

11th April 1929

# LEGISLATIVE ASSEMBLY DEBATES

(Official Report)

Volume III

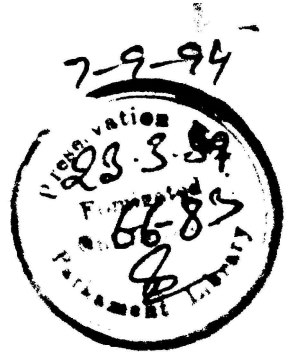
(21st March to 12th April, 1929)

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FOURTH SESSION

OF THE

THIRD LEGISLATIVE ASSEMBLY, 1929



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# LEGISLATIVE ASSEMBLY.

Thursday, 11th April, 1929.

The Assembly met in the Assembly Chamber of the Council House at Eleven of the Clock, Mr. President in the Chair.

## MEMBER SWORN :

Mr. Thomas Ryan, C.I.E., M.L.A. (Secretary, Department of Industries and Labour).

## BOMB OUTRAGE IN THE LEGISLATIVE ASSEMBLY CHAMBER.

**Mr. President:** We meet today under the shadow of a great tragedy which, but for the merciful intervention of Providence, would have resulted in consequences the seriousness of which it is not difficult to imagine. But the fact that the dastardly outrage did not result in more serious injuries does not make it any the less deplorable or condemnable. I am sure it is the unanimous wish of the House that we should place on record our emphatic condemnation of the outrage, and I, therefore, place the following motion before you, namely :

"This House places on record its sense of horror and indignation at the dastardly outrage that was committed in the House on the morning of the 8th instant, offers its deep sympathy to Sardar Sir Bomanji Dalal and others who received injuries, and expresses its profound relief that, thanks to a merciful Providence, the results were not more serious. The House condemns unreservedly this outrage and assures the authorities of its full support in such reasonable steps as may be necessary to prevent a recurrence of such crimes."

The motion was adopted unanimously.

## THE PUBLIC SAFETY BILL—*contd.*

### POINT OF ORDER—*concl.*

**Mr. President:** I now proceed to give my ruling on the Public Safety Bill.

As a rule, I have refrained from offering advice to Government on any matter, unless they themselves sought it, but in this particular case I did so in order to avert a conflict between the powers of the Chair and the rights of Government. It is a matter of regret to me that the Government could not see their way to accept the advice offered, and a conflict has thus become unavoidable. Such a conflict is bound to arise under a constitution like ours, particularly where the Chair considers it its

[Mr. President.]

duty to interpret the rules and orders of the House with a view to prevent powers belonging to this House passing into the hands of the Administration. Speaker Onslow is reported to have frequently observed that it was a maxim he had often heard when he was a young man from old and experienced members, that "Nothing tended to throw more power into the hands of the Administration and those who acted with the majority of the House of Commons than a neglect of, or a departure from, these rules—that the forms of procedure, as instituted by our ancestors, operated as a check and control on the actions of the ministers; and that they were in many instances a shelter and protection to the minority against the attempts of power." Situated as we are in this country, the wonder is that the conflict did not come earlier,—thanks partly to the intervention of His Excellency Lord Irwin from time to time.

Government claim that they have the undoubted right, under the constitution, to decide what legislation they shall ask the House to pass and when. That is no doubt true within prescribed limits, but it must not be forgotten that the Speaker exerts a direct influence upon the course and extent of legislative action. This is what Redlich, at page 142, Vol. II, says:

"But the most important function discharged by him (*that is, the Speaker*), that which gives him his chief political influence, is that of being the sole and final judge of whether any motion or amendment is in order or not. By virtue of the traditional and incomparable authority which is conceded to him by all parties in the House, an immense power is thus placed in his hands and, under certain circumstances, he may exert a direct influence upon the extent of legislative action."

It will thus be seen that the claim made by Government has its own limitations.

Sir Darcy Lindsay, the Leader of the European Group, and the Honourable the Law Member, Sir Brojendra Mitter, contend that it is the right of the House to decide whether it should proceed with the Public Safety Bill or not. Both dispute the right of the Chair to give any ruling on the question whether, assuming that a real debate is impossible, the motion is in order or not. The Law Member further contends that the Chair is bound to leave the decision of this point of order in the hands of the House, and quotes, as his authority, page 145, Vol. II, Redlich, but does not complete the quotation and leaves out the following:

"But it is entirely in the Speaker's discretion whether and when to call for such a decision of the House. If he deems it unnecessary to do so, his ruling is final."

It is quite clear from this that the Speaker is under no obligation to leave the decision of a question like this in the hands of the House. In fact, it did at one time occur to me as a possible course to adopt; but when I heard the statement made on behalf of the Government, a statement which, I must confess, is calculated to undermine the authority of the Chair, and amounts to a direct challenge of its powers, and when I heard the other day the amazing remarks of the Leader of the European Group that, by the exercise of my undoubted right to give a ruling on a point of order, I would be assuming the position of a dictator or usurper, I thought to myself that in yielding to such arguments, I would be shirking my responsibility. But there is another and more serious objection to the proposal. Assuming that I left the decision of the point of order to the House, and the House decided that the Bill should be proceeded with, the Chair

would be bound, in that case, to put the question without any debate if it was found that a debate was impossible. This course would deprive the minority of their right of reasonable debate, which it is my duty to protect.

I understood the Leader of the House, the other day, to claim that Government were entitled to ask the Chair to put the motion to the vote of the House, although there was no debate, as none was possible. I was, however, much relieved when I heard the reply of the Law Member, on behalf of Government, to a question which I put to him during the course of his speech. I asked him whether Government claimed that they were entitled to ask the Chair to put a motion, although there might be no debate on it because a debate was not possible. The reply of the Law Member was:

"I am not suggesting that for a moment, but my submission is this. It is capable of reasonable debate, and if it is capable of reasonable debate, then I presume it will be your duty to put the question before the House."

I am in entire agreement with the view expressed by the Law Member. My difficulty is that I am not satisfied that, in the circumstances of the case, any real or reasonable debate is possible on this motion. On the contrary, the speeches that I heard the other day have confirmed me in the view I had expressed in my statement, that no real debate was possible without repeated reference to, and discussion of, matters *sub judice*, and that matters *sub judice* were the only vital matters relevant to this debate. Indeed the Honourable the Law Member admitted in his speech the other day that we might be handicapped at the present moment, for Standing Order 29 came in the way. He further said that he was not disputing the fact that there might be certain common factors between the Meerut case and the grounds upon which this Bill was framed. One has only to read the speeches of the Leader of the House on the Public Safety Bill, made from time to time, and compare them with the allegations made in the complaint against the 81 accused to be convinced that the fundamental basis of both is identical. The logical result would be that no debate could take place on the motion in question and on the large number of amendments which have been tabled and also on the motion that the Bill be passed. I would have to put all those questions without any debate and secure the passage of the Bill. Such a course is unthinkable and would be a gross abuse of the forms and procedure of the House.

It has been suggested to me that I should allow the debate on this motion to proceed, and if it was found that a real debate was not possible, I should then consider whether I should not exercise my right of declining to put the question, instead of ruling the motion out of order at this stage. Although this suggestion has not been seriously pressed either by Government or any of the speakers on the point of order, I have carefully considered it, and I am of opinion that those who still contend that a debate is possible would be completely disillusioned as soon as the debate began. I have no doubt that I would have repeatedly to intervene and call speaker after speaker to order. I would be deceiving myself and deceiving the House if I left any impression on the mind of any one that I had any doubt whatever that any debate on any vital matter in respect of the Bill was possible. I have, therefore, decided to reject the suggestion, the adoption of which would result in pure waste of public time and would have all the appearance of a farce and a fraud.

[Mr. President.]

It has been contended that, as the motion has already been made, the House is seized of the Bill and the Chair has no power to withhold it from its consideration. This is a mistaken view. The point that a motion is out of order can be taken at any time before it is voted upon, and the Chair is entitled to rule it out if it is of that opinion.

The only question that now remains to be determined is whether the motion is in order or not. It is my duty, as President of this House, to see that it transacts its business with due regard to the forms and procedure laid down in the Act, Rules and Standing Orders governing the same, and where no Rules or Standing Orders exist, in accordance with accepted principles, precedents and conventions that should regulate the fair discussion and free decision of every question before the House. It is a duty which the President owes to the House and to every Member thereof, and is one which he cannot share with or delegate to the Government or the Opposition, or submit to the verdict of a majority or a minority in the House. "Every matter requiring the decision of the Assembly", to quote the words of Standing Order 30, "can only be brought forward by means of a question put by the President on a motion proposed by a Member". When a motion is so proposed and spoken to by the Mover, it is the right of the House to discuss it, and no derogation from, or infringement of, this right of reasonable debate can be permitted by the Chair on any ground, real or imaginary, of urgent executive policy or otherwise. Even where express provision is made by the Standing Orders or Rules for an abridgement of this right, e.g., motions for closure, it is the duty of the President to see that they do not involve an abuse of the Rules or Standing Orders or an infringement of the right of reasonable debate. It follows, therefore, that the President cannot put the question for the decision of the House without a reasonable debate or without affording to Members every opportunity for such debate. It is obvious that, to do so, would be to deny to the House its fundamental right of free discussion and decision on the merits of the question before it. It would constitute a negation of the very basis of all deliberative and legislative bodies. As I have already pointed out, not only no reasonable debate, but hardly any debate, is possible in respect of the motion now before the House. There are, as Honourable Members are aware, certain limitations of debate, which are expressly laid down by Standing Order 29, in the interests of fair and reasonable debate within the House, as also in the larger interests of the public and the State. The first of these is that a Member, while speaking, shall not refer to any matter of fact on which a judicial decision is pending. I have been assured by the Leader of the House that the Government, on their side, will see that no reference is made to matters *sub judice* in the debate on the motion, and I have been invited to help them in seeing that no such reference is made by others in the exercise of their right of debate. I cannot but consider such a proposal, coming from a party that has, by its own action in launching the prosecution during the pendency of the Bill, made the debate on it impossible, as unfair to those Members who desire to oppose the motion and to disprove the case made in support of it by the Home Member, and unfair also to the House which has to give its decision on it. The Law Member admits that the right of reasonable debate exists, but contends that, in this case, it has already been exercised twice, and that therefore



further exercise of this right is superfluous. This betrays a fundamental misconception of the procedure of the House and the rights of debate of Members on motions. The House and every one of its Members has the right, on every occasion that the Bill is taken into consideration—whether on a motion to refer it to a Select Committee or to consider the Bill as reported by the Select Committee, or to pass the Bill as amended after consideration and passing of its clauses,—to discuss the case for the enactment of the Bill as a whole and give its decision thereon. I cannot, by reason of previous discussion having taken place, impose on the Members the obligation to vote for the motion without the debate they are entitled to raise.

[It has been contended that the right to rule the motion out of order is not expressly conferred on the President by any of the Rules or Standing Orders of the Assembly. Indeed, the Law Member goes further and says that, as the Assembly and its President are creatures of the Statute, the convention and precedents of the House of Commons have no application, and that such power cannot be deduced by implication from the provisions of Rules and Standing Orders. Such a power must, according to him, be expressly given. But it is a matter of common knowledge that conventions and precedents of the House of Commons are being quoted repeatedly in the Legislative Bodies in India and acted upon.) It was only last year that the Chair exercised its inherent power to disallow the introduction of a very important Bill on the ground that the course proposed was an abuse of the forms and procedure of this House and violated its proprieties. If the contention of the Honourable the Law Member is upheld and the Chair restricted to the powers expressly conferred on it by the Rules and Standing Orders of this House, the business of this House would become impossible.

The Leader of the House, the Law Member and the Leader of the European Group have, in support of their contention, relied upon the proceedings of the House of Commons relating to the following Acts:

- (1) An Act for the better protection of persons and property in Ireland, 1861;
- (2) Defence of the Realm Act passed in the early years of the recent war.

I have carefully studied the debates on the above measures, but am unable to find either that the present point of order was raised and decided, or that there was, in fact, a common basis for the prosecution as well as the Bills before the House, as is the case here. I am therefore unable to derive any guidance from these instances for deciding the point before me.

[For those reasons, I am of opinion that, although power to rule this motion out of order is not expressed in so many words in any of the Rules and Standing Orders, it does arise by necessary implication and analogy, and I am further satisfied that, in any case, the Chair has the inherent power to rule out a motion on the ground that it involves an abuse of the forms and procedure of this House as this motion, I hold, does. I therefore rule it out of order.]

I understand that the Leader of the House does not wish to make any statement on behalf of the Government in view of the communication which I am about to read.

## MESSAGE FROM H. E. THE VICEROY AND GOVERNOR GENERAL.

**Mr. President:** I have received the following communication from His Excellency the Viceroy and Governor General.

(The Message was received by the Assembly standing, except the Members of the Congress Party, who continued to sit in their places.)

Will the Honourable Members kindly stand in their places?

**Pandit Motilal Nehru** (Cities of the United Provinces: Non-Muhammadan Urban): Is it your decision, Sir, that we should stand?

**Mr. President:** Courtesy requires that we should stand.

**Pandit Motilal Nehru:** We stand because you request us to do so.

(The Assembly then received the Message standing.)

*"In pursuance of sub-section 3 of section 63B of the Government of India Act, I, Edward Frederick Lindley, Baron Irwin, hereby require the attendance of the Members of the Legislative Assembly in the Assembly Chamber at 11 o'clock on Friday, the 12th April, 1929.*

IRWIN,

*Viceroy and Governor General."*

*New Delhi, 10th April, 1929.*

In view of this communication, I understand the Leader of the House makes no statement.

**The Honourable Mr. J. Orerar** (Leader of the House): In view of that communication, Sir, it is unnecessary for me to make any statement.

**Mr. President:** Honourable Members will meet tomorrow at Eleven o'clock to hear the address by His Excellency the Viceroy and Governor General, and, after the conclusion of that address, there will be an adjournment of ten minutes when the House will re-assemble again.

The Assembly then adjourned till Ten Minutes after the conclusion of the Address of His Excellency the Viceroy on Friday, the 12th April, 1929.