Monday, 4th April, 1932

THE

COUNCIL OF STATE DEBATES

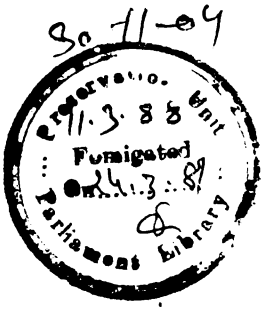
VOLUME I, 1932

(25th February to 6th April, 1932)

THIRD SESSION

OF THE

THIRD COUNCIL OF STATE, 1932



CALCUTTA: GOVERNMENT OF INDIA
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COUNCIL OF STATE.

Monday, 4th April, 1932.

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

BILLS PASSED BY THE LEGISLATIVE ASSEMBLY LAID ON THE TABLE.

SECRETARY OF THE COUNCIL: Sir, in pursuance of rule 25 of the Indian Legislative Rules, I lay on the table copies of the following Bills which were passed by the Legislative Assembly at its meeting held on the 2nd April, 1932, namely:

A Bill to provide for the fostering and development of the sugar industry in British India, and

A Bill to provide against the publication of statements likely to prejudice the maintenance of friendly relations between His Majesty's Government and the Governments of certain foreign States.

BENGAL CRIMINAL LAW AMENDMENT (SUPPLEMENTARY) BILL.

THE HONOURABLE MR. H. W. EMERSON (Home Secretary): Sir, in moving that the Bill to supplement the Bengal Criminal Law Amendment Act, 1930, as passed by the Legislative Assembly, be taken into consideration, it will be necessary for me to say something about the previous history of legislation of this character and also to give some facts regarding the Provincial Act that this Bill is intended to supplement. I shall be as brief as possible, and the greater part of what I have to say about the local Act will be directly relevant to the provisions of the Bill now before the House. The House is no doubt aware that the legislation which this Bill is intended to supplement dates in all essentials from 1925 when in view of the activities of the terrorist party in Bengal it became necessary to pass legislation of a character that involved the principle of detention without trial. Subsequent to the passing of that Act, a Bill similar to that now under consideration was introduced by the Government of India. It was rejected in another place, was passed by this House and was certified by the Governor General. The Provincial Act expired at the beginning of 1930. Those provisions of it which related to the institution of special tribunals to try terrorist crimes were continued for another five years and consequently those provisions of the Supplementary Act also continued which provided for an appeal to the High Court in the cases of capital sentences and for confirmation by the High Court of those sentences. Two provisions of the Supplementary Act lapsed, namely, the provision which

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gave to the Local Government, with the sanction of the Governor General in Council, the power of transferring detained persons from the province of Bengal to other provinces, and secondly, the power which placed a bar on applications of *habeas corpus*. The provisions of the Bengal Act relating to the powers of detention had been inoperative for less than a fortnight when the Chittagong armoury raid occurred. That raid was the most serious attempt yet made by the terrorists in Bengal to paralyse the existing administration, and it showed beyond doubt that the powers which had been allowed to lapse were still necessary in the conditions obtaining in Bengal. In consequence, the Governor General promulgated an Ordinance immediately after the Chittagong raid. That was in April, 1930. In October, 1930, the Ordinance was replaced by an Act of the Provincial Legislature which in effect restored the provisions of the Act of 1925. The Act was passed by the Bengal Legislative Council by an overwhelming majority, and this fact the House would do well to bear in mind. The Act the House is asked to supplement has thus been in force since October, 1930, but since then it has been amended in some important particulars. During the session of the Bengal Provincial Council which has just concluded, a Bill was passed which extended the operation of the substantive clause to a very considerable extent. Previously, persons were liable to be arrested and detained without trial only if there were sufficient grounds to believe that they were acting, had acted, or were about to act in pursuance of a terrorist conspiracy or in pursuance of certain crimes of a terrorist character. The authorities found that in practice it was difficult to cope with the movement under the restrictions imposed by the Act and they asked for powers to extend the Act so as to bring within its provisions any member of an association whose objects, speaking generally, were to carry on terrorist activities. An Ordinance was promulgated to secure this purpose at the end of October last, and that Ordinance has now been embodied in an Act of the Provincial Council. This Act also was passed only a few weeks ago by a large majority in the Provincial Council—an Act, as I have said, which very largely extended the scope of the original measure of 1925. This also is, I think, a very important fact which the House will want to take into consideration. For it is relevant to ask why the Bengal Council have been convinced that it is their duty to pass legislation of a character which is naturally repugnant to public opinion. The answer is to be found in the series of atrocious outrages that have been committed during the last two years. It is unnecessary for me to dwell on them at any length. The facts are only too well known to this House and to the public. It will be sufficient for me to say that during the past 14 or 15 months—we collected the figures for the year ending about the middle of January last—no less than 93 crimes of a terrorist character were committed in Bengal. Twenty-four of those related to murders or to attempts to murders. Among the most serious crimes committed within the past 12 months are the assassinations of Messrs. Peddie, Garlick, Khan Bahadur Ahsanullah, Mr. Stevens, Mr. Ashutosh Neogy, who was a witness in an important case against terrorists and the attempted murders of Messrs. Cassells, Villiers, Mr. Durno, a Sergeant of Police, the Assistant Superintendent of Police of Chittagong and the District Magistrate of Howrah, and last of all the recent attempt on the life of Sir Stanley Jackson, the late Governor of Bengal, whose life was saved only by the gallantry, courage and presence of mind of the Vice-Chancellor of the Calcutta University. It is in the light of those facts that the Members of the Bengal Provincial Council, who after all are best able to estimate the conditions existing in that province, have twice within a period of 18 months passed legislation of a drastic character.

Now, the criticism that is naturally passed on the Bengal Act is that it provides for a system under which a person can be kept in detention without having been convicted of any criminal offence. That is admitted. It is the essential principle of the Act and if that principle is undermined the value of the Act disappears. I wish to say only one or two words about that. There is a safeguard provided by the local Act, a safeguard which in the circumstances of the case cannot be a complete one, but which in practice has been found to operate as a very effective check on irresponsible executive action. That safeguard is a provision of the law which requires that the Local Government should refer to two judges of the status of Sessions Judges the facts they have in their possession which in their opinion justify the detention of the person concerned. The Bengal Government have claimed time after time—and they have claimed rightly—that they exercise the most scrupulous care in reaching decisions on cases in which they propose to subject persons to detention. They have laid down certain standards by which their action is determined. They have insisted on the observance of those standards and the Home Member has claimed—and I do not think his claim has ever been questioned—that the most scrupulous care is taken that no person is under detention against whom there is not an overwhelming case. I have had occasion to see a number of the cases and of the briefs which are preferred relating to the reference to two judges. I can only say that I was most favourably impressed with the thoroughness with which these cases are prepared and presented. In fact so far as I recollect, I have heard no suggestion that the system so works as to place under detention persons who are innocent of engaging in these terrorist conspiracies. The criticism that is made is of a different kind and is inseparable from the nature of the Act, namely, that the detenus have not been convicted by a criminal court. But I think the House can rest assured that under the system as it now works the chance of an innocent person being placed under detention is quite negligible. When one is naturally inclined to extend sympathy towards persons who are detained in these circumstances I think it is necessary to remember that those persons have indubitably been engaged in conspiracies, the main object of which is the assassination of Government officers.

I come now, Sir, to the reasons which have made it necessary to adopt a procedure of this sort. Government would naturally prefer to bring these persons to trial, to get them convicted of substantive offences and to consign them to jail as ordinary prisoners. Wherever that course can be followed it is followed, and it has been found possible in a fairly large number of cases. But, speaking generally, the Government of Bengal are fighting a secret movement, a movement that works in the dark, a movement about which it is ordinarily difficult to get information. They have to obtain their knowledge of the plans of the terrorists by the same secret methods as the terrorists themselves employ, that is to say, their chief sources of information are secret informers whose information cannot be revealed for several reasons. If the sources were revealed the lives of informers would be in the greatest danger, and secondly, if owing to the disclosure of information several informers lost their lives, the sources would entirely be closed up. No other persons would be willing to come forward to give information. Another reason why it is necessary to adopt this procedure is that it is part of the terrorist plan to intimidate and terrorise and overawe persons who would otherwise be willing to give evidence against them. I need only give two recent examples of that. A few months ago, in August last, a Muhammadan Inspector of Police was assassinated in Chittagong. He was murdered when he was watching a football match. A large number of people saw what happened. There could be no doubt about facts. There was no lack of eye-witnesses. At the

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trial practically all the non-official witnesses went back on their statements, not because they wished to condone murder, but because they had been terrorised. A few months later there was an important case relating to what was known as the taxi-cab dacoity in Calcutta. The most important witness was a gentleman named Mr. Ashutosh Neogy. Within a few weeks he was murdered.

The few facts that I have given will, I think, convince the House, that repugnant as this procedure is to Government and to the public, it is unavoidable and the responsibility for it lies on those who carry on secret conspiracies which necessarily compel Government to adopt similar measures in order to check them.

Sir, I now come to the two main provisions of the Supplementary Bill before the House. The first provision provides for the transfer of detenus at the initiative of the Local Government, but subject to the approval of the Governor General in Council, from the province of Bengal to other provinces. A similar provision was in force from 1925 to 1930 and during that period a number of persons were transferred to other provinces. The House will no doubt wish to know what is the necessity for a provision of this kind. The Bengal Government have represented to the Government of India in the strongest terms that they feel that they are unable to cope successfully with the terrorist movement, even with the system of detention, so long as the most inveterate conspirators are present in Bengal to contaminate the younger revolutionaries and to continue to carry on plots from the detention camps in which they are detained. I will give the House some recent information which Government believe to be reliable, regarding the activities of detenus in these detention camps. In January last a detenu was caught while attempting to escape from one of the detention camps. He was found to be carrying letters of introduction to terrorists at large. In the same month the father of a détenu who was visiting his son in the camp was caught in the act of smuggling out 15 letters to members of an organisation which is known to have been responsible for the murders of several Europeans which have taken place during and since 1930. Government have also reliable information that specific instructions have been issued from detention camps in Bengal to terrorists outside to carry out the following plans. First, the murder of a particular district magistrate ; secondly, the murder of a particular superintendent of police ; thirdly, the murder of the presidents of tribunals which had tried terrorist cases ; fourthly, the murder of a very high official of Government, and fifthly, to concentrate on the murder of European officials and specially of members of the Indian Civil Service. The facts that I have given will leave no doubt that conspiracies are to a large extent organised and instituted from detention camps in Bengal. And the Bengal Government, as I have said, have represented with the utmost force that, unless they are able to send out of Bengal the more inveterate terrorists, they are unable to prevent the maturing and organisation of these plans. That is the first ground for their request.

Another reason and a very important one is that they cannot institute and carry on with any hope of success any system of reformation of the less hardened and younger members of these organisations so long as their efforts are thwarted by the presence of men who have been engaged solely in these activities for many years. If they are able to eliminate the worst cases they have some hope of introducing reformatory measures. And the third reason

is that they are unable effectively to improve the discipline of their camps and of their jails so long as they are hampered by the presence of the worst persons of this description. In maintaining the discipline of their jails and detention camps the Bengal Government are confronted with the most serious difficulties, difficulties which they are doing their utmost to surmount but which, so far, have to a very large extent defied their efforts. I need only remind the House that during the last two months three very dangerous terrorists—convicted terrorists in this case—escaped from one of the jails and two important detenus escaped from a detention camp.

Those, Sir, are the reasons which have impelled the Government of Bengal to ask for the assistance of the Government of India. The Government of India for their part consider that the request should be met and that the Local Government should be given all assistance within reason to deal with this danger. It is, however, difficult to arrange for the transfer of any large number of detenus to the various provinces. Provincial Governments are themselves naturally reluctant to take more than a few of these very, very undesirable persons. And even if they were willing to take them in in any considerable number, it is undesirable that the revolutionary virus should be extended to other provinces. In these circumstances the Government of India propose to come to the help of the Government of Bengal by opening a detention camp in a centrally administered area, namely, at Deoli in Ajmer. The plans for this camp are well in train and it is expected that the transfer will take place within a short period of the Bill becoming law. It is not pretended that it will be possible to reproduce in Deoli in their entirety the conditions prevailing in Bengal. There are naturally differences of climate and of environment, but the climate is extremely healthy and so far as it is possible to reproduce the conditions this will be done. Sir James Crerar, during the course of the discussions in another place, gave on several occasions the most explicit assurances that so far as is feasible every effort will be made to reproduce the conditions under which detenus are detained in Bengal.

That, Sir, is the first substantive provision of this Bill. The second one which is included in clause 4 will operate to prevent applications of *habeas corpus* being made in the High Court with reference to the provisions of the Provincial Act. Now, in the early part of my observations I laid particular stress on the essential principle that underlies the local Act. That essential principle is the substitution of executive action for judicial decision. Nobody likes a principle of that sort. Everybody would be glad if it were possible to do without it. But as I reminded the House, the Bengal Provincial Council who are much better acquainted with the conditions prevailing in Bengal than we are have twice within 18 months expressed with no uncertain voice that in their view it is not possible to do without that principle. So long as that fact is accepted, the inevitable consequence has also to be accepted. If executive action is to be substituted for judicial decision, then the power of the courts to upset executive action is to be definitely checked and controlled. Without this provision relating to *habeas corpus* the whole structure of the local Act is undermined.

Before I move I wish to add a few words only. I wish to emphasise that the Bengal Government and their officers are engaged in a grim fight with organisations of the most dangerous character. Those officers whose duty it is directly to fight these associations go in daily danger of their lives. They are facing those dangers with the utmost courage and determination and it is their intention to defeat the movement and the series of conspiracies comprised in it. It is equally the intention of the Government of India to give the

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Bengal Government and their officers all the support within reason that can be given to them. The Local Government have urged in the most emphatic terms that they regard this measure as of the utmost importance to them in helping them to fight their battle. I am confident that the House will not refuse them that help. Sir, I move. (Applause.)

THE HONOURABLE MR. ABU ABDULLAH SYED HUSSAIN IMAM (Bihar and Orissa: Muhammadan): Sir, in rising to oppose the motion for consideration I wish to say at the outset that we wish to dissociate ourselves from all the terrorist activities and to condemn in no uncertain terms the activities of the terrorists. While we are at one with the Government in the determination to crush the terrorist movement I wish to oppose th s motion on considerations quite apart from the necessity of punishment. It is on the *modus operandi* of the Government that our opposition centres. That the principle underlying the main Act, known as the Bengal Act, " is abhorrent to the lawyers as well as to the administrators ", is not my own opinion; this is the opinion of the highest luminary of the law in India—the Honourable the Law Member. The Honourable the Law Member stigmatised the principle of detention without trial in these words in the other place. We know that it will be going against the spirit of provincial autonomy if we at the centre were to override the decision of the province. I admit that. Still, if it is a wrong principle, no amount of justification can make it good for us to connive at. Two negatives do make one affirmative but two illegalities, two unlawful things, do not make one legality. I wish to dissociate myself from the action of the Government which is going to be an accessory after the event in depriving us of our legal and fundamental rights. The operative clauses of this Bill want to take away the detenus from Bengal to other parts of India. The justification for this that has been given by the Honourable Mr. Emerson is that we have already done this sort of thing in the past. If we have done a wrong once, that is no reason why we should again do it. The point has been urged that they are very dangerous criminals. There are worse criminals than these detenus. There are criminals who have actually committed murder and who have been condemned by the existing courts of law for having committed murder and yet they are being detained in jails in Bengal. They are not dangerous enough, but those against whom there is no legal proof are considered so dangerous that it is thought advisable that they should be taken away from Bengal.

Mr. President, much has been made about clause 4. I will not discuss that point now because it is coming up in connection with the amendment that is going to be moved by a past Judge of a High Court. We will discuss the point fully then. Here I wish to say a few words as regards the advisability of transferring them from Bengal. The place to which they are going to be sent is a God-forsaken place, it is 50 miles from the nearest railway station, in the arid deserts of Rajputana. Compare the dry and hot climate of that place to the humid and temperate climate of Bengal. When people are brought in from England, we try to give them as much of the climate of Europe as we can. We find for them capitals in the cool places in the hills. But these people are not allowed to breathe even the air of their own native soil. It has been said that all arrangements will be made to bring as far as possible the conditions of Bengal into that arid desert. But this is physically impossible. Another point that has been urged about these detenus by many Honourable Members of the other House is that there is uncertainty about

these men. They do not know how lo g they are going to be kept in jail, and no arrangement has been made for them to see their relatives. Knowing the financial condition of India, which could very well have been commented upon by Mr. Brayne with reduced purchasing power, etc., can these poor people afford to travel more than a thousand miles from Bengal to Ajmer and then take all the trouble of going 60 miles in an arid desert where there are no facilities worth naming ? The point was made in the other place that their near relatives should at least get a pass once a year or more often to go and see them, but that was not given. Even the worst criminals are allowed the privilege of seeing their relatives, but this privilege is not given to the detenus. It will rest on the sweet will of the jailer whether he allows the detenus to see their relatives or not. There are no fixed laws about it, and no promise has been made that any bye-laws will be made under this Act on this point. We admit, Sir, that the detenus are dangerous, but if they are dangerous, the Government is strong enough to take care of them. They have been in Bengal long enough, and if the worst criminal can be kept inside Bengal, there is no reason why these detenus should be sent outside Bengal. The fact that this Bill has been brought forward just now does not show that the Government have all at once decided to do this. Two years back provision was made for repairing the jail at Deoli and Rs. 2 lakhs were provided under the head " Public Works " to make that place habitable. If these two lakhs had been spent in some quarter of Bengal, we could have had quite a secluded place, selected by Mr. Emerson in the Sunderbans, and then there would have been no necessity to bring forward this Bill. What I object to is that Bengal should dictate to us. While we are asked not to interfere with Bengal, we do think that the Bengal Council should not dictate to us and say : " I want this, you have got to do it." The tables have been turned. The Central House seems to be more or less a subservient House to the Bengal Council. The decisions of the High Courts are binding on the subordinate courts, but we are asked to give way to the decisions of the Bengal Council in the name of provincial autonomy. It is provincial tyranny. Sir, in the other place, many attempts were made to soften the provisions of this Bill, but the Government were adamant ; it would hear nothing. As is always the case in this House, especially with a thin attendance of the elected Members who are less than 40 per cent. of the House at the present moment, there is no hope at all of our success. But we can at least dissociate ourselves and warn the Government that they are taking upon themselves a great responsibility in passing this Bill against the wishes of the representatives of the people.

THE HONOURABLE MR. MAHMOOD SUHRAWARDY (West Bengal : Muhammadan) : Sir, I rise to make a few observations on the Bill which has just been so ably moved by my Honourable friend Mr. Emerson in the interests of the Government of Bengal. Sir, in the first place, it confers on the Government of Bengal the power of transferring the detenus to another province in British India subject to the approval of the Governor General in Council, and secondly, it suspends the operation of section 491 of the Criminal Procedure Code relating to *habeas corpus*. Sir, it appears to me at the first blush to be an unduly and unnecessarily repressive measure, but the consideration of the safety of the State, under which alone society can exist and progress, must—to all reasonable men—be the consideration of supreme importance overriding all other considerations. Sir, the sole consideration therefore before this Honourable House is whether the interests of public safety require the present Bill. The Government, who are best able to judge the situation have said that it is of pressing necessity ; and the other House, which is pre-eminently

[Mr. Mahmood Suhrawardy.]

the House of the representatives of the people and the more popular House, have endorsed that opinion in no equivocal terms. Therefore the question is whether the Bill is a necessity. The main objections raised by the opponents of the Bill relate to difficulties of diet of the detenu and interviews by his relations in another province. These objections are merely of a sentimental nature. As for diet the detenu may be given the right of selecting his own meals. Regarding difficulties of interview I think it is to the interest and safety of the detenus if frequent interviews with the relations, who have no control over the boys or girls and who could not guide them properly, are made difficult. Moreover, such trivial difficulties as regards diet and interview are bound to come ; but we are to look to the greater benefit, advantage and safety that would follow such detention outside Bengal. It will keep the detenu out of the evil and dangerous association of the exponents of revolution, murder and assassination and place them in the midst of better associates to mend themselves. It means the safety of the boy or the girl and safety of the Government officials who run the risk of being assassinated for loyalty and devotion to the Government and to their duties. If you want to save a boy or girl from the gallows, take him or her out of the dangerous influence of anarchists and revolutionaries. If you desire to protect your officers against murderous assaults, place the suspects in better and safer society and environment.

Sir, I hail from the district of Midnapore in Bengal. The district is representative of the province. In my own district terrorist outrages are rampant as in some other districts of Bengal like Chittagong, Mymensingh and Dacca. Police officers have been killed in my district. I refer to the Chatwa sub-inspector murder, where the victim was burnt alive by terrorists. Deputy Magistrates have been attacked and a very dutiful and competent District Magistrate, Mr. Peddie, has been murdered. I believe you all know the name of Bimal Das Gupta of Barisal. The murderer of Mr. Peddie escaped conviction by virtue of the threat which the terrorist organisation exercised over witnesses. Therefore the Advocate General had to withdraw the case from the High Court. Sir, of late, similar assassination and attempts at assassination have cropped up in quick succession in different parts of Bengal. I hang my head in shame and sorrow when I notice that my Indian brethren are implicated in these acts in a country which is proverbial for its religious feelings, charity, hospitality and liberality. If you want to check these atrocities, if you want to clear the atmosphere, if you have got to put some such law on the legislative anvil as an emergency and preventive measure, I believe the House will welcome the measure in view of the facts. But, Sir, at the same time, I have also to give a warning to the Government that such facts are to be faced boldly and gracefully. How are you to face them ? Not with Black and Tan laws. Certainly save the younger generation and the official by all means ; but do something at the same time to win over the people. You cannot govern the people against their will. You cannot rule them if they refuse to be ruled by you. That is the spirit in the land, the spirit of independence, the spirit of liberty, that is pulsating through the veins of each and every Indian. Until you give that spirit scope, there will be no peace in the land.

Therefore let me request and repeat to my Honourable friend the Home Secretary opposite, let this Bill be not an engine of tyranny, persecution and innovation in the name of stamping out the terrorist movement. India is a sentimental country and if the Government totally disregard the sentiments of a large section of the people, I doubt whether the Government will be successful in the long run.

Let me also repeat and request the Home Secretary to remember that Indian people are peculiarly responsive to sympathy and personal influence. Sir, more things can be gained by gaining the sympathy and goodwill of the people than by continuous repressive laws. Sir, I offer this criticism not in any spirit of opposition to Government, but from a sense of duty. Sir, I support the measure and have no objection to Government assuming larger powers for the maintenance of law and order which is the first and foremost duty of every Government.

THE HONOURABLE MR. SATYENDRA CHANDRA GHOSH MAULIK (West Bengal: Non-Muhammadan): I presume my Honourable friends here have taken the trouble to read and watch the proceedings in the other House in connection with this measure, and if they have done so they will have noticed the depth of feeling which this Bill has evoked in the public mind. As an elected Member from Bengal I deem it my duty to voice that feeling on the floor of this House. I recognise this Supplementary Bill is designed merely to give additional powers not to be found in the Bengal Act but which the Government of Bengal are very anxious to secure for themselves. And it is only because such powers are not within the competence of the Local Legislature that the Bengal Government found it necessary to invoke the aid of the Central Government. It is not germane, therefore, to raise in the discussion here questions as to the policy or principle underlying arrest or detention without trial. Even if it were, I do not think it would be right or proper for us to disregard the views which have found unmistakable expression in the verdict of the Local Legislative Council. By a large majority that Council passed, or rather re-enacted the provisions of the general Act whereby power was given to the executive to arrest on suspicion and detain without trial. And we have a right to assume that they took that course in view of and with a full appreciation of the situation in that province. Far be it from me to carp or cavil at their decision, or to minimise the gravity of the difficulties with which they are faced in Bengal. I venture to say that we are all of us united in a common determination to stamp out terrorism from Bengal, and we are prepared also for that purpose to arm the executive Government with all reasonable powers to fight down that terrible menace. For, so long as the terrorist stalks the land, so long will the fulfilment of the conditions necessary for constitutional advance be retarded.

12 NOON.

Actuated by such a feeling, Sir, I say that I do not question the principle of the present Bill any more than I question the principle of the fundamental legislation which the Bill seeks to supplement. And in saying this, it is just as well to remember that the powers which the Bengal Government are now seeking are a reproduction of the powers they had under the Supplementary Bill of 1925.

My friends may reasonably ask, therefore, if these be my views, why then should I appear to strike a somewhat discordant note by giving notice of certain amendments. I feel I owe an explanation to the House. Well, Sir, that explanation lies in the terms of the amendments themselves. I shall have occasion to deal with them when they come under discussion, but I might point out at this stage one or two of the salient features. None of the amendments, Sir, you will notice, touch any fundamental points involved in the Bill. Their object, and their only object, is merely to provide a few reasonable safeguards which from the nature of things appear to me to be necessary.

There are two different matters dealt with in the Bill. One is about the transfer of detenus from Bengal to some other place outside that province

[Mr. Satyendra Chandra Ghose Maulik.]

and the other is to take away certain powers of the High Court from these detenus, not only from those who may be detained in Bengal, but also those who may be detained outside Bengal. Now, Sir, while fully admitting the compelling necessity which has forced the Government to ask for these powers, I believe that I can safely say that in putting these powers into operation it can never be the intention of the Government to deal with these persons with unnecessary severity. The object is to segregate them : the action is more preventive than punitive : these persons *ex hypothesi* will be persons who have not been tried and found guilty, at the worst they are persons against whom a suspicion exists : and it is considered necessary in the interests of the safety of the State to remove them from the scene of their mischievous activities, actual or potential. In dealing with such persons, Government, even if they cannot act with magnanimity, can at least avoid the appearance of being vindictive.

Sir, if you have followed the debates in the Assembly, you will have seen that the Honourable the Home Member was pleased to give certain assurances to the House more than once and I am glad also to express that in this House also the Home Secretary has reiterated that assurance that Government would do all it can to mitigate the hardships of these detenus. Well, Sir, most of my amendments have been framed with a view to carry out these very assurances. There can be no question that the transfer of these persons outside Bengal does involve a good deal of hardship ; why not do something to mitigate it ? Why not try to reproduce for these unfortunate people some of the conditions of detention which they would have enjoyed if they were in Bengal ? Dangerous terrorist criminals, who may have been tried and found guilty, cannot be removed from Bengal, Government will have to provide for their custody in a jail within the province. But you are removing these suspects from the province of their origin, some of them doubtless much less dangerous than the convict prisoners. I ask why should you in their case be more severe than in that of the others ? Sir, as I said, the Home Member gave certain assurances to the House in regard to them. I venture to think, mere assurances will not do : you will have to satisfy the public that they are being given effect to, and that is why I suggest that Government should obtain and place before the Legislatures periodical reports about the health and general conditions of these detenus in their place of enforced banishment.

Sir, the Bengal Act has given very drastic powers to the executive : I suppose that cannot be disputed. Without questioning for one moment that there are sufficient reasons for trusting them with such drastic powers, is it not still permissible to ask that in exercising such powers the officers of Government should keep within the limits prescribed by this Act ? The Bill, Sir, seeks to take away the rights of *habeas corpus*. That is a most serious invasion of the personal liberty of the subject, and abhorrent as this must be to everyone, even though we may be prepared to submit to it in the higher interest of the State, is there any reason why at the same time it should not be incumbent on the executive authorities to follow the procedure laid down for them ? I venture to suggest that Government have no right whatever to disregard the provisions of the Act itself. If they do, they must be prepared to have their action scrutinised by the highest Court in the land. I will make the distinction between procedure and merits. If I must lose the right of questioning the merits of the arrest or detention, need I lose the right at the same time of insisting that special procedure of the law should be scrupulously observed.

Sir, the amendments I have suggested represent the minimum of what Government in their own interests ought to concede, far short as they are of the maximum which the public could very well claim. I will not say anything more at this stage beyond expressing the hope that the House will appreciate my attitude in this matter and do right.

THE HONOURABLE MR. JAGADISH CHANDRA BANERJEE (East Bengal : Non-Muhammadan) : Sir, any measure that will conduce to the best interests of the country will have my sincere and solid support but when I understand that the Bill to supplement the Bengal Criminal Law Amendment Act, 1930, if passed into an Act, will discredit Government and be resented by the public I cannot support its passage silently without entering my emphatic protest against it which, I am sure, will be a most unpopular measure. The Bengal Criminal Law Amendment Act, Sir, was passed by the Government of my province against the teeth of opposition of a considerable section of people who thought that it was not only an unwanted piece of legislation but one that could be termed as a Draconic Law. Much has been said against the Act and the Bill before us, which has been discussed threadbare, debated keenly and passed finally in the other House. But when it has come to us either for revision or ratification or for our approval the only action feasible for us would be to oppose the Bill in all its bearings. The woes and grievances of the detenus are many and if on the top of these woes and disabilities, they are removed from their own provincial jails to other places of detention in different provinces there will be a multiplication of their miseries. In the first place, Sir, if the food and the mode of life as obtains in Bengal cannot be provided the health of the detenus will certainly suffer and as such when similar conditions regarding food and mode of life of the Bengalis cannot be ensured in any jail outside Bengal, it would be wise on the part of Government not to transfer the prisoners to jails outside their own province. Then, Sir, with regard to interviews by their relatives, it would be very difficult affairs for them, because in case any detenu is seriously ill in any jail outside Bengal, much time may be lost in communicating with the provincial authorities for permission to see him and the official dilatoriness may be dangerous and sometimes prove fatal. Even in ordinary circumstances, it is noticed that a relative seeking an interview with a detenu is driven from pillar to post and post to pillar. When, in Bengal itself, it is sometimes seen that matters relating to interviews cannot be expedited by Government for reasons best known to them, it can be better imagined than described what would be the condition of the relatives relating to interviews with the detenus if they are to rot in jails outside Bengal. Moreover, if the interviews are granted the relatives would have to incur heavy expenses to see the detenus in jails outside Bengal. In view of this fact when Government do not make any provision for travelling allowances for the relatives of the detenus it is better the detenus should be kept in Bengal jails and not removed to some other provincial jails as contemplated in this Bill. And then with regard to the correspondence of the detenus, it is desirable that Government should provide reasonable facilities because complaints are often found in the press from the relatives of the detenus that their whereabouts remain enshrouded with impregnable and impenetrable mystery for a considerable period of time. Of course exaggerated reports are promptly contradicted by Government who generally clears up the matter and gives the true state of the situation. But in some cases it is reported, if the letters of the detenus are considered objectionable by the authorities they are not mailed to the addressees or relatives and the letters of the relatives too, for sufficient reasons known only to the authorities who censor them, are not

[Mr. Jagadish Chandra Banerjee.]

delivered to the detenus and no reasons are generally assigned by Government for their action while the detenus as well as their relations remain in suspense for a long time. And, then, Sir, sometimes the Telegraph Department of Government becomes the gainer through the exchange of wires by the parties concerned! To remove such grievances with regard to correspondence of the detenus and their relatives, Government should inform the parties in time that for such and such reasons the letters were considered objectionable and were not forwarded to the addressees which would relieve them of their anxieties. If in Bengal these things may happen, Sir, it is more than likely that the same may be the case regarding the correspondence of the detenus and their relatives if the prisoners are kept in jails in other provinces. In such circumstances, Sir, the detenus should not be transferred from the Bengal jails, because their transference will not only put them to a lot of difficulties as regards their correspondence but their relatives too will be greatly inconvenienced in this matter in case the letters of both the parties are held over by Government for reasons which they consider objectionable and for which they may not assign any reason.

Before I resume my seat, Sir, I should like to make one particular suggestion to Government to make the best of the worst situation that if at all the detenus are transferred to jails outside Bengal or any person is committed to custody in a jail outside Bengal, the Government of India should obtain from the Provincial Governments monthly reports of the health, comfort and the conditions of detention of every such person and place them before the two Houses of the Central Legislature and the Local Governments be asked to do so before the Provincial Legislative Councils when the Legislatures would be in sessions, for their information.

In conclusion, Sir, I would like to point out to Government here—of course I am subject to correction and I shall be only too glad to be corrected by the Treasury Bench—that the Irish political prisoners with the same kind of dress and diet and the same mode of living as most of the Englishmen have were not transferred by the British Government from Mountjoy jail to Dartmoor prison. Then why is this proposed legislation to transfer the Bengal detenus or any person that may be arrested under this Bengal Criminal Law Amendment Act, 1930, to jails outside Bengal? I hope better counsel will prevail and the Treasury Bench will combine with this Honourable House consisting of elected and nominated non-official Members to throw out this Bill.

THE HONOURABLE RAJA BIJOY SINGH DUDHORIA OF AZIMGANJ (Bengal: Nominated Non-Official): Sir, I must admit that Government have sufficient justification in bringing forward a measure like the one under consideration before the House. It has already been proved that the Bengal detenus cannot be kept in the places of detention in Bengal if their activities are to be really checked from further dissemination amongst the youths of Bengal. It must be admitted on all hands that the imprisonment of these detenus in Bengal have not produced the result desired from such detentions. They get sufficient opportunities of communicating with their comrades outside the places of their detention though of course this sort of inter-communication with the people outside does not speak of efficient jail administration of the province of Bengal. Sir, though I agree with the basic principle of the transfer of these detenus yet I cannot with equity and justice agree to be vindictive. I think

even the Britisher will never agree to be vindictive on these detenus as every Britisher is endowed with a keen sense of mercy and justice. Once upon a time the words "British justice" were a by-word in every Indian home and I cannot believe that British statesmanship will not rise to the occasion to be able to keep the standard of British justice as high as it was in the past. At this stage I think I will be permitted to make a few observations on some of the salient points of the Bill.

Clause 4 of the Bill aims at taking away the power of appeal of a detenu who thinks his detention is wrongful and illegal. Every civilised Government allows every subject, even convicts or criminals, the right of appeal and I do not see any reason why the present Bill should aim at taking away the liberty of these men. I think Government will see their way not to insist on this clause as otherwise it will belie the traditions of the highly civilised British administration.

The second point I wish to mention is about the amenities that should be allowed to these unfortunate misguided youths when they are taken away from their homes and relatives. The Bengal youths have their peculiar food and mode of living to which they are accustomed from their childhood. It is most natural that they should be given the same amenities of food and living which they are accustomed to get in Bengal if they are to be transferred to places of detention outside Bengal.

Lastly, Sir, before I resume my seat I would like to bring to the notice of the Government that they should take particular care in their selection of the visitors for those detention places of the detenus. I think that Government will agree with me that the visitors should be so selected from amongst the public men on whom the public and the Government will have full confidence. The present discontent and distrust of the people in regard to the treatment of these detenus is more due to the distrust of these visitors rather than due to the actual maltreatment of these detenus by the authorities. I do not see any reason why a civilised Government, like the British Government, should not concede this small concession which will go a great way to remove distrust from the minds of the people. With these remarks, Sir, I support the Bill which, to my mind, is an essential weapon required by the present administration to combat the revolutionary movement in Bengal.

THE HONOURABLE KUMAR NRIPENDRA NARAYAN SINHA (West Bengal : Non-Muhammadan) : Sir, as one of the representatives of Bengal in this House, I will not do justice to myself and my constituency if I do not express my great disapproval of this unhappy and unfortunate measure.

Sir, let me premise by saying that the provisions which give the power to send outside Bengal persons who will be detained under this Act is nothing but deportation over detention. You cannot, however, ordinarily send away a convict to any place outside the province in which he is convicted. If you are not allowed to do so, Sir, then with what justification, with what grace or moral approbation, can you tell off a batch of persons, not yet convicted by any court of justice, outside their province of birth or adoption—away from their natural environments, away from their kith and kin ? Again, Sir, when you provide for special arrangements for usual diet, clothing and habits of life to European convicts in this country, it is really a matter of great injustice if you are to grudge the detenus their usual food, clothes and habits of living, who are not yet convicted of any offence but have only been taken into custody on mere suspicion—more or less on police report. In detaining them for an indefinite

[Kumar Nripendra Narayan Sinha.]

period without trial on *ex parte* and untested evidence, the Government lay themselves open to the charge of setting at naught elementary notions of justice and fairness ; if, Sir, on the top of this, they are to be deprived of the most essential comforts and conveniences of life, charges of cruelty, neglect and injustice can with justification be laid at the door of the Government. It will be nothing but proper therefore that the Government should abandon this project of sending the detenus outside Bengal.

Next, Sir, when this measure is mainly preventive and not penal, the Government cannot in all fairness combine their detention with deportation. Sir, it is really a matter of deep regret to me that the extensive province of Bengal, with about three dozen districts, has not been able to provide sufficient accommodation for a few hundreds of our detenus. But, Sir, in case it is insisted upon that some of these unfortunate persons are to be eventually kept in custody in the rocky fastness of Deoli, I cannot but impress upon the House the extreme necessity of the reproduction of the conditions as regards food, clothing and mode of living in which these men have been brought up in their province, in the place where they are intended to be transferred. Great will be the bitterness, Sir, which these people will naturally feel, when they will be landed in strange places, amongst strange surroundings and in changed conditions, but, Sir, let not that bitterness, if it can be helped, be accentuated by any official act calculated to embitter their feelings all the more. In sending these men to far-off places from Bengal, you will be cutting them off from their friends and relations. Bitter will be the feelings of their kith and kin naturally if for the want of funds they will be deprived of their periodical visits to these detained men. Sir, I would suggest, therefore, that in deserving cases —in the cases of those whose sole mainstay and sources of income are those men detained—in cases of those who are absolutely indigent and helpless— the Government of Bengal ought to find funds for railway fare and other incidental expenses for the journey and stay, so as to enable them to look up their detained relations at least twice a year.

Finally, Sir, as you are substituting the executive judgment for the judicial on the plea of the exigencies of the present political situation, I cannot whole-heartedly accept that position, because everything regarding arrest and detention of political suspects is done mainly on police report, which is not tested in any court of law. As our Indian police, Sir, leaves a great deal to be desired, interference of the highest judiciary in hard cases was a most desirable thing. But in suspending the *habeas corpus* provisions from the purview of the Act, the Government is seriously crippling the jurisdiction of the High Court. I deplore that the statutory check which the High Court always exercises over the arbitrary and irresponsible executive in fit cases through the *habeas corpus* writ will now be altogether gone. Sir, anything which is bound to cripple the powers and privileges of the High Court should be resisted from this side of the House.

But, Sir, if it is really contemplated that you cannot but abrogate the provisions of *habeas corpus* so far as detentions of suspected people are concerned, I would insist, with all the earnestness at my command, upon a careful examination of every individual case by a Board, consisting of at least two High Court Judges in office or retired. But in making such appointments it should be seen that persons so appointed will inspire respect and confidence in the people, among the relations of those who have been deprived of their liberty.

THE HONOURABLE RAI BAHADUR LALA JAGDISH PRASAD (United Provinces Northern : Non-Muhammadan) : Sir, I have no desire to speak on this motion. I simply want to ask the Honourable the Home Secretary what is the function of the two judges to whom the cases of these criminal suspects are referred by the Government of Bengal under the provisions of the Bengal Criminal Law Amendment Act? I want to know whether their function is simply advisory or whether they conduct any sort of enquiry into these cases? As the original Act is not before me, this point is not quite clear to me. I hope the Honourable the Home Secretary will throw some light on this point in the course of his reply.

THE HONOURABLE SIR BROJENDRA MITTER (Law Member) : Sir, the provision for scrutiny of cases by two judges is contained in section 9 of the Bengal Act. It reads thus :

"Within one month from the date of an order by the Local Government under sub-section (*1*) of section 2, the Local Government shall place before two persons, who shall be either Sessions Judges or Additional Sessions Judges having, in either case, exercised for at least five years the powers of a Sessions Judge, or Additional Sessions Judge, the material facts and circumstances in its possession on which the order has been based or which are relevant to the inquiry, together with any such facts and circumstances relating to the case which may have subsequently come into its possession, and a statement of the allegations against the person in respect of whom the order has been made and his answers to them, if furnished by him. The said Judges shall consider the said material facts and circumstances and the allegations and answers and shall report to the Local Government whether or not in their opinion there is lawful and sufficient cause for the order".

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadan): Sir, I should like the Honourable the Law Member or the Honourable the Home Secretary to throw some light on the point which the Honourable Syed Hussain Imam raised in his speech as to whether the terrorists who have been tried and convicted of terrorist crimes are kept in Bengal jails or not ?

THE HONOURABLE MR. H. W. EMERSON : Sir, I would like first of all to deal with the question of the Honourable Rai Bahadur Lala Ram Saran Das. Up to the present, persons convicted of terrorist crimes in Bengal are usually kept in Bengal jails. If it is desired to transfer them to jails of any other province, the powers to do so already exist and no legislation is necessary. There are proposals under consideration for the transfer of some of the persons who have been convicted of terrorist crimes outside Bengal.

The only other point which appears necessary to me to refer to is one that has been raised by every speaker on this stage of the Bill, and that is the desirability so far as it is possible of reproducing in the places of detention the conditions obtaining in Bengal. This matter would perhaps be more appropriately considered in regard to the first amendment of the Honourable Mr. Ghosh Maulik on clause 2 of the Bill ; but the concern expressed on this account is so general that I take the opportunity of repeating an assurance that was given by Sir James Crerar in the other House. This is what he said :

"I am asked if we are prepared to give an assurance to the House that if this Bill is passed and detenus are transferred from Bengal to other provinces every endeavour will be made to reproduce as far as may be practicable the conditions obtaining in Bengal in respect of diet and in respect of other conditions of detention. Well, I am perfectly prepared to give that assurance in the most express terms. So far as detention in places

[Mr. H. W. Emerson.]

which are centrally administered areas is concerned, I give my Honourable friend a perfectly clear assurance that rules will be drawn up—as a matter of fact they are now in process of being drawn up—which will give effect to those conditions. Those rules will be notified by the local authority and they will be reproduced in the Gazette of India; and I may say that so far as the proposed camp at Deoli in the Ajmer province is concerned, every step is being taken to see that those conditions will be secured. An officer accustomed to deal with Bengalis will be in charge, assisted by another officer from the province of Bengal. Bengali cooks will be supplied—that point was specifically brought forward—and as far as possible the diet to which Bengalis are accustomed will be provided. Adequate medical arrangements are being made as well as arrangements for proper exercise and recreation, indoor and outdoor games, a library, reading facilities and so on. If there is anything in addition to these, anything which has arisen in the course of the present discussion, or any suggestion that may hereafter be communicated to me by any Honourable Member, I shall be very glad to consider it in the framing of the rules ".

I should like to repeat on behalf of Government to Members of this House the offer which was made by Sir James Crerar to the Members of the Legislative Assembly. If any Member of this House has any suggestion to make in this respect that suggestion will receive every consideration.

THE HONOURABLE THE PRESIDENT : The question is :

" That the Bill to supplement the Bengal Criminal Law Amendment Act, 1930, as passed by the Legislative Assembly, be taken into consideration ."

The motion was adopted.

THE HONOURABLE THE PRESIDENT : Clause 2. The question is :

" That this clause stand part of the Bill."

THE HONOURABLE MR. SATYENDRA CHANDRA GHOSH MAULIK : Sir, the amendment which stands in my name runs as follows :

" That the following further Proviso be added to clause 2, namely :

' Provided further that in the case of any such person, rules shall also be framed, by or under the authority of the Government of India, to ensure as far as practicable similar conditions of detention as regards diet and mode of life as would have obtained in Bengal, and to provide reasonable facilities for correspondence and for interviews (including payment by the Local Government of travelling allowances, where necessary) between such person and his relations '."

The amendment explains itself. All that it seeks to secure is that where any detenu is transferred out of Bengal conditions must be reproduced as far as practicable. The Honourable the Home Member in the other House, and I am glad that the Honourable the Home Secretary in this House also, have given assurances that this would be done. Where then is the objection to accept this amendment ? I do not forget that so far as travelling allowances are concerned the Honourable Member pointed out that there are financial difficulties in the way. In view of that, Sir, I have suggested the insertion of the words " where necessary." You will also see, Sir, that in asking for facilities for correspondence and interviews, I do not presume to dictate the nature of such facilities or the frequency of these concessions. All that I have in view by this amendment is to keep these matters in the forefront so that they may not be overlooked and may not be left to depend on mere assurances given here or in the other House. The actual fulfilment of these obligations, the manner of fulfilling them and the particulars of action to be taken, they are all left to Government. Sir, I move.

THE HONOURABLE MR. H. W. EMERSON : Sir, I have a few minutes ago stated to the House that on the main principle embodied in the amendment of the Honourable Member the Government are in agreement with the views expressed by him, namely, that so far as possible conditions obtaining in Bengal should be reproduced in the provinces to which these persons are transferred. His amendment however goes further in some respects than Government are prepared to accept, for instance, the suggestion that travelling allowances shall be paid to relatives of the detenu. The difficulty of the Government of India in this matter is two-fold. Firstly, no principle of this kind has ever been accepted hitherto. Persons are detained under Regulation III of 1818, under the Madras Regulation and under the Bombay Regulation. There is no provision in the law that Government should pay travelling allowances to their relatives, nor has there been any practice of paying such allowances. The amendment therefore embodies a new principle which may well entail considerable expenditure to Government.

The second difficulty is this. If this principle is accepted in regard to persons kept in detention outside Bengal, how can the Bengal Government, on any ground of equity or fair play, refuse to extend the same principle to persons detained inside the province of Bengal ? Now certainly if this concession were accepted as regards persons detained inside Bengal, it would involve a very heavy financial responsibility on the Local Government. Surely as a matter of principle the Government of India should abstain from creating a precedent which will involve a Local Government in large expenditure and which the Local Provincial Council has had the opportunity of considering and has not accepted. For I think it may be assumed that if the Members of the Bengal Provincial Council attached great importance to this matter, so far as detenus inside Bengal are concerned, an amendment to that effect would have been moved on the provincial Bill and would have been passed by the Council. I would, therefore, ask the House to consider whether it should lightly accept an amendment which will undoubtedly have the effect of imposing on provincial revenues a charge against the wishes of the Legislative Council. We have heard a good deal about provincial autonomy this morning, and I think some of the views expressed have been rather curious. But I do think that the Central Legislature will be creating a somewhat embarrassing position if they take it upon themselves to impose obligations against the wishes of a Provincial Legislature and for which the Provincial Government will have to pay. That is so far as travelling allowances are concerned.

As regards the conditions of detention, I have repeated an assurance given by Sir James Crerar in the most explicit manner, and I have also assured the House that if any Member wishes to make any suggestion in this matter it will receive very careful consideration. But matters of this sort are for administrative attention rather than for embodiment in Statutory Law. It is not the practice to include in the Bill itself detailed provisions relating to administrative arrangements. Again, we must recognise that local conditions differ, and that while it is proper and reasonable that the Government of India should insist on certain general principles, latitude must be left to Local Governments to prescribe rules which, while observing the general principles, do make allowance for special local conditions. For these reasons, Sir, I regret I am unable to accept the amendment.

THE HONOURABLE THE PRESIDENT : The original question was :

" That clause 2 stand part of the Bill. "

[The President.]

Since which an amendment has been moved :

"That the following further Proviso be added to clause 2, namely:

Provided further that in the case of any such person, rules shall also be framed, by or under the authority of the Government of India, to ensure as far as practicable similar conditions of detention as regards diet and mode of life as would have obtained in Bengal, and to provide reasonable facilities for correspondence and for interviews (including payment by the Local Government of travelling allowances, where necessary) between such person and his relations'."

The question I have to put is whether that amendment be made.

The motion was negatived.

Clause 2 was added to the Bill.

THE HONOURABLE MR. SATYENDRA CHANDRA GHOSH MAULIK: Sir, the amendment which I have to move runs as follows :

"That after clause 2 the following be inserted as clause 3 and the remaining clauses be re-numbered as clauses 4, 5 and 6:

'3. Where in exercise of the powers under section 2, any person is committed to custody in a jail outside Bengal, the Government of India and the Local Government shall obtain a full report at least once a month regarding the health, comfort and conditions of detention of every such person, and such reports shall be laid before either House of the Central Legislature as well as before the Local Legislative Council at each session thereof'."

The object of this amendment, Sir, is to re-assure the public. I venture to think that public opinion is always a great asset, and if without sacrificing any questions of policy or principle, Government may earn the goodwill of the people in carrying out the provisions of drastic legislation, it is well worth doing it. I believe Government will, of their own accord, be obtaining such reports. All that I ask is that these may be made public, and if they are laid on the table in the Legislature, not only will publicity be gained, but a moral check will be ensured. Sir, as Legislatures are being asked to sanction these extraordinary powers to the executive, is it too much to expect that the executive should justify their actions to us to the very limited extent of making a periodical report on the conditions of the detenus.

THE HONOURABLE MR. H. W. EMERSON : Sir, so far as the transfer of these detenus to a new camp at Deoli is concerned, I have already assured the House that suitable medical arrangements are being made and the House may rest assured that every attention will be paid to the health of the detenus. So far as these persons may be transferred to any other province it is the practice to detain them in a jail. As the Honourable Members know medical arrangements in a jail are a very important care of the Local Government. Whether, therefore, these persons be transferred to Deoli or to any other province, the House may rest assured that suitable medical arrangements will exist. The suggestion contained in the amendment of the Honourable Member is that in regard to these persons a system which, so far as I know, is without precedent should be introduced, by which there should be an obligation on the Local Government concerned to prepare a report each month not only on the health but also on the conditions of detention, and the comfort of all persons detained, and that this report should be presented to the Indian Legislature, and also to the Legislative Council. I would oppose the amendment as unnecessary. If it is desirable for detenus who are transferred outside Bengal,

surely it is equally desirable for detenus who are detained inside Bengal, and there will be many more detained inside the province than will be transferred outside it. So far as I am aware the Legislative Council of Bengal has expressed no wish to be so intimately informed of the conditions, comfort, health and so on of each individual detenu who is kept under detention. And I think the reason is plain. It is not that the Members are not concerned with the health of these persons. It is because they are able by exercising their right of asking questions to obtain any information they may wish regarding a particular detenu. That right equally exists in regard to Members of the Indian Legislature and is being constantly exercised. During the present session the Home Department have, I know, obtained the necessary information regarding quite a number of persons who are kept in detention under either the Bengal Criminal Amendment Act or other Acts. I would therefore suggest that the object which the Honourable Member has at heart can be achieved equally well without imposing on the Local Government concerned the amount of unnecessary labour which his suggestion would involve. I regret, Sir, I cannot accept the amendment.

THE HONOURABLE THE PRESIDENT: The question is:

"That after clause 2 the following be inserted as clause 3:

'3. Where in exercise of the powers under section 2, any person is committed to custody in a jail outside Bengal, the Government of India and the Local Government shall obtain a full report at least once a month regarding the health, comfort and conditions of detention of every such person, and such reports shall be laid before either House of the Central Legislature as well as before the Local Legislative Council at each session thereof'."

I think the "Noes" have it.

THE HONOURABLE MR. SATYENDRA CHANDRA GHOSH MAULIK: The "Ayes" have it.

THE HONOURABLE THE PRESIDENT: Is the Honourable Member wishing to claim a division? I thought when I said the "Noes" have it that the Honourable Member said "Yes", agreeing with that decision; but apparently he meant otherwise. Is the Honourable Member wishing to claim a division?

THE HONOURABLE MR. SATYENDRA CHANDRA GHOSH MAULIK: Yes, Sir.

THE HONOURABLE THE PRESIDENT: Will those Honourable Members who wish to vote "Aye" on that question rise in their places? The "Ayes" are 1.

Will those Honourable Members who wish to vote "No" rise in their places? The "Noes" are 21.

The motion was negatived.

Clause 3 was added to the Bill.

1 P.M. THE HONOURABLE SIR DAVID DEVADOSS (Nominated Indian Christians): Sir, the clause that I wish to have deleted runs as follows:

"The powers conferred by section 491 of the Code of Criminal Procedure, 1898, shall not be exercised in respect of any person arrested, committed to or detained in custody under the local Act or the local Act as supplemented by this Act."

[Sir David Devadoss.]

I entirely approve of the object of the Bill. Never in the history of this vast country was it known that young girls and delicately brought-up children were tutored and trained to commit cold-blooded murder. One shudders to think what the result would be if this state of things were allowed to continue. An ordinary Indian household seldom sees a fire-arm and its inmates never handle one. How is it then that girls of 14 and 15 of respectable parentage learn the use of revolvers. I think, Sir, there is some organisation which gets at these immature persons and instils poison into their minds and makes them monomaniacs. Such associations ought to be crushed out of existence. Unless and until that is done I am afraid it will be very difficult to prevent the commission of atrocious crimes. One can appreciate the anxiety of the Government to prevent the spread of sedition by removing the undesirable elements to some place or places where they will not be able to do much mischief. But in achieving this object, we should not overlook the very foundations of civil liberty.

The Criminal Law Amendment Act is a very drastic measure and it does not provide any adequate remedy against unauthorised and illegal detention and therefore the only remedy open to the subject should not be lightly taken away.

Sir, the right of *habeas corpus* is a valuable and highly cherished remedy against executive high-handedness. Students of English history know how it acted as a check upon executive lawlessness. In the words of Wharton :

> " This, the most celebrated prerogative writ in the English law is a remedy for a person deprived of his liberty ".

The argument in favour of the retention of this remedy receives strength from the fact that the detenu is liable to be sent out of the jurisdiction of the Government of Bengal. The Local Government can be expected to see that the provisions of the law are not violated in detaining the suspected persons. Can the same be said of other Governments within whose jurisdiction the detenus are confined, whose officers may regard them as unwanted and undesirable persons who have been thrust upon them ? Further, the Chartered High Courts may disregard the provisions of clause 4 and as successors of the old Supreme Courts may hold that they have inherent jurisdiction to issue the writ in proper cases. We may trust the High Court to interfere only in cases where the provisions of the law have not been complied with and not to go into their merits or evidence. It is unnecessary to discusss the question at any length.

As a member of the English Bar I feel it my duty to enter my emphatic protest against putting on the Statute-book such a provision as that contained in clause 4. The case of political prisoners is different. Municipal courts have no jurisdiction to question the legality of Acts of State ; but the detenus are not political prisoners and are at best only common law offenders. With these few words, Sir, I move that clause 4 be omitted from the Bill.

THE HONOURABLE RAI BAHADUR LALA JAGDISH PRASAD : Sir, I beg to support this amendment for the deletion of clause 4. Clause 4 seeks to curtail the powers of the High Court which it possesses under section 491 of the Criminal Procedure Code, *i.e.*, powers of the nature of a *habeas corpus*. It has, to my mind, two aspects. One is that it means the taking away of the only effective remedy available to a subject of questioning the acts of the

executive. This, Sir, is a very serious matter. We must remember that we are conceding under the provisions of this Bill the principle of detention without trial. Now supposing the detention of a person under the Bengal Criminal Law Amendment Act is unlawful because the conditions of the Statute have not been complied with or the order has not been passed, say, by the proper authority, there is no reason why a subject should be deprived of his remedy under section 491 of the Criminal Procedure Code and the principle obtaining in every part of the British Empire, namely, that a person has a right to be protected from illegal imprisonment, should be departed from in the case of these detenus. If we allow this, I think we will be conceding a very dangerous principle. The other aspect is that we will be depriving the High Courts—the highest judiciary in the country—of certain important powers which they possess in relation to the actions of the executive. This, Sir, to my mind, implies want of faith in the most important and independent judicial authority. After all, the High Court will not exercise the jurisdiction under section 491 of the Criminal Procedure Code if the conditions of the Statute are satisfied, and the detention is lawful. Why should the Government therefore be afraid of the High Courts and not have faith in them ? In my opinion we should not give *carte blanche* to the executive knowing as we do that we have to deal with an irresponsible executive. In my humble opinion, therefore, clause 4 lays down a principle and a proposition to which this House should not agree. Hence I am in favour of the amendment.

THE HONOURABLE THE PRESIDENT : Does the Honourable Member from Bengal propose to move his amendment to this clause ?

THE HONOURABLE MR. SATYENDRA CHANDRA GHOSH MAULIK : Yes, Sir. The amendment which stands in my name runs thus :

" That in clause 4 for the word and figures ' section 491 ' the words, figures and letters ' section 491, sub-section (*1*), clauses (*a*), (*b*) and (*c*) ' be substituted."

In the Assembly the Honourable the Law Member stated that though under section 491 (Criminal Proce dure Code) powers were being taken away in the case of the detenus, there was no intention to take away the powers given to the High Court by clauses (*c*) and (*d*) of that section. These clauses empower the High Court to direct :

" (*c*) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court ;

(*d*) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners acting under the authority of any commission from the Governor General in Council for trial or to be examined touching any matter pending before such Court-martial or Commissioners respectively ".

If there is no intention to interfere with these powers, why not make that clear by limiting the suspension of the right of *habeas corpus* to the cases which really matter ? I gather that what Government want to prevent is merely the right to claim a trial or the right to question the custody as illegal or improper. My amendment leaves that wholly untouched. Sir, I move.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Sir, the amendments proposed seem to be modest and reasonable. Clause 4 curtails the powers of the High Court. Sir, I am of opinion that no legislation ought to take away the fundamental rights given by the common law. It is a matter

[Rai Bahadur Lala Ram Saran Das.]

of justice and fair play. The High Court ought not to be left at the mercy of the executive by doing away with the only right of protection to an aggrieved person given by the writ of *habeas corpus*. I strongly condemn the terrorist movement and I am of opinion that we must help the Government in every possible way to crush it and to destroy it. But, at the same time, we ought to have these safeguards, and the proposals made by my Honourable friends Sir David Devadoss and Mr. Ghosh Maulik are reasonable, and I think they ought to have the approval of this House.

THE HONOURABLE MR. G. A. NATESAN (Madras : Nominated Non-Official) : Sir, my Honourable friend Sir David Devadoss who has moved this amendment was, in his non-official days, a very mild politician. He was not even a moderate politician. He has said that, as a member of the English Bar, he has felt it his duty to move his amendment and stand by it. I may perhaps remind the House that he adorned the Madras High Court for seven years, and when one of his antecedents and qualifications moves an amendment of this description, I think it should receive the most careful consideration at the hands of all. This clause 4 has formed the subject-matter of speeches by many of my honourable friends on the occasion of the debate on its first reading. I will not therefore dwell on it again, but before I sit down I should like to make this one observation. If the right is given to a detenu to appeal to the High Court there is a chance, a very reasonable chance, of many a young man who might be innocent and who might have been for some reason or other detained as a detenu getting back his freedom. More than anything else it will be a great and, in my opinion, a useful check upon the vagaries of the subordinate executive officers who perhaps make reports to their superiors which they are not often in a position to judge accurately and correctly.

THE HONOURABLE THE PRESIDENT : I would remind the House that it is not the practice here to treat a motion that a clause be omitted as an amendment to a Bill or for such motion to be put from the Chair. The motion before the House is that clause 4 stand part of the Bill, and to that an amendment has been moved by the Honourable Mr. Ghosh Maulik. It is that amendment that is before the House at the moment.

THE HONOURABLE MR. ABU ABDULLAH SYED HUSSAIN IMAM : Mr. President, the fact that according to the traditions of this House an amendment to delete a clause cannot be moved has debarred us from discussing the motion of Sir David Devadoss, and we are discussing the motion of the Honourable Mr. Ghosh Maulik.

THE HONOURABLE THE PRESIDENT : I do not quite understand what the Honourable Member is suggesting. When the Honourable Mr. Ghosh Maulik's amendment or amendments have been disposed of the clause will still be before the House and the Honourable Member can go on for the rest of the day if he likes.

THE HONOURABLE MR. ABU ABDULLAH SYED HUSSAIN IMAM : Sir, the fact that an Honourable Member of this House who is a past Judge of the Madras High Court is opposing this clause and a past Judge of the same High Court opposed it in the Lower House and the opinion of the Advocate General of Madras was quoted by a Member in the other place in opposition to this Bill is significant ; and in view of that, I think the amendment brought

forward by Mr. Ghosh Maulik is a sort of *via media*. It gives the High Court some power and at the same time serves the purpose of the Government in denying it certain specific powers. I therefore press this on the attention of the House.

THE HONOURABLE SIR BROJENDRA MITTER: Sir, the Honourable Sir David Devadoss objects to clause 4 because as a member of the English Bar he feels that clause 4 attacks the foundation of civil liberty, and, he dwelt, although shortly, on the virtues of *habeas corpus*. As a member of the English Bar I would refer him to the maxim "*Salus populi est suprema lex*". Sir, this maxim is based on the implied agreement of every member of society that his individual welfare shall in case of necessity yield to that of the community and that his property, liberty and life shall under certain circumstances be placed in jeopardy or even sacrificed for the public good. That is the *suprema lex* in English law.

Now, what is the situation with which we are faced? We are faced with abnormal crime in Bengal. In normal circumstances no doubt the normal principles of law ought to apply, but in abnormal circumstances normal principles can no longer be followed in their entirety. When abnormal circumstances become extremely abnormal and lawlessness overruns the country, then, in every civilised state all law for the time being is suspended and what is known as martial law, which is really the negation of all law, is resorted to. There are three stages. In normal conditions we have normal law. In abnormal conditions we must have abnormal law, and in widespread lawlessness we must have the suspension of all laws.

Sir, in Bengal the crime with which the Government is faced is not an ordinary crime which proceeds from infirmities of human nature, but is an organised crime out to strike at the root of society. That is the object of the terrorist movement. That being so, we have to deviate a little from the normal laws of the land. Sir, the provisions of section 491 are part of the normal laws of the land. If a person is illegally arrested or illegally detained, he has normally the right to go to the High Court for relief. He will not be deprived of that right even under clause 4 of this Bill. Clause 4 says:

"The powers conferred by section 491 of the Code of Criminal Procedure, 1898, shall not be exercised in respect of any person arrested, committed to or detained in custody under the local Act or the local Act as supplemented by this Act".

Sir, if a person is arrested or detained under the local Act, he is arrested or detained legally. That local Act may be a bad law, but still it is the law of the land. If this Supplementary Bill is passed, it may be a good Bill or a bad Bill—but it will nevertheless be the law of the land. Therefore, any arrest or any detention either under the local law or under this law will be legal arrest and legal detention. In that case section 491 will have no application. All the other powers, which Sir David Devadoss mentioned, of the Chartered High Courts do not come into the picture. They are not affected. Sir, what strikes me is that there is a good deal of loose talk over our nebulous conceptions of fundamental rights. What are the fundamental rights, and whose rights? It is the fundamental right of the citizens at large that this sort of secret crime should not be committed. Are we thinking of the fundamental rights of the community as a whole? We are only thinking of the fundamental rights of the suspected terrorist. Now, is there not, as the Advocate General of Bengal said the other day in a case, is there not such a thing as the fundamental duty of a citizen? We are always talking of the fundamental rights of the man who

[Sir Brojendra Mitter.]

breaks the law. What about his fundamental duties ? Sir, these general remarks are loosely made and loosely refuted but they serve no useful purpose. Let us come to the particular amendment. Let us see what is the scope of clause 4 and what the amendment wants. Clause 4 says that no person arrested or detained under the local Act or under this Act shall have resort to the High Court. But he will not have resort, in any case, if the arrest or detention be made under these Acts because his arrest or detention will be legal. Therefore we are not taking away any right which he would otherwise possess. I can well understand the argument that if a person is arrested or detained not in pursuance of the Act but in violation of the provisions of the local Act or in violation of the provisions of the Supplementary Act, he should have a remedy. His position will be this. Clause 4 will not take away his right to go to the High Court. It will be open to him to go to the High Court and say : " Well, a police officer who was not specially authorised under the local Act has arrested me. I am not under legal arrest and I want relief. I want an open trial." That right is not being taken away by section 4. He will still have that right. If a person is detained, say, in a province other than the province of Bengal without the sanction of the Government of India, as clause 2 of this Bill provides, in that case that person may very well go to a High Court and say : " I am being detained here not under the Supplementary Act, but against the provisions of the Supplementary Act. Therefore, my detention at Deoli is illegal." Nothing will prevent him from going to the High Court, nor will anything prevent the High Court from giving adequate relief in such a case. Sir, when you examine clause 4 closely you will find we are not taking away any valuable right from anybody. The only case in which section 491 would have applied, but for clause 4, is this. If a person is arrested under section 4 of a local Act by a police officer and before an order by the Local Government for his detention is passed, during this short period, he could, if clause 4 were not enacted, go to the High Court and claim an open trial. But as soon as the order of the Local Government for his detention is made, that right automatically falls to the ground. This is a matter, Sir, which I do not think Honourable Members fully realise.

Section 2 of the Bengal Act says this : " where, *in the opinion* of the Local Government, there are reasonable grounds for believing that " any person has done something, the Local Government may by order in writing direct that he shall be committed to custody in jail. Now suppose an order is made by the Local Government and the person makes an application to the High Court that he is being illegally detained and claims an open trial. The High Court will immediately say : " It is not for us to decide, because this order has been made by the Local Government and we are not to judge of the correctness or otherwise of that order, because the law says the opinion of the Local Government is conclusive." The Local Government before making the order, came to a particular opinion. Once the Local Government has done that, then that is conclusive. That is the effect of the local Act. That being so, a person detained under the Bengal Act, when the Local Government has, after forming an opinion, passed an order, has no relief under section 491 or any other provision of the law. The only case in which the High Court may intervene, if clause 4 be not passed, would be an arrest under section 4 of the local Act. Section 4 says :

" Any officer of the Local Government authorised in this behalf may arrest, without warrant, any person against whom a reasonable suspicion exists ".

Now, the person under arrest, before the order of the Local Government has been passed, may go to the High Court and say: "I have been arrested on suspicion, but it is not reasonable suspicion." In such a case a High Court might go into the matter to decide the question whether the suspicion upon which the police officer arrested the man was reasonable or unreasonable suspicion. That is the only case in which section 491 would be available if clause 4 of the present Bill be not passed. But just consider this for one moment. As soon as such an application is made the Local Government sends for the papers and immediately proceeds to pass an order either of his release or of his detention according as the merits of the case require. Directly the Local Government passes that order, although an application might be pending before the High Court, that application becomes infructuous. The High Court has no further jurisdiction. Therefore what is the right, the substantial right, which is being taken away by clause 4? The substantial right which is being taken away is the right of a man under arrest during the short period between arrest and the order of the Local Government. Sir, it may be asked, if it be so, then why enact this at all? The answer of the Government is this. It is still necessary to enact this because section 491, sub-clause (3), expressly provides that certain Regulations and Acts are excluded from the scope of section 491. In order to bring the Bengal Act into line with these Acts and Regulations that this clause is necessary, because if it were not enacted it might well be argued in every case that certain Regulations and Acts are specifically excluded from the operation of section 491; the Bengal Act is not so excluded and therefore section 491 still applies to a prisoner who is detained under the Bengal Act. Sir, in order to obviate the doubt created by such argument that it is necessary to enact clause 4. The second reason is this. In the very few cases where a person might resort to section 491, between arrest and the order of the Local Government, assuming that the High Court does go into the matter of the reasonableness of the arrest, what would be the position of the Government in such cases? Government will have to place all facts and all evidence before the High Court in order to satisfy the Court that the arrest was made upon reasonable suspicion. Now, that is a thing which in the interests of the community is not desirable. Government is anxious not to expose witnesses and persons who give valuable information with regard to the terrorist movement to the danger of being assassinated. Government is not willing, in the interests of the community, to disclose the methods which it is adopting to fight the terrorist movement. All these disclosures will have to be made in order to satisfy a Court that a particular arrest was made on reasonable suspicion. Sir, it is necessary, in the abnormal circumstances which exist in Bengal at the present moment, that the normal law of *habeas corpus* should be suspended for the period of three years for which this measure will have operation. Sir, I hope the explanation which I have given will satisfy Honourable Members that no very dreadful thing is being done or that we are taking away a valuable right from the citizens. Very little is being taken away and what little is being taken away is necessary in the larger interests of the community. (Applause.)

THE HONOURABLE THE PRESIDENT (to the Honourable Sir David Devadoss who had risen in his seat): The Honourable Member is not entitled to a reply.

The original question was:

"That clause 4 stand part of the Bill."

[The President.]

Since which an amendment has been moved :

"That for the word and figures 'section 491' the words, figures and letters 'section 491, sub-section (*1*), clauses (*a*), (*b*) and (*c*)' be substituted."

The question I have to put is that that amendment be made.

I think the "Noes" have it.

THE HONOURABLE MR. SATYENDRA CHANDRA GHOSH MAULIK : The "Ayes" have it.

THE HONOURABLE THE PRESIDENT : The Honourable Member has not forgotten the fate of his last division ?

Will those Honourable Members who wish to vote "Aye" rise in their places ? The "Ayes" are 5.

Will those Honourable Members who wish to vote "No" rise in their places ? The "Noes" are 21.

The motion was negatived.

THE HONOURABLE THE PRESIDENT : This will be, I think, a convenient moment to adjourn the House. The only doubt I have is whether it will be more convenient for Honourable Members to adjourn till half past two or till to-morrow morning. The list of business for to-morrow is short and there will be plenty of time to dispose of this Bill to-morrow morning.

HONOURABLE MEMBERS : To-morrow morning, Sir.

The Council then adjourned till Eleven of the Clock on Tuesday, the 5th April, 1932.

ERRATUM.

In Council of State Debates, 1932, Vol. I, No. 14, page 281, under the heading "MEMBER SWORN" *for* the present entry *substitute* :—

"The Honourable Major-General James Drummond Graham, C.B. C.I.E., K.H.S., I.M.S."