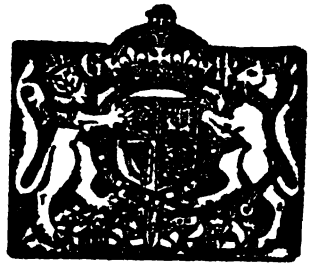
LEGISLATIVE ASSEMBLY DEBATES

SATURDAY, 14th FEBRUARY, 1931

Vol. I—No. 19

OFFICIAL REPORT



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DELHI
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LEGISLATIVE ASSEMBLY.

Saturday, 14th February, 1931.

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

MEMBERS SWORN.

Mr. B. V. Jadhav, M.L.A. (Bombay Central Division: Non-Muhammadan Rural); and

Mr. H. B. Fox, C.I.E., M.L.A. (Assam: European).

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Mr. President: Further consideration of the following motion moved by Mr. Gaya Prasad Singh on 3rd February, 1931:

"That the Bill further to amend the Code of Criminal Procedure, 1898 (*Amendment of section 144*), be referred to a Select Committee consisting of the Honourable Sir James Crerar, Sir Lancelot Graham, Mr. B. R. Puri, Sir Abdur Rahim, Sir Hari Singh Gour, Rai Sahib Harbilas Sarda, Maulvi Sayyid Murtuza Saheb Bahadur, Mr. Arthur Moore and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be four."

Raja Bahadur G. Krishnamachariar (Tanjore *cum* Trichinopoly: Non-Muhammadan Rural): Sir, I support the motion to refer the Bill to the Select Committee. I congratulate the Honourable the Home Member on the restraint with which he made his speech the other day, although he opposed the motion, but I am afraid I cannot commend the attitude of his Government in connection with this Bill. For after all, Sir, the Bill says that certain deficiencies have been brought out in the application of the section to certain recent events and that sufficient provision may be made in order to obviate the recurrence of those events in the future. Now, either those facts are correct or those facts are not correct. In either case, there is no doubt that there is a grievance that the Act has not been administered, at least the particular section 144 has not been administered properly in the only manner in which it was originally intended that it should be administered. I cannot understand the reluctance of the Government to explore the matter, and find out whether the said statement that is the basis of this amendment is true before opposing this motion. Sir, the other day in connection with the election of some Members to the Delhi University Court, one of the Honourable Members of the Government deplored the existence of a suspicious mind in many non-official Members whenever a Member of Government made a proposal. Now, a suspicious mind wherever it exists has to be deprecated, and we have got the highest scriptural authority for the position *samsayatma vinashyati*, that is a man who doubts or who is suspicious comes to destruction. But, Sir, should it be only a one-sided warning? Does it

[Raja Bahadur G. Krishnamachariar.]

not appear from the attitude of the Government regarding this Bill that they suspect what we have got in view when we ask for this amendment? Why not straight away say plainly that, so far as our statement is concerned, either you believe it or you do not believe it. We know cases—I personally can cite at least half-a-dozen examples—where there was absolutely no justification for the application of this section 144, and what I respectfully submit should be the correct attitude in these matters is that, when a complaint is brought forward, Government should try and investigate and show that there is nothing wrong in it; then we shall be perfectly satisfied, rather than asking us to accept this *ipse dixit* of yours, and when we do not accept it making it a matter of complaint. About the year 1908, when the late Lord Minto had to face a serious trouble with the then critical unrest that was raging over the country, he turned among other things to the advice of Indian Princes, and the first man to whom he went was the late Nizam of Hyderabad, who was one of the shrewdest princes that ever sat on the Indian *gadhi*. What did he say in reply? After an administrative experience of 25 years, his advice to the late Earl of Minto was that not only should the administration do justice, but that it should make the people believe that justice has been done. That may appear to be a common place, a copy book maxim, but there is a good deal of truth in it. Applying this to the particular case complained of, what I should have expected the Government to do is this. We say there is an injustice; either there is an injustice or there is not an injustice, and how are you going to make us feel that there is no injustice? Not by your saying that there is no injustice, nor by your people, who have been in our opinion doing that injustice, saying that there is no injustice. I do not think even the Government would assume infallibility in this matter. They have got a large army of officials, all of whom are not of the same mind, and it is quite conceivable that in their excessive zeal in what they consider to be their masters' policy, they overstep their bounds. Where is the harm in investigating? Where is the harm in trying to prevent that state of things? That, Sir, is the only thing which this Bill wants to be done. Although I am not particularly enamoured of the remedies suggested by my Honourable friend Mr. Gaya Prasad Singh by asking that an appeal should lie to the Sessions Court—I would rather that an appeal should lie to the High Court than to a Sessions Court for more reasons than one—although I say I am not particularly enamoured of the remedy suggested, I submit that it will come with very good grace on behalf of the Government if they accept his motion for reference to a Select Committee, go there, thrash out the whole thing, and then convince my Honourable friend Mr. Gaya Prasad Singh that, after all, his fear of abuse is groundless, and then come back triumphant. That is one of the most reasonable positions to take, rather than merely asserting the fact on your own authority and then asking us or expecting us to accept the position. Sir, as I said, whenever we make a proposal, my respectful request to the Government Benches is not to take it with any suspicion, not to consider that there is something very uncanny behind it, but to test it for what it is worth and then to try and come to some conclusion. In this connection, before I resume my seat I think I ought to invite the attention of Government to these pregnant words uttered by the Honourable Chancellor of the Chamber

of Princes, the Maharaja of Patiala—not an agitator, nor a man who is particularly anxious to embarrass the Government of India—when he addressed recently a meeting in London, wherein he said:

"In the face of the Nationalist movement, which in a government based on the people of the country would find its natural response, the Government of India found itself in difficulties. These difficulties lead it on occasions to strain unduly the loyalty of those whose support it believes it can rely upon in all circumstances, and for the sake of political advantages whether real or imagined, to overlook its moral and legal obligation to those whose conduct never warranted such a course."

Most of us, Sir, have come here in order to do our best to assist Government in their task of administration, and if they work the administration in the real spirit, they will never fail.

Mr. N. N. Anklesaria (Bombay Northern Division: Non-Muhammadan Rural): Sir, I beg to move the amendment of which I have given notice and which is as follows:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st August, 1931."

Apart from the inapt and inartistic drafting of the Bill, as I will proceed to show, the Bill is singularly ill-conceived and ill-thought out. One would have thought that the maxim "prevention is better than cure", was of universal acceptance, but in thinking so I seem to have counted without my host, the Honourable the Mover of this Bill. One would have thought that at a time when earnest appeals have been made in this House and in the Provincial Councils for special preventive legislation, the Honourable the Mover would refrain from tinkering with a piece of legislation which has proved its salutary existence for the last 70 years without eliciting any the least dissentient opinion during that very long period. When one considers the nature and the extent of the evil which the section was designed to prevent and which in actual practice the section has prevented, one would be immediately convinced of the utter inadvisability of the measure proposed by the Honourable and learned Mover. And its undesirability becomes so glaringly apparent that one would think, and one would be justified in thinking, that the Bill has been brought, not for the serious consideration of this House but for purposes of pure propaganda against "the iniquities" of our police and magistracy of which we hear so much and, I am constrained to say, see so little. To prove what I have said, I will proceed to quote the relevant portions of section 144 of the Criminal Procedure Code which the Honourable the Mover seeks to amend. The heading of the Chapter of which it is the only section is:

"Temporary orders in urgent cases of nuisance"

and it begins . . . .

Mr. C. C. Biswas (Calcutta: Non-Muhammadan Urban):

"Or apprehended danger."

Mr. N. N. Anklesaria: Yes. And it reads:

"In cases where in the opinion of the District Magistrate . . . immediate prevention or speedy remedy is desirable, such Magistrate may by written order stating the material facts of the case and served in the manner provided by section 134 direct any person to abstain from a certain act . . . if such Magistrate considers that such direction is likely to prevent or tends to prevent obstruction, annoyance or injury or risk of obstruction, annoyance or injury to any person . . . safety or disturbance of the public tranquillity or a riot or an affray."

[Mr. N. N. Anklesaria.]

Now, Sir, the essential part of the section and the essential condition under which the section operates is that immediate action is required. Cases of immediate action are the cases provided for in this section. If the action brooks delay, then this is not the appropriate section and it is not applicable to the case. There are other sections in the Code for that.

Secondly, in order to enable the Magistrate to come to a swift decision and to take immediate action, the Magistrate is relieved of the duty of formally recording evidence. I say this is common sense. If delay is caused in formally recording evidence, the action which would be taken after that delay would, in ninety-nine cases out of a hundred, be absolutely nugatory. Because *ex necessitate rei* the action has got to be immediate, and immediate action could not possibly be taken if wide discretion to enable the Magistrate to come to a swift decision were denied him. At the same time, though the discretion given to the Magistrate under the section is wide, that that discretion shall not be used capriciously is abundantly provided for by the safeguard mentioned in the section. The section requires that, before a Magistrate can take action under that section, he must record in the written order the material facts which prompt him to take action. If he is not able to record the material facts, then his action is absolutely illegal, and the High Court would interfere and set aside the order. Then, again, supposing the Magistrate does blunder, what happens? The Magistrate's blunder harms or hurts nobody.

Mr. Gaya Prasad Singh (Muzaffarpur *cum* Champaran: Non-Muhammadan): *Lathi* charges.

Mr. N. N. Anklesaria: As I said, the section is purely a precautionary and preventive measure, which imposes no penalty on anybody. The penalty is provided by section 188 of the Indian Penal Code, and that too could not be used indiscriminately, because section 188 is subject to the provisions of section 195 of the Criminal Procedure Code, which requires previous sanction of the authorities concerned before action can be taken for infringement of the order. I submit that these are sufficient safeguards against any indiscriminate or oppressive use of the section. The sole *raison d'être* of the section is that it gives the Executive power to give a warning to all peacefully minded citizens that if they hold a meeting, or join a procession, or go to a place where speeches are delivered, they do so at their peril. That is the only thing which the section, I say, provides for, and if such legislation were not in existence, if legislation which enables the magistracy to give warning to peacefully inclined citizens not to take a certain course of action, not to go to certain places because by doing so they would be exposing themselves to the risks involved in a riot or breach of peace or *lathi* charges, or even indiscriminate shooting by the police, I say if such a law exists, then it should be approved of by all responsible people. Sir, how valuable and how efficient this section has proved in actual working can be seen by a few figures I proceed to cite. The figures are confined here, Sir, to what has happened at dispersals by firing alone. It appears that during the two months of April and May last there have been 31 shootings by the military. (*An Honourable Member*: "Where do you get the figures

from?") I will tell you the source of my figures presently. In those 31 shootings, 125 citizens were killed and more than 500 wounded and in those 31 shootings 4 military and 6 police died . . . .

Mr. C. C. Biswas: All this happened though Mr. Gaya Prasad Singh's Bill was not there.

Mr. N. N. Ankleśaria: And 16 military and 450 police were injured. These are the figures in connection with shootings alone and the casualties in connection with *lathi* charges must have been, I presume, at least 10 times the number, but we have not had these figures up till now. And I say these are the figures when the preventive and precautionary section 144 has been in full operation. We can very easily imagine, Sir, how these figures will mount up if the precautionary and preventive operation of the section is restricted in the manner sought to be restricted by the Honourable the Mover. I say "restricted", but if you just consider the various alterations in the section suggested by the learned Mover, you will find, Sir, that the operation of the section would be nullified. Now, what are the learned and Honourable Mover's proposals? He restricts the magistrate's discretion by imposing on him the necessity of taking formal evidence. The only word in connection with this proposal which I can possibly use without any offence to the learned Mover, is that it is absurd. *Ex hypothesi*, you have got to take immediate action, and how is the immediate action possible if the magistrate is required formally to record evidence, as the Honourable Member says, after "evidence duly recorded". Now those who are lawyers know what is "evidence" and what is "evidence duly recorded" and they also know what formalities are required for the Magistrate to follow in order to "duly record" evidence. I say by the time the evidence is "duly recorded", the mischief which the Magistrate sought to prevent, in 99 cases out of 100, would have taken place. Then, Sir, the Honourable Member would restrict the duration of the operation of the section from two months to two days. This also I am constrained to say is absurd, if you consider the object of the section. For, what happens if you restrict the operation of the order to 48 hours? The mischief-makers against whom the order is designed to operate have simply to lie low for 48 hours and by keeping silent for 48 hours, *ipso facto*, get the order vacated. I say that the proposal of the Honourable the Mover betrays singular ignorance of the psychology of crowds. I would recommend him to read "Psychologie des Foules" or the Psychology of Crowds. If he does not know French, I believe there are translations of that book in English. If one were to realise the genesis of riots and breaches of the peace, one would at once see that the proposal of the learned Mover is absolutely ill-conceived. How do riots start? Two, three, four or five mischief-makers collect a few people with them. Innocent passers-by are attracted by the assemblage. The crowd increases, and when the crowd has reached a certain proportion in numbers, the mischief-makers just put a little idea in their minds, just make a suggestion and the thing happens. That is the genesis of riots, and it is to prevent that sort of thing that section 144 is pre-eminently designed.

The learned Mover has cited cases to show that the section has been misused and abused by the Magistrates. Now we do not know the facts with reference to those cases, and we do not know if any of these cases was

[Mr. N. N. Anklesaria.]

taken to the High Court and judicial decision taken on the course of action pursued by the Magistrate. But *prima facie* I say those cases in no way support the course suggested by the learned Mover. The learned Mover cited the case mentioned by Sir Surendranath Banerjea about people crying *Bande Mataram* being prevented from doing so. There are cases in our law reports in which the mere repetition of the word "Amin" has led to sanguinary riots. "Amin" is a very innocent word; certainly as innocent as "Bande Mataram"; but that word has led to sanguinary riots. Then the second case cited was that of Mr. Gandhi, the apostle of peace and non-violence, being prevented from entering Champaran.

An Honourable Member: He was sought to be prevented.

Mr. N. N. Anklesaria: . . . and I say he was very rightly sought to be prevented, because Mr. Gandhi, whatever his proclaimed proclivities for peace and non-violence may be, is a man who much resembles the God Hanuman. (*Cries of* "Withdraw.")

Kumar G. R. Roy (Surma Valley *cum* Shillong: Non-Muhammadan): This is most objectionable, Sir, the speaker must withdraw his statement.

Mr. Amar Nath Dutt (Burdwan Division: Non-Muhammadan Rural): I object. No man should be compared with a God.

Mr. N. N. Anklesaria: If I have offended my Honourable friend's feelings I withdraw. But if my Honourable and learned friend had heard me further he would have seen that I meant no offence to his religious susceptibilities.

Mr. Amar Nath Dutt: No human being should be compared with Hanuman who is a God.

Mr. N. N. Anklesaria: In Hindu mythology the God Hanuman is said to have set fire to Lanka, the modern Ceylon.

Kumar G. R. Roy: Lanka is not modern Ceylon.

Mr. N. N. Anklesaria: All right. Then the case was cited by the learned Mover about Gandhi caps being prohibited by the District Magistrate of Guntur. On the face of it, it does appear to be a very unnecessary interference with the liberty of the subject. But who does not know the state of mind of the different communities in the country? Even the sight of an innocent article of food like beef is enough to upset people of a certain temperament . . . .

An Honourable Member: Beef and ham; include both the communities.

Mr. N. N. Anklesaria: Yes: I mean something like this would hurt the susceptibilities of the different communities in India; and circumstances may be imagined when the Gandhi cap would hurt the susceptibilities of certain individuals who were not of the Congress persuasion. ("Hear, hear" *from the Nationalist Benches.*) Even granting that these cases do prove abuse or misuse of section 144, does it prove that the law is bad because the administration of the law is bad? I say, no. This section was enacted some seventy years ago, and if the necessity for that section

was felt seventy years ago, in the present state of the country the necessity is seventy times greater than what it was then. Seventy years ago, Sir, there was no boycott; seventy years ago there was no picketing of foreign cloth shops, there was no picketing of liquor shops, no civil disobedience movement as we see it at the present day; in those days there was no defiance of the salt law or the forest laws of the land.

Mr. B. R. Puri (West Punjab: Non-Muhammadan): Were there no British laws in those days?

Mr. N. N. Anklesaria: Yes, there were, but there were people like you who would not break those laws.

An Honourable Member: He was not born then.

Mr. N. N. Anklesaria: Sir, the Honourable the Home Member the other day said that this section would provide a valuable weapon in connection with communal discords. I say, as things are moving at present, communal discords are being cast into the shade by political discords. We are fast approaching the conditions which prevailed in Ireland during the period 1914-1921. Sir, there are people in this country to whom the tyranny of the Congresswallas has become unbearable. These people are thoroughly disgusted with the apparent attitude of helplessness and apathy adopted by the Government. And these people, Sir, now show an inclination of taking the law into their own hands. On one day alone about four or five days ago in the *Times of India*, in one column, we found reports of Muhammadan shopkeepers taking the law into their own hands against the Congress picketers in Poona, Karachi and in some other places which I don't quite remember.

Mr. C. C. Biswas: Could not section 144 have been applied against them?

Mr. N. N. Anklesaria: It is a great pity it was not applied in time. And I say, Sir, that Honourable Members of this House will not enhance their reputation for responsibility if they pass a measure like the one moved by the Honourable the Mover. For, Sir, the belief, rightly or wrongly, prevails outside this House and also inside it that the forces of violence and disorder are now manœuvring for positions of vantage, and those forces have got supporters in this House. My friend the Mover of this Bill has already sponsored three Bills which are bound to give an impetus to forces of violence and disorder ("Hear, hear" *from the Nationalist Benches*), and one of the Bills is this.

Lastly, Sir, I would bring to the notice of the House, the effect which the passing of such a measure as this would produce on our police and the magistracy. Already, Sir, the police and the magistracy are exhibiting an apathy and an unwillingness to take responsibilities which, if allowed to continue, will prove deplorable, and I think it is absolutely necessary that, before this Bill comes to be considered by this House, the House should have before it for its consideration the opinions of the police and the magistracy who are vitally interested in the administration of this section. I therefore move, Sir, that the Bill be circulated for eliciting opinion thereon by the 31st of August, 1931.

Mr. President: Order, order: The amendment proposed is:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st August, 1931."

[Mr. President.]

I notice that the Honourable Mr. Maswood Ahmad has also given notice of a similar amendment*. I do not find him in his place here. I take it that this amendment having been moved, he will not press his own. It only differs in the date within which opinion must be obtained.

Mr. J. Hezlett (Assam: Nominated Official): Sir, I rise to oppose the Bill before this House and also the motion which has been moved by my Honourable friend Mr. Gaya Prasad Singh. Hitherto I have been a silent Member of this House, and I hoped at one time, in these days of championships, to be in the running for the title of champion listener of this House. I now must give up my aspirations as regards that, Sir. I feel that if the principle of this Bill is accepted by this House, it will so injuriously affect the maintenance of order and good administration in this country, that I must attempt, Sir, with your indulgence, to place my views before this House. Perhaps, Sir, I have some special qualifications for speaking on this subject. I have had more than 31 years service in this country, and during all that period I have been employed in the direct work of administration in the districts of this country. Perhaps, Sir, I have longer administrative experience than any other officer of this House, and I have seen a good deal of the working of section 144, Criminal Procedure Code, which we are now considering. I feel, Sir, that my task has been rendered much easier by the speech of my friend who has just sat down. I have listened with much attention to the speech made by my friend the Mover of the motion we are considering, and I have also studied his Statement of Objects and Reasons. The main reason given for introducing this Bill is that section 144 has been misapplied and misused in certain cases. I admit, Sir, that the section may have been misapplied, but I would ask my Honourable friend what section of the Indian Penal Code, what section of the Criminal Procedure Code, what law either revenue, civil, or criminal in this country, has not been misapplied? (*Cries of "Hear, hear" from Nationalist Benches.*) (*An Honourable Member*: "A frank admission.") My Honourable friend who is a lawyer knows all those volumes which we call law reports, and there are thousands and thousands of such valumes. If I ask my office to produce I. L. R., 35 Calcutta, page 357, it is produced; if I ask them to produce volume 1000, page 690, it will also be produced. And you have volumes of these law reports. What do they contain? They contain, I submit, mostly decisions of cases in which the lower courts have misapplied the law to the facts of the case before them. And not only do Magistrates make mistakes; Judges make mistakes too, even those august bodies, the High Courts, make mistakes, and have to be corrected. Therefore, Sir, I ask, why should my Honourable friend select section 144 of the Criminal Procedure Code for modification, because that has been misapplied, and I admit that it has been misapplied, in certain cases. I submit that my Honourable friend's argument will not stand.

Now, Sir, if my Honourable friend wants to revise section 144 of the Criminal Procedure Code, why should he not revise all the other laws of this country? I know from my Honourable friend's activities in this

*"That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st May, 1931."

House that he is one of the world's workers. I cannot claim to belong to that honourable body of men. But I must say that he would have to be very busy indeed if he attempted to revise all the laws of this country so as to make them fool-proof, so to amend them that they would not be misapplied by those officers who are responsible for administering them. Again, it must be remembered that, since the passing of the Act of 1923, the High Court has powers to revise orders passed by Magistrates under section 144, and has exercised those powers. As a result, a body of case law is being built up for the guidance of Magistrates. Now, I am sure my Honourable friend will admit that Magistrates pay much attention to the rulings of the Honourable High Courts. I am also sure that my Honourable friend, Sir Abdur Rahim, who has the distinction of having been a Judge of a High Court, will bear me out when I say that Magistrates pay much attention to the rulings of the High Courts. Therefore, I say, Sir, that this Bill is not necessary. The safeguards already provided are sufficient for guiding Magistrates in the proper application of this section, and the Bill before the House is really not required in the interests of justice or good administration.

But my main reason for opposing the Bill before the House is not only that I hold that it is unnecessary—and I hope I have convinced my Honourable friend to that effect—but also because the present time is not opportune for introducing a measure of this kind. Now, Sir, we are all aware that a reformed constitution will soon be working in this country; perhaps it may come into effect in one year, or two years, or perhaps, if the suggestion made by my Honourable friend Mian Muhammad Shah Nawaz is taken into consideration, it might come into effect even in two or three months. I ask, then, is this the time to seek to undermine the authority of those officers who are responsible for the maintenance of peace and good administration in this country? I submit, it is not. It also has to be remembered that there is still a party in this country whose openly declared object is to paralyse the present administration and to overthrow the present "satanic" Government, whose representatives we see in our front Benches. Sir, we all know that this party is still in power and has considerable influence in the country. It is also a fact that the civil disobedience movement has not been called off, that the Hindu-Muslim dispute has not been settled, and that the terrorist movement has not been crushed. India is about to pass through one of the most critical junctures in the history of the country, and I submit that the time is very inopportune to weaken the authority of those officers who are responsible for peace and good administration.

If we go into the provisions of the Bill, what do we find? We find that the Bill provides that a Magistrate can only pass an *ex parte* order valid for a period of 48 hours. I would ask the Honourable the Mover of this motion, what will happen after the expiry of this magic period of 48 hours? I presume following the spirit of the recent rulings of the High Courts which have been quoted in this House, the offending party will have to be given a period of grace, a *locus pœnitentiæ* as it were, to see whether he will take action such as the Magistrate thinks he might take. Then, the Magistrate, before he could pass an order valid for more than 48 hours, has to take down evidence. My Honourable friend who preceded me has shown how it is impossible for Magistrates

[Mr. J. Hezlett.]

to take evidence under this section. An appeal is allowed to the Sessions Judge. No doubt, a motion will be made to the Sessions Judge to suspend the order while he is considering the application. It may take one week, two weeks, or a month, before the Sessions Judge passes an order. In the meantime, disorder breaks out and the Magistrate responsible is powerless to prevent disorder breaking out.

Sir Hari Singh Gour (Central Provinces Hindi Divisions: Non-Muhammadan): That can be done now in revision by the High Court.

Mr. J. Hezlett: That is what I say. The High Court has revisionary powers, but a Magistrate can pass an order valid up to a maximum of two months, and not for 48 hours.

My Honourable friend who preceded me has already touched another important consideration, and that is the effect which the passing of a measure of this kind will have on those services which are responsible for peace and good administration in this country. From what we have heard in this House, Sir, one would consider that Magistrates and police officers like dispersing an unlawful assembly. I can assure you from personal experience that no more unpleasant duty, no more thankless task, can fall to the lot of a Magistrate or a police officer than to have to disperse an unlawful assembly. If the officer in charge does not take action in time, with the result that the small force at his command is overwhelmed, or innocent lives lost, or valuable property destroyed, he will be called to account by the Home Department of his Government. If, on the other hand, he takes action and uses the necessary force to disperse the crowd, mob or unlawful assembly, there will be a howl throughout this country, votes of censure will be passed, and motions of adjournment made in this House. It has been said that the lot of a policeman is not a happy one. I can assure my Honourable friends opposite that the lot both of Magistrates and the police in this country during the last year, and perhaps, during the last number of years, has been most unhappy. It is not right at this juncture that this House should do anything which would weaken the authority of those services who are responsible for peace and good administration. We, on this side of the House, when we make over charge to the reformed Government, are anxious to make over a prosperous and peaceful India. We want to make over services working efficiently. We want to make over services animated by that high morale, that strong sense of public duty, that strict sense of discipline, tact, forbearance and good sense, which at present characterise the services of this country. Therefore, Sir, I think that my Honourable friends opposite should not do anything which would tend to lessen the efficiency of those services. But this Bill we are taking away the powers of officers to maintain peace and good administration. We are taking away their powers, and we are holding them responsible for peace and good administration, and even under the reformed Government they will still have to be held responsible for peace and good administration, collection of taxes and all that kind of thing, if the reformed Government is going to function properly.

12 Noon.

In conclusion, Sir, I oppose the motion before the House, first, because it is not necessary, secondly, because the present time is very inopportune for introducing a measure of this kind, even if it is held to

be necessary, and thirdly, because if the principle of this Bill is accepted, it will tend to lower the high morale, to break down the strong sense of public duty and the strict sense of discipline which at present animate those splendid services which are responsible for peace and good administration throughout the length and breadth of this vast country.

Sardar Sant Singh (West Punjab: Sikh): I have listened with great surprise to the strained speech which came from my Honourable friend Mr. Anklesaria. If it were not for the fact that I felt convinced that he was speaking from his conviction, I would have thought that probably he was not serious about what he was saying. My friend has jumbled together various items in his speech, which will be very surprising if they are analysed individually. My friend has stated that the law as enacted in section 144 of the Criminal Procedure Code is a preventive provision. It no doubt is, and he has stated that prevention is better than cure. No doubt that is true, but the question still remains whether these preventive provisions in the Criminal Procedure Code tend to maintain the liberties of the subject or tend to restrict the legitimate actions of individuals. Before discussing the main provisions of this section, I will submit for the consideration of my Honourable friends whether there is any such provision in any criminal code of any other country in the world. So far as I have been able to find out, I have not been able to lay my finger on any other code which contains a provision similar to this. The reason is quite obvious, because this section deviates from the principle of British criminal jurisprudence. The criminal jurisprudence mainly deals with punishing the acts or omissions of individuals, and it is only in those cases where another individual is threatened with felony or with a similar offence, that the criminal law is set in motion and stops the hand of the suspected offender. Now, this section 144 really does not do so. It actually tends to prevent the lawful activities of individuals or associations. My friend has again stated during the course of his speech that the *ex parte* method of proceeding under this section is of that nature which if removed will affect the powers of the police and the magistracy to such an extent that a breach of the peace will be the likely result. Now, if my friend had studied the rulings of the various High Courts given under this section he would have come to know that this section gives power to the Magistrate to pass an *ex parte* order only in very emergent circumstances and such an order is not contemplated in ordinary cases. You will find cases in the Weekly Reports, where it was held that ordinarily the party against whom an order is made should have an opportunity to show cause against it. Evidence shall be recorded and witnesses examined, and then only in urgent cases may an order be passed *ex parte*. *Ex parte* orders are not contemplated in the first instance and only in very rare cases are *ex parte* orders permitted. In the very recent cases cited by my friend Mr. Gaya Prasad Singh, an *ex parte* order has been passed in very innocent affairs, and what we find from the present motion proposed by my friend Mr. Gaya Prasad Singh is that this *ex parte* order, if necessitated at all, will remain in force only up to 48 hours. After that, of course, evidence could be recorded, and after recording evidence, the necessary orders may be passed. So the amendment proposed by the Bill does not take away anything which is already there. It only wants to explain the provisions as they already exist, and this explanation has become necessary owing to

[Sardar Sant Singh.]

the fact that the section has not been properly used by those who are in charge of the administration. Further we find, when we see how this section is worked, that the police reports the case to a Magistrate and the Magistrate quietly passes his orders on that without caring to know what evidence the police had at the time. The result is that, before a person knows what is against him, he is silenced by the service of an order on him, and thus the lawful activity of a particular individual is restricted. We have found during the last year or so that when a person comes to give a public lecture in a particular city, the city is decorated in his honour and he is received with open arms. All at once a bombshell in the shape of an order under section 144 falls on the pretext that his arrival in the city is likely to disturb the public tranquillity. Now, one fails to understand how the very public which decorates a city and its hearths and homes in order to honour a man whom it respects in the highest degree can be guilty of a breach of the peace when he arrives there. This is incomprehensible. Really what happens, and really what has led to the abuse of the section, is this, that in the present state of political agitation and unrest, there have been two distinct parties existing side by side in the country. One party is the Executive, and the other party is the people's party who want to protect their liberties. The Executive, being afraid of the lawful activities of individuals and being unable to check them in any lawful manner, use this section for their own ends and prevent the lawful activities of those individuals. Well, this certainly calls for an amendment of the section so that it should be made clear to all the Magistrates and other authorities that this section is not intended for this purpose. Thus, in clause (3-A.) my friend, Mr. Gaya Prasad Singh, has made it quite clear that:

"Notwithstanding anything hereinbefore contained, no order under this section shall be made by a Magistrate so as to restrict the right of any person or persons to convene, attend, or take part in any public or political meeting, association, procession, or other demonstration, unless the Magistrate finds an evidence duly recorded that such direction is necessary to prevent obstruction, annoyance, or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray."

Now herein there is no emergency. A person has already announced that he is coming to a town to address a meeting there. His programme is already announced in the papers. He does not come secretly, and he comes openly. Well, meanwhile, the Magistrate is called upon to restrict his action under this section. There is no emergency. There is nothing of that sort which will lead to a public affray. Therefore, it is absolutely necessary that in such cases the political activities of individuals, who probably are not welcomed by a particular section of the services, should not be restricted till the evidence is duly recorded in a legal manner. Then, again, my friend who opposed my friend, Mr. Gaya Prasad Singh's motion, says, "this section has been in existence for 70 years, and should not be changed now because it is probably too old to be changed." (Laughter.) But I think, Sir, that this argument goes, against my friend rather than in his favour. A piece of legislation 70 years old does require a change when the circumstances in the country have changed so materially during the last two years. At this time when we find that a particular section of political workers refuses to take any notice of the course of the administration of justice, it becomes all the

greater a duty of the courts to inspire confidence in the public that justice is administered, not that justice is denied to them, and it is greatly incumbent upon the executive authorities to re-establish the confidence of the public in the administration of justice. Therefore, Sir, any change which is brought forward at this time to restrict the arbitrary action of Magistrates or the police should be welcomed by them and should not be opposed. Furthermore, I quite agree with the maxim of my Honourable friend, that it is not the administration of justice alone but the general feeling that justice is being administered which is more important and more valuable for any Government in any country. Lastly, I would respectfully urge that it is now time that such amending Bills should be welcomed, so that any law which restricts the just liberty of any subject should be modified in such a manner as to enlarge the liberties of the subject. Therefore I support the Bill which has been introduced by my Honourable friend, Mr. Gaya Prasad Singh.

Sir Abdur Rahim (Calcutta and Suburbs: Muhammadan Urban): Sir, if the object of this amending Bill was to substantially weaken the provisions of section 144 of the Criminal Procedure Code, not to say of repealing that section, I should not think of supporting it for one moment. I think a great deal of misconception has arisen with reference to the scope of this Bill which has been introduced by my Honourable friend, Mr. Gaya Prasad Singh. There can be no doubt that, owing to the somewhat vague and certainly very general and wide language of section 144, there has been considerable uncertainty in its application to various cases that arise from time to time. Everyone who has had to deal with this section has to admit that in many cases the section has been misapplied, and that has been practically admitted from all sections of the House. If that be so, it seems to me, having regard to the way section 144 has been applied recently, that it ought to be amended so as to prevent misapplications of the nature that have aroused so much opposition in the country. Now as I understand the amending Bill, it is directed entirely to preventing interference with *bona fide* public meetings and associations. That is the object of the Bill as I understand it. If that be so, I do not think there will be many Members of this House who would be inclined to oppose it. Now, so far as the prevention of breaches of the peace or of danger to property and the lives of persons is concerned, there can be no two opinions that there should be some weapon in the hands of the authorities in this country, the magistracy, by which speedy prevention might be secured. We know that in these days the Magistrates ought to have power to achieve and to secure tranquillity and peace in the country. Sir, I am looking forward to the time, I believe every one of us is looking forward to the time, when there will be complete provincial autonomy in the provinces, which means throughout the length and breadth of India, and I am sure the judicial authorities and the executive authorities will feel the need of having some measure which they can resort to in times of apprehended trouble. For that reason especially I should be loth to deprive the future Government of any useful measure of this character which is designed to prevent breaches of the peace or apprehended danger to people's lives and property. But, Sir, having in view especially the political developments in the country and the constitutional advance that we are all eagerly expecting, I should be very much disinclined to see that there should be in the Code any provision which would prevent any expression of

[Sir Abdur Rahim.]

political opinion, because in the times to come, free expression of political opinion will become then far more necessary than even now. If the party in power, for instance, were to have ready at their hands a weapon of this character which is so liable to be applied against political opponents, it would augur ill for the administration of the country in the near future. Sir, I think there are very cogent reasons indeed why this House should carefully consider the provisions of this section and wherever it is too indefinite and too wide, it should be amended by appropriate words. Now, Sir, I do not wish to commit myself or the Independent Party, of which I am privileged to be the spokesman, to the exact wording of the amending Bill or to the exact proposals contained in it, but what we do support is this, that section 144 should be so amended so as to prevent in the future any use of it to curtail the liberty of the people to hold public meetings or to carry on any political agitation having for its object, not the commission of any crime nor the commission of breaches of peace. As regards the details of this Bill, I do not want to enter upon any discussion now; but I think it is eminently a matter which ought to be considered by a Select Committee (Hear, hear). A Select Committee has been proposed and I do not think, Sir, any good purpose will be served by having the Bill circulated for public opinion. It is really a matter of proper drafting. We know that certain provisions of the Bill are liable to be misapplied on a very large scale and it is to correct that, this Bill is sought to be incorporated into the law of the country. Take for instance the main provisions of the Bill, section 3-A. The whole idea is to prevent the law under section 144 being applied to restrict the rights of public meetings and public associations. Now, Sir, I do not think that any person can reasonably object to the perfectly sound argument that has been advanced by Honourable Members opposite that mere mis-application of the law in isolated cases is no ground for repealing the law. That is a perfectly correct proposition, but at the same time when we find that a particular provision of the law is couched in such wide terms that it is liable to be misused on a very wide scale, then the public has a right to insist upon that law being properly amended and that is exactly the position in this case. I do not think any one can deny that public opinion for some time for the last 10 or 20 years has been greatly stirred by the use that has been made by a number of Magistrates all over the country of this section 144. There is strong public opinion in this matter and I do think, if for nothing else, in order to satisfy that opinion, this House should consider whether it cannot be properly amended and whether such amendment would not improve the section.

Now, Sir, as regards the provision that no *ex parte* order should be passed unless evidence has been duly recorded in support of such an action being taken, I do not think that the object of the section would be frustrated by that. (Hear, hear.) I am perfectly aware that immediate prevention in certain cases is necessary, but the section itself as it stands at present says that the Magistrate ought to pass a written order recording the facts which have justified him in taking action and serve the order on the parties, except in cases of absolute emergency when there is no time for it. If that be so, it follows, as it ought to, that a certain time must elapse before the order comes into operation. That being so, it is not clear to me that there can be any difficulty on the part of the Magistrate

in recording some evidence, putting on record the evidence which has induced him to take this action. I do not think that need cause any unnecessary delay. The police, I take it, will be the informants in most cases and their evidence may be recorded.

Then, this Bill seeks to provide also an appeal against that order, whether it be an appeal or a revision it makes no difference. But under the section, as it stands at present, it is impossible, it is very very difficult, for the revising court, the High Court or the Sessions Judge, effectively to revise an order of this nature. Every legal practitioner must be aware that in a large number of cases, the High Court has to say, "Well, there are the facts recorded; we cannot go beyond that. We are not required to go into the evidence. It is for the Magistrate to decide whether a case has arisen under section 144 or not and there the matter rests". But if there be some evidence on record, then the High Court or the Sessions Judge would be in a position to say whether, as a matter of fact, there was good ground for the Magistrate to proceed under this section. As it is, as the law stands at present, I am absolutely sure and my Honourable friend, the Law Member would bear me out, that it is very difficult for the High Court to revise an order of this nature, especially in case of political meetings or associations. Surely it is desirable that if the Magistrate is really of opinion that some action should be taken in the interest of public safety, then he ought to put on record the evidence on which he has formed that opinion. If he does that, then if the persons who are affected by that order challenge that order, they can move the High Court or the Sessions Judge to revise it; and then if he has a good case, surely the Magistrate's order would be set aside and ought to be set aside. As regards the exact period for which the *ex-parte* order should last, my learned friend has suggested 48 hours. So far as we are concerned, we are not prepared to commit ourselves to the exact period mentioned. That is a point which ought to be considered in the Select Committee. I think, Sir, there is really a very good case made out for reconsidering the scope of section 144, and I think it is a very sound and reasonable proposition that section 144 should not be used recklessly by the Magistrates so as to hamper the people in their ordinary legitimate political activities. For these reasons I support the Bill.

Mr. Khurshed Ahmad Khan (United Provinces: Nominated Official): Sir, the Honourable the Mover of the Bill alleges that section 144 of the Criminal Procedure Code has been grossly abused for suppressing political agitation. I do not think, Sir, that the Honourable the Mover is justified in condemning magisterial action in this wholesale fashion. He cited a few instances of the application of section 144, and even if the facts alleged by him are accepted as correct, I am certain Honourable Members will not be led to believe that the abuses referred to by him are the order of the day. Moreover, Sir, it is not fair to a Magistrate to judge the motive of the action taken by him by the results of the order passed by him under section 144. It is conceivable that in certain cases it may appear in the light of subsequent events that the order under section 144 was not called for; but as Honourable Members will admit, a Magistrate is after all a man with all the limitations of a man. He passes an order under section 144 on the information in his possession at the time of passing the order. He does so in perfect good faith. He apprehends a breach of the peace. It is quite likely that later on he may find that the apprehension was not

[Mr. Khurshed Ahmad Khan.]

justified. But this does not mean that in passing the order he abused his power.

Now, Sir, I come to the provisions of this Bill. It would appear from the Statement of Objects and Reasons that the Honourable the Mover is particularly anxious about restricting magisterial discretion in passing orders under section 144 in respect of political activities. But clause 2(1) of the Bill does not confine itself to political activities alone. The provision is intended to apply to all public or political meetings, associations, processions and demonstrations as well. The procedure prescribed for dealing with the above-mentioned activities is that the Magistrate should, before taking action, duly record evidence in order to satisfy himself that action under section 144 is called for. It is further provided that *ex-parte* orders shall not be passed without duly recording evidence. It is also provided that an order passed *ex-parte* under section 144 shall not last for more than 48 hours; and lastly it is provided that an appeal shall lie from an order passed under sub-section (6) to the Court of Session.

I propose to examine each provision separately.

As regards the proposal that the Magistrate should record evidence before passing an order under section 144, I would submit that the Honourable the Mover has not properly appreciated the difficulties with which a Magistrate is faced when he has to take action under that section. If the Honourable the Mover will calmly reflect on the consequences that are sure to follow if this measure were brought on the Statute Book, I am almost certain that he will not press for its acceptance by the House. It requires no great imagination to picture the predicament in which the Magistrate will be placed if he is required by the law to sit down and start recording evidence when passions are excited, disruptive forces are threatening the public peace. Sir, I can assure Honourable Members that I am not trying to overdraw the picture. I have been a Magistrate myself, and I think I can speak for Honourable Members who have experience as Magistrates that I am not overdrawing the picture; and my own experience is that had I been compelled under the law to follow the procedure which is prescribed in the amending Bill, the salutary provisions of section 144 would have been rendered completely inefficacious.

Apart from this, I am not quite sure what sort of evidence the Honourable the Mover has in view. So far as my knowledge goes, evidence can be recorded in three ways. Firstly,—I am open to correction,—section 164 of the Criminal Procedure Code provides that statements may be recorded of witnesses who may turn hostile. Then again evidence may be recorded under section 202 by way of preliminary inquiry. Then, Sir, evidence may be recorded either in a summons case or a warrant case. I have given careful consideration to the proposition of the Honourable the Mover and I am sure he does not intend by the term "evidence duly recorded" that a regular trial according to the procedure laid down for the trial of a warrant case or a summons case should be held. Such a course would be obviously impossible. All that could be done is to record statements on oath, and here the question arises—whose statements? There is the Magistrate who gets information that a riot is about to take place. Who brings this information to him? In 99 cases out of a 100, it is the police officer. I ask the Honourable the Mover whether he would be satisfied if the statements recorded by the District Magistrate or the Sub-Divisional Magistrate, whatever the case might be, are the statements of police officers or of

witnesses produced by police officers. If he says "Yes", I would ask him in all seriousness, whether it would not be a sheer waste of time to do so. Where is the District Magistrate going to get the witnesses from? He gets information either from the police officer or from some other source, and I suppose that source will be called tainted, because the Honourable the Mover has no faith in the good intentions of the magistracy. I should certainly think that, instead of wasting his time in sitting down and recording evidence while a riot is about to take place and the public peace is threatened, the Magistrate should pass orders on the information he has received; and under the law he is required to state his reasons and the material facts of the case, which in the difficult situation he has to deal with is all that he can reasonably be expected to do. Instead of recording evidence as suggested by the Honourable the Mover, it would be far more desirable for the Magistrate to go at once to the spot and stop the trouble, and I think every sensible man would recommend this course. The course suggested by the Honourable the Mover is impracticable and will lead to unhappy results. The fact of the matter is that no country in the world can be properly governed if the officers entrusted with the administration are not given a fairly wide margin of discretion, of course, with certain reasonable safeguards. The question is whether the measure introduced by the Honourable the Mover removes the defects which may be present in section 144 as it stands. I maintain that it does not, and instead of making things easy for the Magistrates, or for the matter of that for the public or the persons concerned, it will make the work of the Magistrates much more difficult, almost impossible at times.

I now take proviso (*a*) of the Bill. It says:

"Provided that no *ex parte* order shall be passed by a Magistrate in such cases without evidence duly recorded."

This provision, Sir, is absolutely redundant, because the cases contemplated therein are already covered by the main clause which I have just discussed. This is my view and I am open to correction.

The third point for consideration is the proposed curtailment of the period for which an order under section 144 may be enforced. I find no good reason for showing partiality to an *ex parte* order. As far as I am aware, and I am open to correction, the only difference in law between an ordinary order and an *ex parte* order is that an *ex parte* order under section 144 is not served on the party or parties concerned, but so far as the *operation* of this order is concerned, I fail to see any difference whatever, whether it is passed *ex parte* or otherwise. It will have the same effect so far as the maintenance of the peace is concerned and so far as the liberty of action of the person against whom the order is served is concerned. I fail to see why insistence should be made on curtailing the period of the order passed under section 144 from two months to 48 hours. As Honourable Members will have no difficulty in realising it is at times absolutely impossible to serve an order under section 144. Suppose an angry mob is bent on loot and arson. The Magistrate gets the information that this is happening, say 40 miles away from the headquarters. The police officer comes and gives the information. What is the Magistrate going to do? He cannot serve an order on the people who are about to commit breaches of the law. Immediate action is required. I do not see why only an *ex parte* order passed in such exceptional circumstances should remain in force only for two days. It is very likely, as was pointed out by one speaker, that if the period is reduced, mischiefmakers might make capital out of it.

[Mr. Khurshed Ahmad Khan.]

Now, Sir, the last clause, which provides for an appeal to the Court of Session. I have carefully read sub-section (6) of section 144 which runs as follows:

"No order under this section shall remain in force for more than two months from the making thereof; unless, in cases of danger to human life, health or safety, or a likelihood of a riot or an affray, the Local Government, by notification in the official Gazette, otherwise directs."

Now clause 2(2) of the Bill states:

"An appeal shall lie from an order passed under sub-section (6) to the Court of Session."

Honourable Members will see that a Magistrate passes no order under sub-section (6). How can, then, an appeal be preferred as provided in the Bill? The Honourable the Mover in the excess of zeal provides a remedy for an evil which does not exist.

In conclusion, Sir, I would like to read a portion from the speech made by Rao Bahadur C. S. Subrahmanyam who was a Member of this House in 1923, when a Bill to amend section 144 of the Criminal Procedure Code was under discussion. He said in the course of his speech:

"After all there is a good deal of confusion and error about the right of public meeting and all that sort of thing. Where do we get this right? Which constitutional lawyer has told you that you have a right of public meeting? I can quote you Professor Dicey. He will tell you that what is called a right of public meeting is not the right which you have been describing here in this Assembly and a question like that is not a question which can really be discussed in this Assembly. As for the rights of public procession and public meeting, you have read Professor Dicey just as well as I have. But if for a moment you want to rise to heights of eloquence and appeal to the sentiments and feelings of Honourable Members here, you may, I suppose, say that our rights are being disturbed if action is to be taken under this section. But what will happen? A Magistrate passes an order and you go to the Sessions Judge."

I especially want to draw the attention of Honourable Members to this particular passage.

"A Magistrate passes an order and you go to the Sessions Judge. What materials will the Sessions Judge have before him for examining the propriety of the order? The Magistrate does not record detailed evidence; he has information and knowledge of all kinds placed before him; many a thing is said before him which helps him in forming an opinion; often he has his own private information and ideas; he knows the district, the area in which he is working and the temperament of the parties to the dispute. Those are the conditions under which an order like this would be passed; and if you ask the Sessions Judge to examine that order, how can he do it? That is the real point. Suppose the Sessions Judge disagrees with the order of the District Magistrate or the Magistrate who has taken action under this section, and he passes an order saying that the meeting may be held. What will happen? The Magistrate is responsible for keeping the peace, but he is told that a particular sect is to be supported in the exercise of its right to hold a meeting. In other words, he has to muster a sufficient force to support these people at a public meeting and so uphold the order of the Sessions Judge who had upset the Magistrate's order. Is that feasible in the districts? Has a Magistrate got sufficient forces under him for these sort of skirmishes? Let us examine both sides of this matter. Do not let us assume hastily that a Magistrate always exercises this power erroneously. That is not a fair assumption to make in arguing on a legislative enactment. If this Assembly were here discussing the particular case of Magistrates, then it would be a different matter. But when a change in the law is proposed, are we to set out with the assumption that a large number of these responsible men are going to use their powers erroneously and that therefore the law must be hedged in in various directions?"

To sum up. Sir, I will submit that clause 2(1) of the Bill is injudicious, unworkable and ill-conceived. Proviso (*a*) is absolutely redundant and proviso (*b*) is in my opinion altogether indefensible and clause 2 is, as I have already pointed out, a remedy for an evil which does not exist. I, therefore, strongly oppose the motion.

Several Honourable Members: The question may now be put.

Mr. President: Closure has been asked for, and I am inclined to accept it on the ground that the matter has been discussed fairly fully and that the agenda before us is a very long one. I leave it to the House to decide whether they want to continue the debate or whether they wish to go to vote on it. (*Some Honourable Members*: "Vote, vote.") I have now to put the question that the question be now put.

The Assembly divided:

AYES—44.

Abdoola Haroon, Seth Haji.
Abdur Rahim, Sir.
Aggarwal, Mr. Jagan Nath.
Bhuput Singh, Mr.
Biswas, Mr. C. C.
Chandi Mal Gola, Bhagat.
Das, Mr. A.
Dudhoria, Mr. Nabakumar Sing.
Dutt, Mr. Amar Nath.
Gour, Sir Hari Singh.
Gunjal, Mr. N. R.
Ismail Khan, Haji Chaudhury Muhammad.
Isra, Chaudhri.
Jamal Muhammad Saib, Mr.
Jog, Mr. S. G.
Krishnamachariar, Raja Bahadur G.
Lahiri Chaudhury, Mr. D. K.
Maswood Ahmad Mr. M.
Misra, Mr. B. N.
Mitra, Mr. S. C.
Mujumdar, Sardar G. N.
Pandian, Mr. B. Rajaram.
Puri, Mr. B. R.
Puri, Mr. Goswami, M. R.
Rajah, Raja Sir Vasudeva.
Ranga Iyer, Mr. C. S.
Rastogi, Mr. Badri Lal.
Reddi, Mr. P. G.
Roy, Kumar G. R.
Sadiq Hasan, Shaikh.
Sant Singh, Sardar.
Sarda, Rai Sahib Harbilas.
Sen, Pandit S. N.
Shah Nawaz, Mian Muhammad.
Shahani, Mr. S. C.
Singh, Kumar Gupteshwar Prasad.
Singh, Mr. Gaya Prasad.
Sitaramaraju, Mr. B.
Suhrawardy, Dr. A.
Sukhraj Rai, Rai Bahadur.
Thampan, Mr. K. P.
Tun Aung, U.
Uppi Saheb Bahadur, Mr.
Ziauddin Ahmad, Dr.

NOES—53.

Acheson, Mr. J. G.
Alexander, Mr. W.
Allah Baksh Khan Tiwana, Khan Bahadur Malik.
Anklesaria, Mr. N. N.
Anwar-ul-Azim, Mr. Muhammad.
Ayyangar, Diwan Bahadur V. Bhashyam.
Bajpai, Mr. R. S.
Banarji, Mr. Rajnarayan.
Baum, Mr. E. F.
Bhargava, Rai Bahadur Pandit T. N.
Boag, Mr. G. T.
Chatterjee, The Revd. J. C.
Crerar, The Honourable Sir James.
Dalal, Dr. R. D.
Fazal Haq Piracha, Shaikh.
Fazl-i-Husain, The Honourable Khan Bahadur Mian Sir.
Fox, Mr. H. B.
French, Mr. J. C.
Graham, Sir Lancelot.
Gwynne, Mr. C. W.
Hamilton, Mr. K. B. L.
Heathcote, Mr. L. V.
Hezlett, Mr. G.
Ibrahim Ali Khan, Lt. Nawab Muhammad.
Ishwarsingji, Nawab Naharsingji.
Ismail Ali Khan, Kunwar Hajee.
Jawahar Singh, Sardar Bahadur Sardar.
Khurshed Ahmad Khan, Mr.
Macmillan, Mr. A. M.
Montgomery, Mr. H.
Moore, Mr. Arthur.
Mukherjee, Rai Bahadur S. C.
Pandit, Rao Bahadur S. R.
Parsons, Mr. A. A. L.
Rafiuddin Ahmad, Khan Bahadur Maulvi.
Rainy, The Honourable Sir George.
Rajah, Rao Bahadur M. C.
Rao, Mr. M. N.
Row, Mr. K. Sanjiva.
Sahi, Mr. Ram Prashad Narayan.
Sams, Mr. H. A.
Sarma, Mr. R. S.
Schuster, The Honourable Sir George.
Scott, Mr. J. Ramsay.
Shillidy, Mr. J. A.
Studd, Mr. E.
Talib Mehdi Khan, Nawab Major Malik.
Tin Tut, Mr.
Wajihuddin, Khan Bahadur Haji.
Yakub, Maulvi Muhammad.
Yamin Khan, Mr. Muhammad.
Young, Mr. G. M.
Zulfiqar Ali Khan, Sir.

The motion was negatived.

Mr. President: The debate will continue.

Mr. Muhammad Yamin Khan (Agra Division: Muhammadan Rural): Sir, there is no one in the House who will deny that there have been cases in which this law has not been properly applied; there is no one in the House who will say that there has been no miscarriage of justice, because in the matter of administration of justice people have got different views and each officer applies the law according to his own view, and there might be cases in which there might have been miscarriage of justice, and this depends entirely upon circumstances and upon the views of the particular individual officer who applies the law. But, Sir, here we have to remember that the law which is sought to be amended is a permanent measure on the Statute-book. It is not a temporary law, but it is a permanent law, and when we change a permanent law, we must examine its provisions properly and thoroughly and we should not be guided merely by our political sentiments, but we should see that our permanent law is not subordinated to the whims and caprices of the opinion in the country. The permanent law must stand on the Statute-book in such a manner that it will not be altered to suit the sentiments of a particular party which might come into power at a particular time, otherwise the law will be used like a football rather than as a law.

1 P.M.

Now, I have examined this Bill very carefully and what do I find? I find that my Honourable and learned friend wants the law to be altered in such a manner that on the very face of it one can say that it is not meant to be used for the proper administration of justice but that it is meant only to suit a particular view point of a particular movement which exists in India at the present time. If that is so, Sir, as soon as these circumstances change, my friend will bring in another Bill to alter the law which he now seeks to introduce. (*An Honourable Member*: "Change of time.") That kind of thing, Sir, is not conducive to progress of any country, and it is bound to lead to many evils, and those evils will surely arrest the progress of the country.

Now, Sir, I want my Honourable and learned friend to convince me that his Bill will improve the existing law. I say, Sir, that it will not improve the existing law even from his own point of view. It says "to restrict the right of any person or persons to convene, attend or take part in any public or political meeting....." I want my Honourable and learned friend to explain what he means by a "public meeting". Of course, one can certainly understand what is meant by a political meeting, but what is a public meeting? For what purpose is it convened? And for that purpose he wants the Magistrate to duly record evidence before passing any order. Probably "by duly recording evidence" he means that certain witnesses should be called by a process, they must be administered the oath, the other party must be given an opportunity to cross-examine them in the ordinary way, and so on. That is the way by which you can "duly record evidence". Of course, there can be no such thing as evidence when you record a particular statement of a man, and evidence in any case, whether it is recorded *ex parte* or in the presence of another person, is different from a statement, and when you duly record an evidence, you want a certain procedure to be gone through before any action can be taken by the Magistrate. Then my friend wants another change to be made in the

existing law. Supposing it is proposed to hold a public meeting, the object of which may be known only to the Magistrate or the police, and which may not be known to the public, and the Magistrate might feel that by holding such a meeting the peace of the district would be disturbed. At that time my Honourable and learned friend wants that the Magistrate instead of taking action then and there, should issue a process to certain individuals to attend his Court and give evidence, should summon the conveners of the public meeting, those conveners of the meeting should also be present to examine those witnesses whom the Magistrate might be pleased to summon and then bring certain other witnesses in defence to contradict the evidence of those who have given evidence against the conveners, and so on. If that is my friend's object, if that is the law which he wants, then I think the House will at once reject the Bill that my friend has placed before it.

Then, Sir, there is one other thing. What is a public meeting? How does it take place? What do we find now-a-days? A man sits in a *tonga*, a hired *tonga*, he has a drum with him, and he goes about beating it and announces that there will be a public meeting at such and such a place at a particular time. That is called a public meeting. Now, in such a case my friend wants that the Magistrate should thoroughly examine the whole case by calling witnesses to find out whether the man who has been going about the streets beating the drum in the *tonga* and announcing the holding of a public meeting is *bona fide* and whether the meeting is going to be held without any breach of peace. Are the public aware of what is the object of that? Supposing a Magistrate comes to know at the nick of time that there is a likelihood of a breach of the peace, or supposing that a public meeting is going to be held, say, on the day of the *Mohurram*, or *Bakr-id*, and my Honourable friend comes to know that the butchers of a particular locality are going to collect on the *Id* day and they want a cow to be decorated and taken in the street in procession for slaughter and that there is likely to be a breach of the peace and that that action is likely to stir up the sentiments of the Hindu public, will he require that evidence should be taken about these things before they can be averted? Sir, I think he is mistaken there. His object will be frustrated. I can give examples of hundreds and hundreds of cases regarding the words which my Honourable friend uses, "public meeting". The words which he has used are "public meeting". That is quite different from political meetings. There may be hundreds of public meetings of different kinds, of different nature, which may be likely to bring about a disturbance of the peace or which might involve the city in a turmoil. My Honourable friend wants the Magistrate to sit and not to act and discharge his duty promptly. If he does not act promptly, he may be called to account as to why he delayed in the matter. I have no doubt that that state of things was never the intention of the Honourable the Mover of this motion when he drafted this Bill. Let me give another example. My Honourable friend says "..... unless the Magistrate finds an evidence duly recorded that such direction is necessary to prevent obstruction....." What is obstruction? I do not know what he means by obstruction in the legal sense. I can argue in a Court of law that the word "obstruction" can be used in many senses. If I appear on behalf of the prosecution, I will argue it in one way; if I appear on behalf of the defence, I will argue it in a different way. (Laughter.) This word "obstruction"

Mr. S. C. Mitra (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): The word is there in the Code itself now.

Mr. Muhammad Yamin Khan: I am not concerned, with the Code, but the Bill.

Mr. S. C. Mitra: It is there.

Mr. Muhammad Yamin Khan: Again, my Honourable friend uses the word "annoyance". Does not my Honourable friend know that a Magistrate can use these words "obstruction" and "annoyance"

Mr. S. C. Mitra: They are all from the Code.

Mr. Muhammad Yamin Khan: "or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray".....

Sir Hari Singh Gour: I rise to a point of order, Sir. This discussion has proceeded as if the details of the Bill were under discussion in this House. I beg to invite your attention to paragraph 77 of the Manual, at page 28, namely, that "the principle of the Bill and its general provisions may be discussed, but the details of the Bill must not be discussed further than is necessary to explain its principle". My Honourable friend is dealing with the Bill in minutest detail, which I submit is not appropriate at this stage of the discussion.

Mr. President: I have often been faced with a point of order on those lines, and I have tried my best to find out the strict dividing line between principle and detail. It is perfectly true that opinion might differ as regards what may well be regarded as principle and what as detail. I felt that the matter had been discussed sufficiently fully and I therefore accepted the closure. But the House is of a different opinion and I will therefore allow the debate to proceed on the same lines as heretofore.

Mr. Muhammad Yamin Khan: Take the word "obstruction". Suppose a volunteer comes and pickets a liquor shop or a foreign cloth dealer. If the magistrate comes to know that a particular man is obstructing, or for the matter of that, a few persons, are obstructing—we may call it an association, for two persons can form an association—if that association comes to picket a liquor shop or a foreign cloth shop, that means annoyance or obstruction, and it at once brings this Bill into operation and the magistrate passes an order at once. Is that the idea of my Honourable friend? (*An Honourable Member*: "We don't want it.") But that is in the Bill. That is what appears from the Bill, but my Honourable friend's idea is different from what appears on the paper. This Bill, as it stands, is not improving the law, but it is going against the law. Of course, certain changes may be required in the present law, but it does not mean that we may make any changes. Any change is not desirable, but what is desirable is an improvement of the law. Don't we know what is happening at present? Don't you know that certain people are suffering on account of their convictions? Can any one deny that at present there are people who are suffering because they do not agree with the opinions or methods of particular associations? Have we not read in the papers the state of affairs in Benares? People have been shot down because they were not willing to give up their trade in foreign cloth. Of course, it is open to everybody to convince or persuade people by all lawful means to use *swadeshi* cloth and to give up foreign cloth altogether;

but when the agitation comes to such a pitch that people who do not share the views of the men engaged in the movement are molested and the volunteers take the law into their own hands and commit acts which instead of helping them causes injury to their cause—that is what really happened in Benares, because a man was not willing to give up his foreign cloth trade he was shot dead. If such a state of things were to prevail . . . (*An Honourable Member*: "The case is *sub judice.*") It resembles Europe in the mediæval ages when people were burnt for their convictions,—because they believed in a certain way, they were burnt alive. Nowadays if they are not burnt alive, they are shot down for their convictions. We cannot allow this state of things to go on in the country, however laudable the object may be behind the movement. It takes away the sympathy of people when they find that the men in charge of the movement misapply their sentiments and resort to violence. I submit that the Bill before us cannot be a remedy for the state of things which prevails at the present juncture.

When the Leader of the Opposition moved that the motion for the release of political prisoners should be adjourned *sine die*, he did so because he wanted to produce a calm atmosphere in the country for the peace negotiations now going on. I thought that a similar motion would come from him on this occasion also. This is not the time when we may discuss controversial measures. We want to discuss this coolly, in a calm atmosphere and we want to have also the opinions of High Courts and the various political associations, bar associations and so on. That is the object of the amendment of my friend Mr. Anklesaria. We want to know the opinions of people who are engaged in administering the Act, the Local Governments, the High Courts, and so on. There is no hurry at present. We can wait for a few months more. By the 31st August when we shall get all the opinions, the House will be in full possession of all the opinions, and then we can alter or amend the law as we think fit. I am very sorry that I cannot support the motion for Select Committee. I would have supported the motion if the Bill was for improving the existing law, but I am convinced that, instead of improving the law, this Bill will spoil it.

Mr. S. C. Mitra: Change it in the Select Committee.

Mr. Muhammad Yamin Khan: The Select Committee cannot alter the two principles contained in the Bill. We do not want dilatory action. We want urgent action to be taken at once. Instead of putting on an extra sub-section, the section itself can be amended to suit the Mover's point of view. My Honourable and learned friend will be well advised if he would support the amendment of my friend Mr. Anklesaria. After receiving the opinions of the various bodies we will be in a better position to vote upon this motion. We should not be guided by the views of a few persons in the Select Committee, however eminent they may be. We require the experiences of a wider range of people. Therefore I would support the motion of my friend Mr. Anklesaria.

(At this stage Mr. Studd rose in his place.)

Mr. President: I should like to ask Mr. Studd how long he proposes to take. If he is going to speak at some length, I would ask him to reserve his remarks to the next meeting.

Mr. E. Studd (Bengal: European): I shall only take about 5 or 10 minutes.

Mr. President: In that case, please proceed with your remarks.

Mr. E. Studd: Sir, I have listened with close attention to the speech of the Mover of this Bill and of those who supported him. Sir Abdur Rahim in his speech admitted that there was certainly a necessity for some weapon of this kind in the hands of authorities to deal with the urgent possibility of disorders, but he gave two reasons for supporting the amendment of section 144, which has been put forward. The first of these reasons was that he was afraid, in its present wide terms, that in the near future when autonomy actually came into being it might be misused by the political party at the moment in power to suppress the political activities of their opponents. Sir, I am very loath to believe that he could really think that any political party would attempt to use this section deliberately in order to suppress perfectly legitimate activities of their political opponents, and I am equally loath to believe that even if they wished to do so, they would be able to persuade the Magistrates concerned that that was proper and fitting use of this section. The second reason was that as it stands at present it interferes with legitimate political activities. Sir, it is very easy to be wise after the event and to say in the light of further knowledge that it was unnecessary to have applied this section, but I submit that the decision of the Magistrate has to be made on the facts known to him at the time. It might easily be said afterwards that he need not have taken action, although he may have been perfectly justified in the action he took on the facts which were before him; and even if afterwards it might appear not to have been necessary, who can say that a breach of the peace might not have occurred if no action had been taken? At the present time, there is in the country an element of disorder, an element anxious to take every opportunity of flouting Government and creating disorders; and therefore it seems to me that what in times of tranquillity might be perfectly legitimate activity, can quite well be considered, under the inflammable influences which are unfortunately existing today, to be a danger which may lead to disorder, and therefore may be justly treated under section 144 now, whereas in times of tranquillity such action might not be justified. Sir, the Magistrates and the police have an extremely thankless and difficult task to perform ("Hear, hear"), and I for one am full of admiration of the restraint, the discipline and the high sense of duty which they have exhibited in the performance of that difficult task. ("Hear, hear.") (*Some Honourable Members*: "Question".) Therefore it seems to me, Sir, that we should be very careful not to do anything which might make that task still more difficult, which might make them feel that they have not got our confidence and our admiration for the way they are fulfilling that task. ("Hear, hear.") I feel, Sir, that the very foundation of the Bill which has been proposed is the misapplication of section 144. Now if that be so, it means there is no inherent vice in that section, but that the Magistrate or Magistrates who apply it wrongly do not know their business. Therefore, it seems to me that the proper remedy is not to amend the section, but rather to attempt to improve the quality of the authority who has to apply that section. Therefore I submit that if there is a feeling that the section has been largely misapplied, the proper remedy is to insist upon seeing that the people who have to apply it are properly qualified. Sir, I therefore oppose the Bill. (Applause.)

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 17th February, 1931.