

Monday, 20th August, 1934

THE
COUNCIL OF STATE DEBATES

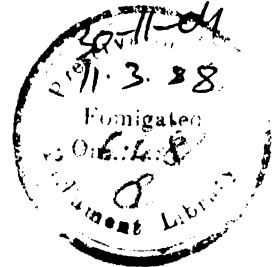
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(8th August to 6th September, 1934)

EIGHTH SESSION

OF THE

THIRD COUNCIL OF STATE, 1934



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COUNCIL OF STATE.

Monday, 20th August, 1934.

The Council met in the Council Chamber at Viceregal Lodge at Half Past Ten of the Clock, the Honourable the President in the Chair.

QUESTIONS AND ANSWERS.

INDIANIZATION OF THE SERVICES OF PORT TRUSTS

115. THE HONOURABLE SIR PHIROZE SETHNA : (a) Will Government be pleased to state what recommendations, if any, were made to the Port Trusts to give effect to the Resolution moved in this House on the 26th September, 1932 and adopted by it ?

(b) Are the Port Trusts giving effect to these recommendations ?

(c) If not, what measures do Government propose to take, which will speed up Indianizing the services of the Port Trusts ?

THE HONOURABLE MR. D. G. MITCHELL : With your permission, Sir, I will answer the questions on behalf of the Honourable Mr. Stewart, who has been detained unavoidably.

(a) The Resolution was brought to the notice of the various Port Trusts through the Local Governments concerned and it was suggested that the stage had been reached at which it was desirable that the Port Trusts should adopt definite measures for carrying through an effective policy of Indianization of their superior services. It was also suggested that the Port Trusts should give preference to ex-“Dufferin” cadets possessing the requisite qualifications in filling the superior posts under them which require mercantile marine qualifications.

(b) The replies so far received generally indicate that the Port Trusts have taken and will continue to take such action as lies within their power to to accelerate the process of Indianization of their superior services and that Indians are being appointed to those posts under the Port Trusts for which properly qualified Indians are available. The majority of the Port Trusts have also expressed their readiness to give preference to ex-“Dufferin” cadets in filling posts requiring mercantile marine qualifications, provided that they possess the requisite experience and qualifications.

(c) Does not arise.

NUMBERS OF VACANCIES WITH A MINIMUM SALARY OF RS. 500 WHICH HAVE OCCURRED IN THE VARIOUS PORT TRUSTS SINCE 1ST OCTOBER, 1932.

116. THE HONOURABLE SIR PHIROZE SETHNA : (a) Will Government be pleased to state the number of vacancies with a minimum salary of Rs. 500

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per mensem which have occurred since 1st October, 1932 in the Port Trusts of Bombay, Calcutta, Karachi, Madras, Rangoon, Chittagong and Aden ?

(b) How many of these were filled by Indians, Anglo-Indians and Europeans in the various Port Trusts ?

(c) If all the vacancies were not filled by Indians, the reasons therefor ?

THE HONOURABLE MR. D. G. MITCHELL : The information asked for is being obtained and will be supplied to the Honourable Member in due course.

UNPASSED ROUTINE DIVISION CLERKS IN THE GOVERNMENT OF INDIA SECRETARIAT AND ATTACHED OFFICES.

117. **THE HONOURABLE MR. HOSSAIN IMAM :** (a) Will Government please state whether it is a fact that there are at present a large number of temporary routine clerks employed in the Secretariat of the Government of India and in the Attached Offices who have not passed the examination of the Public Service Commission ?

(b) Will Government state their numbers in each office, the length of service, the pay drawn by them, and their nationalities ?

(c) Is it a fact that under existing rules these clerks cannot be absorbed in the permanent cadre and will have to be discharged ?

(d) Is it a fact that a large number of persons who have passed the Public Service Commission examinations are on the waiting list and have not been given any post ?

(e) Has Government considered the advisability of replacing the unqualified clerks by qualified candidates ?

THE HONOURABLE MR. M. G. HALLETT : (a) and (b). Information is being collected and will be supplied to the House in due course.

(c) Yes ; that is to say, they can only secure permanent employment through the competitive examination.

(d) As the Honourable Member is no doubt aware vacancies are filled on the results of a competitive examination. In accordance with the instructions in clause IX of paragraph 1 of the Home Department Office Memorandum No. F. 452/27-Ests., dated the 8th December, 1928, a copy of which is in the Library, the Public Service Commission supply each of the Government of India offices with a list of candidates who did not obtain places in the last preceding examination, but were nevertheless considered qualified for temporary employment. This is I presume the waiting list to which the Honourable Member refers. I may mention, however, that under clause IX of the Office Memorandum referred to Departments have discretion to appoint candidates who are not on this list.

(e) The matter is under consideration.

METHOD ADOPTED FOR RECRUITMENT TO THE BENGAL PILOT SERVICE.

118 **THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA :** (a) Will Government be pleased to state the number of Indians and Europeans employed in the Bengal Pilot Service ?

(b) How is this Service recruited in India and in England ?

(c) Is any preference given to Indians trained and passed through the Mercantile Training Ship "Dufferin" ?

THE HONOURABLE MR. D. G. MITCHELL: (a) 42 Europeans and 15 statutory Indians are at present employed in the Bengal Pilot Service.

(b) Appointments to this Service are made by the Governor General in Council on the advice of the Public Service Commission in India and of the High Commissioner in England.

Appointments are made in England only when the Governor General in Council has been unable to make suitable appointments in India.

(c) In making appointments in India preference is given to qualified ex-cadets of the "Dufferin."

REPRESENTATION FROM THE BENGAL CHAMBER OF COMMERCE CONCERNING METHOD OF RECRUITMENT TO THE BENGAL PILOT SERVICE.

119. THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA: (a) Is it a fact that a representation has been made by the Bengal Chamber of Commerce to the effect that the present method of recruitment to the Bengal Pilot Service should be so changed as to permit of the appointment of certain percentage of Europeans until such time as the Government and various interests concerned were assured that Indianization of the Service was not likely to impair efficiency ?

(b) If so, what reply has been given to the Chamber by Government ?

THE HONOURABLE MR. D. G. MITCHELL: (a) Yes.

(b) The Chamber has been informed that the Government of India do not see sufficient justification at present for making a change in the method of recruitment to the Bengal Pilot Service on the lines suggested by the Chamber.

NUMBER OF EUROPEANS AND INDIANS IN THE RANGOON PILOT SERVICE.

120. THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA: (a) How many Indians and Europeans are there in the pilot service at Rangoon ?

(b) If there are no Indians appointed, will Government be pleased to state the reasons therefor ?

(c) Why Indians trained and passed through the Mercantile Training Ship "Dufferin" are not appointed ?

THE HONOURABLE MR. D. G. MITCHELL: The information asked for is being obtained and will be supplied to the Honourable Member in due course.

TRANSFER OF THE IMPERIAL INSTITUTE OF AGRICULTURAL RESEARCH FROM PUSA TO DELHI.

121. THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA: (a) Is it a fact that Government has decided to transfer the Pusa Agricultural Institute to Delhi ?

(b) How much money was spent for bringing the Institute to the present level of efficiency ?

(c) What amount will be required for repairs as the result of earthquake shocks ?

(d) What amount will be required for transferring this Institute to Delhi ?

(e) Do Government propose to meet the expenses incurred for the transfer of the Institute out of the savings effected in the budget, or to provide for the amount out of loan account ?

THE HONOURABLE KHAN BAHADUR MIAN SIR FAZL-I-HUSAIN : (a) and (c) to (e). I would invite the Honourable Member's attention to the Memorandum submitted to the Standing Finance Committee, which is available in the library of the Legislature.

(b) The precise meaning of the Honourable Member's question is not clear. The efficiency of a scientific institute depends primarily upon the capacity and energy of its scientific staff. It is doubtful whether this is susceptible of measurement in terms of money but, if the Honourable Member wishes it, I can obtain for him the total amount spent upon the salaries of the present staff. The amount spent on buildings, land, etc., is Rs. 30 lakhs approximately ; their present book value, however, is only Rs. 21½ lakhs.

COMMUNITY TO WHICH CERTAIN CANDIDATES SELECTED FOR APPOINTMENT TO THE IMPERIAL INSTITUTE OF AGRICULTURAL RESEARCH BELONG.

122. THE HONOURABLE MR. JAGADISH CHANDRA BANERJEE : Will Government state the names and communal composition of the candidates so far selected to fill vacancies in the posts of Imperial Entomologist and the Imperial Agricultural Chemist at the Agricultural Institute at Pusa ?

THE HONOURABLE KHAN BAHADUR MIAN SIR FAZL-I-HUSAIN : *Imperial Entomologist*—Dr. Hem Singh Pruthi, Sikh.

Imperial Agricultural Chemist—Rao Bahadur B. Viswanath, Hindu.

PERSONAL STATEMENT BY HIS EXCELLENCY THE COMMANDER-IN-CHIEF THANKING THE MEMBERS OF THE COUNCIL OF STATE FOR THEIR CONGRATULATIONS ON HIS G. C. S. I.

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : Sir, I thank you for your courtesy, and the House for its courtesy, in affording me the opportunity of making a personal statement. While I was on tour the other day, I had the pleasure of receiving a most agreeable letter from our Secretary, who informed me that he was directed by you, Sir, to offer your congratulations and the congratulations of the House to me on being created a Grand Commander of the Star of India. These decorations when they come to a man of my age, although it may not appear to everybody in the same light, are a very forcible reminder that one's active career in the public service is coming to a conclusion, but one would be scarcely human if one did not appreciate getting them. But I would like to say in addition that the two congratulations, among many others, which gave me the most pleasure were those of His Excellency the Viceroy and of this House, because His Excellency and this House and I work in the same field and are doing our best for India, and this House and His

Excellency both know what my task is, and what my difficulties are ; and it is therefore congratulations of that sort which are worth three and four times what the ordinary congratulations are. I would therefore like to assure this House how very deeply I appreciate the honour they have done me. (Applause.)

ASSAM CRIMINAL LAW AMENDMENT (SUPPLEMENTARY) BILL.

THE HONOURABLE MR. M. G. HALLETT (Home Secretary) : Sir, I move :

"That the Bill to supplement the Assam Criminal Law Amendment Act, 1934, as passed by the Legislative Assembly, be taken into consideration."

Once again, Sir, it is my task to ask this House to accept a Bill to supplement an Act which has been passed, again by a large majority, by a Provincial Council, in order to give its executive Government the necessary powers to deal with the terrorist movement. The Bill before the House is a short one but to make its provisions clear I must first of all explain briefly the provisions of the parent Bill and then, Sir, I will go on to explain briefly the reasons which led the Assam Legislative Council to pass this Act in March last. The parent Act (copies of which have been supplied to Members of the Council) follows closely the provisions of the Bengal Criminal Law Amendment Act, 1925, and also the similar Act which was passed by the Legislative Council of Burma in the year 1931, also to deal with the terrorist movement which at that time was threatening in that province. It does not contain the more drastic provisions of the more recent Acts in Bengal. It does not contain any provisions that are contained in the Suppression of Terrorist Outrages Act or in the Act passed by Bengal at the beginning of this year. It does not, for example, contain the provision that is in the Bengal Act that the penalty for attempted murder may be death. It contains two main provisions. The first is that it makes it possible that persons accused of the terrorist offences which are specified in the First Schedule of the Act shall be tried by a tribunal of three Commissioners instead of by the ordinary procedure. Again we are profiting by experience. It has been found by experience that the ordinary procedure prescribed by the Criminal Procedure Code under which an accused has first of all to be brought before a magistrate and under which there are very often lengthy commitment proceedings, followed by an even more lengthy trial when he is brought before a sessions court, that procedure is not satisfactory in these cases. For it is clearly desirable even more in terrorist cases than in cases of ordinary crime that the trial case should be completed without any undue delay. Otherwise, apart from the fact that the trial is held before three Commissioners without commitment proceedings, the procedure is practically identical with that under the ordinary law. As a death sentence has to be confirmed by the High Court, an appeal lies to the High Court in all cases, or rather it would be more correct to say that an appeal will lie to the High Court if this Bill is accepted, as I have no doubt it will be, by this Council. In the Bill before us we are asked to confirm the provision that is included in the Assam Act under which appeals lie to the High Court and death sentences have to be submitted to them for confirmation. That is the first provision of the Act.

[Mr. M. G. Hallett.]

The second provision is a provision similar to that in the Bengal and Burma Acts, a provision to which I know some Members of this House (not very many perhaps) take exception, a provision giving to the executive the power to restrict the residence of a terrorist suspect to a certain area or, if necessary, to commit him to custody in jail or in a detention camp. There is no question of course in this case of removing these suspects, even though they are committed to jail, outside the province, there is no question of removing them to Deoli or any other detenu camp outside Assam; that has not been considered necessary. In view of that provision I have again to ask the House to accept a section which deprives the person arrested of the right of applying for a writ of *habeas corpus*. That the Assam Government are using these powers,—drastic powers, I admit,—with care and discretion has been shown to me by a letter which I fortunately received this morning. In that letter they reported that since this Act has been in force they have only used those powers in seven cases; only seven terrorist suspects have been committed to jail. In these seven cases, following the provisions of the law they had referred the facts of the case to two Sessions Judges and the Sessions Judges have found that there was lawful and sufficient cause for the orders that were passed. That I think is very satisfactory for it shows I trust that the mere fact of having these powers even though they are not used is having a deterrent effect on the terrorists,—a point which I tried to emphasise when I was discussing the Bengal Bill on Saturday last.

Another point I would mention, in view of the amendment of which notice has been given, is that there is no time limit inserted in the Bill. That point was discussed in the Assam Council and there again the Local Legislature accepted by a large majority the view of the Local Government that following the precedent of Bengal it was necessary to have these powers permanently on the Statute-book.

Another point I would make clear is this. The Act is not in force in the whole of the province. It has to be extended by notification to a particular area or to a particular district. That of course makes it easy to withdraw it also from a particular area or a particular district. At present the Assam Government has only extended them to the two districts of Sylhet and Cachar which, as those who know the conditions in Assam will realise are very closely akin to the neighbouring districts of Bengal,—Tippera, Mymensingh and Chittagong.

So much for the provisions of the parent Act. I will now explain briefly the reasons which led the Government of Assam to undertake this legislation. I do not think I can do better than read to the House the statement of objects and reasons with which their Bill was circulated. The statement is as follows :

“The Government of Assam have been aware since 1928 (*i.e.*, six years ago) of the existence of a section of the Bengal revolutionary party in certain districts in Assam but have been keeping a careful watch on the activities of these men. The pressure exercised on revolutionaries by the authorities in Bengal has had the effect of driving a number of them over the border into Assam. For some time past there have been growing indications that the revolutionaries have been contemplating outrages in Assam and there is good reason to believe that the number of serious crimes which have recently occurred

in Assam were the work of this revolutionary party. These included the Chandput and Itakhola mail robberies, the Shamsheernagar railway station mail dacoity and the Soraru mail dacoity, all of which occurred in 1933. There is also reason to believe that other outrages have been and are being planned. It is clear that the whole movement, both in Assam and in Bengal, is one and the same movement and springs from the same origin in Bengal, and unless there is co-operation between the two provinces not only will there be a danger of terrorism spreading in Assam but measures taken by authorities in Bengal which are admittedly of vital urgency will remain incomplete. In order that this co-operation may be effective, it is desirable that the ordinary law in Assam should be supplemented by legislation on the lines of the Bengal Criminal Law Amendment Act. A Bill on these lines is accordingly submitted to the Assam Legislative Council. It is intended to be used only against persons believed to be members of secret terrorist organisations”.

Those, Sir, in brief are the reasons which led the Government of Assam to put forward this Bill. That they did so after a due consideration of all the facts of the case is shown by the statement made by the Honourable the Home Member in the Assam Legislature, the Honourable Maulvi Saiyid Sir Muhammad Saadulla. He said :

“ I have been in charge of the Department of Law and Order since 1929, and have resisted the proposals of the police and of the district authorities to supplement the ordinary criminal law. But the information now placed before the Government clearly proves the existence of many organizations within the province with the avowed policy to overthrow constituted government by means of force and violence. In the public interest I cannot divulge either the quantum or quality of the evidence that Government possess, but I can assure the House that on the materials which were placed before us, my Honourable colleagues, European and Indian, the Government as a whole, both the reserved and the transferred halves, have come to the unanimous conclusion that Government must possess powers ready for use for dealing with future emergencies. Thus, with a view to uproot the common menace—a menace alike to the public and to the Government—Government have placed this Bill for consideration by the Honourable Members”.

The statement of objects and reasons only went back as far as 1928. I could, Sir, go back considerably further than that and show the connection between the terrorist movement in Assam and in Bengal at a far earlier stage. Even in 1907 and 1908, one of the first supporters and organisers of the terrorist movement who came to Bengal and who was subsequently convicted there, was a resident of Sylhet. In 1926, the notorious Surjya Sen who, as this House is no doubt aware, organised the raid on the Chittagong armoury, and who subsequently suffered the extreme penalty of the law, escaped from Bengal where he was evading his arrest under the Criminal Law Amendment Act, and for more than a year was lying hidden in Sylhet. During all that period he was organising this terrorist movement in that district and creating a terrorist mentality among the youths of Sylhet. Sylhet, as you must be aware, is next door to Bengal, next door to those districts in which the terrorist movement has been most rampant. It is a very easy journey, I understand, from Chittagong, the main centre of terrorist activity in Bengal, to Sylhet. The people of Sylhet are ethnologically, linguistically and racially the same as those of Bengal. In fact, it is claimed that Sylhet should be removed from Assam and made part of the province of Bengal. Under those conditions, it is not surprising that terrorists take an opportunity of spreading the movement in that district. I quite recognise that the outrages committed in Assam are not possibly quite as serious as those which have been committed in Bengal. There have, I am glad to say, been as yet no cases of attacks upon district magistrates or other

[Mr. M. G. Hallett.]

Government officials. The particular form of terrorist crime prevalent in that province is dacoities and mail robberies ; the terrorists in fact are using Assam as an area in which they can obtain money to carry on their movement in the sister province of Bengal. We are as anxious to protect the unfortunate mail runners as we are anxious to protect the district magistrate or superintendents of police. In some of the cases which have been quoted in the statement of objects and reasons—the dacoities or mail robberies have been accompanied by murder and it is clearly our duty to protect these unfortunate mail runners, these humble servants of the State. The second form of crime which is also prevalent in these areas is theft of arms—of guns and revolvers. That again goes to prove what I was saying just now that the terrorists are using Assam as a place from which to get the sinews of war, arms and money.

Those are the main activities of the terrorists in that area. The objects of the Bill as passed by the Assam Legislative Council are twofold,—firstly, to protect themselves and, secondly, to help the sister province of Bengal. When the question of legislation was under discussion, the Government of Bengal rightly pressed very strongly that Assam should take these powers because they felt that if they had not these powers, it would facilitate the commission of offences in their province, and Assam, recognising that point as well as the need for protecting itself, passed this Act in its Legislative Council by a very large majority. Those, Sir, are the reasons why Assam undertook this legislation. We are merely asked to supplement and to confirm two sections which were included in that Act, partly by mistake, which were *ultra vires* of the Local Legislative Council and which require confirmation by the Central Legislature. I trust the House will have no hesitation in accepting this Bill, and by so doing will show that they confirm the action taken by the Government of Assam and its Legislature to deal with the terrorist menace both in Assam and in Bengal.

Sir, I move.

THE HONOURABLE SRIJUT HERAMBA PROSAD BARUA (Assam : Non-Muhammadan) : Sir, we have heard the Honourable the Home Secretary, Mr. Hallett, with regard to the necessity of this measure in Assam. As a matter of fact, I consider this measure to be a preventive one rather than a punitive one. Finding that drastic measures have been adopted in Bengal and finding also that the geographical surroundings of the province of Assam, teeming with hills and forests, afford hiding places to the terrorists to take shelter for hatching their conspiracies, and carrying on their nefarious activities, the terrorists across the border come to the districts of Sylhet and Cachar, the bordering districts, to take shelter there and carry on their object. It is a very gratifying thing that the people of Assam proper have so far not been infected by the virus of terrorism or anarchism. Then why is this measure at all necessary ? The existence of terrorism or anarchism in the border districts of Sylhet and Cachar is a grave menace to the people of Assam, and it is to avert this danger that this Bill has been considered necessary by the Assam Legislative Council. The simple, unsuspecting and impressionable youths of Assam could be easily worked upon by the clever and subtle people who are to be found in the ranks of this movement.

The new danger of terrorism has to be dealt with in a drastic manner if it is to be nipped in the bud before it takes root in the soil of Assam and before the people of Assam are affected by this infection of terrorism. The Honourable Mr. Hallett has said in his speech that the people of Assam are linguistically and culturally different from the people living in the districts of Sylhet and Cachar. An agitation has been set on foot for the amalgamation of these districts with Bengal and their separation from Assam proper. The terrorism prevailing in these districts is another plank in the platform of this agitation. Of course I do not now want to go into the merits or demerits of this agitation. The danger of infection is there and it is a serious danger, and Government should arm the executive with powers to ward off this danger and deal with the situation. Sir, the Assamese people, as I have said, are rather peace-loving. No Assamese up till now has been involved in any of these terrorist activities; the persons concerned are all people from across the border. Naturally, the people of Assam are alarmed at the crimes committed and public opinion in my part of the country is very strong that the Government should be sufficiently equipped with powers to get rid of this danger.

Then, Sir, I come to the Supplementary Bill. I do not think that there can be any objection to clause 2, which is only an enabling clause, enabling the person convicted under the contemplated legislation to prefer an appeal to the High Court. Of course as regards clause 3, the suspension of the *habeas corpus* powers of the High Court, it is a drastic measure. But in the larger interests of the country I think the people will have to submit themselves to the provisions of this measure for the time being in order to enable the Government to have a free hand to do away with this terrorism from the country. That is all I have to say about this Bill. I hope the Government will not keep this measure on the Statute-book for a single moment after it has served its purpose. Further, I also hope that Government will be very careful in extending the provisions of this law to different parts of the province. I have reason to believe that the Government will be very careful in this respect; because, only recently, before I left the province, there was a serious mail robbery in my part of the country in Upper Assam in Tinsukia and fortunately the people concerned were all from outside and no Assamese is involved, and in spite of it the Government has not thought fit to extend the provisions of this measure to that particular place.

With these words, Sir, I would like to support the Bill.

THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA (United Provinces Central: Non-Muhammadan): Sir, the Bill before the House is practically the same that we passed on Saturday last. There are certain minor differences no doubt and it is very difficult to say whether this Bill is the "big brother" of the one that we passed on Saturday. It consists of four clauses. Clause 1 is practically the same as clause 1 of the other Bill and seeks to give permanency to this measure. Clause 2 is certainly different from the one in the Bengal Criminal Law Amendment Supplementary Bill. By this clause Government has chosen to give the right of appeal to those convicted by the Commissioners appointed by the Assam Government. Clause 3 is the same as that in the other Bill, and by this the Government wishes to deprive those who have been imprisoned on suspicion of their liberty.

[Rai Bahadur Lala Mathura Prasad Mehrotra.]

Then the last clause is nothing else but to give retrospective effect to the Act. That is the whole Bill before us. Now the question is whether conditions in Bengal and Assam are similar, or is there a difference? By analysing the conditions we shall be able to come to a conclusion whether the Bill is necessary or not.

THE HONOURABLE THE PRESIDENT : The Honourable Member for Assam thinks it is necessary.

THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA : Yes, Sir. We have heard that my Honourable friend Mr. Barua is of opinion that it is necessary. But my friend the Honourable Home Member when moving this Bill for reference to a Select Committee in the other House has clearly said that the conditions in Assam and Bengal are not similar, and I am glad to find that my Honourable friend Mr. Hallett has also said the same. In Bengal the terrorists are making attacks on the lives of officials, and the Home Member said in the other House that there is no danger to the lives of officials in Assam. In Bengal they are committing murders, while in Assam what they are doing is to commit robberies and dacoities—

THE HONOURABLE MR. M. G. HALLETT : With murder.

THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA : With murder, yes. The Honourable Home Member while making his statement in the other House said that during the last three and a half years, 15 dacoities have been committed in Assam. The highest amount robbed in one case was Rs. 15,000 and in the other case Rs. 3,000 or more were taken, and two murders were also committed. That is all. So we find that there were 15 dacoities with two murders in three and a half years, which are said to be the acts of anarchists. I am glad to find that my Honourable friend Mr. Barua has enlightened us and said that these acts have not been committed by Assamese. They were committed by people coming across the border—I mean Bengal.

THE HONOURABLE MR. M. G. HALLETT : That is not entirely correct, Sir. In some cases the acts were committed by people coming across the border, and in other cases by Bengalis, permanently domiciled and living in Sylhet.

THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA : I do not quarrel on the point. It is between the Honourable Mr. Hallett and the Honourable Mr. Barua to decide. The representative of that place says that the acts have not been committed by Assamese; the Government says they have been committed by them. I do not want to give any opinion of mine and my Honourable friends Mr. Hallett and Mr. Barua can decide the point.

Sir, may I ask from the Government whether political dacoities have not been committed in any other province? So far as the United Provinces are concerned, I know several cases in which these dacoities have been committed. But why has not the Government of that province taken it into its head to take

such serious steps? Why has the Government of India not drawn the attention of the Local Government? Because, Sir, we know that the Criminal Procedure Code is quite sufficient to deal with such stray cases. It is only in Bengal where the Government finding itself helpless has asked for extraordinary measures. There is another point, Sir, which I have not been able to follow. Section 2 of the Bill says that convicts after trial by Commissioners will have a right of appeal to the High Court. Section 3 says that suspects will have no right of proving their innocence before the High Court. May I ask why the power given to convicts after trial by Commissioners, *viz.*, the right of appeal should be denied to suspects? If there is a danger of witnesses not coming in court and giving evidence against those who have been convicted, then, Sir, there is the same danger about suspects. The object of the Government, as I understand, by taking away the liberty from suspects of making appeals to the High Court is that witnesses coming before the court will be in danger of losing their lives. That is what I understood by the speeches delivered on Saturday. If there is a danger for witnesses in the one case, there is danger also in the other. If this section is deleted from the Bill, I am sure it will find support from this part of the House. It is to this objectionable section which takes away the liberty of a man that we object to in the other Bill. Then, there is another point in the case of the Bengal Criminal Law Supplementary Act. The Government when first introducing it in 1932 made a special provision for its duration of three years. In this case I find that from the very beginning they are making the Act permanent. I do not know why when the situation was serious, in Bengal, the Government thought fit to have a trial for three years only, while in Assam, where they have admitted that the situation is not so serious, they have come all at once to make the measure permanent. I object, Sir, to this feature of the Bill also, and I shall reserve my remarks after seeing with what fate my amendment meets in this House. So far as section 2 is concerned, we are very glad to find that the Government has given the right of appeal to convicts, but what is happening is that if a convict after appeal is discharged from the High Court the police arrest him under some other section. What does it amount to? It amounts to this that the executive is not prepared to abide by the decisions of the judicial courts. The judicial courts are above everything. They are supposed to administer justice in an impartial manner, but here I find that the case is quite different. If a convict is set free by the court, the moment he comes out of the court he is arrested by the police under some other section. Sir, I would appeal to the Government that they should respect judicial courts as they deserve. That is another point on which I wish to lay stress this morning.

With these words, Sir, I resume my seat.

THE HONOURABLE MR. VINAYAK VITHAL KALIKAR (Central Provinces: General): Sir, before the Bill was introduced in the lower House, I at least did not know that there was such an emergency in Assam, that the terrorist movement had gone to such an extent that there was necessity for passing such a Bill as is before us. I am glad to find from the remarks made by my Honourable friend Mr. Hallett that the position in Assam and Bengal differ very much so far as this terrorist movement is concerned. In presenting this measure before us for our support my Honourable friend Mr. Hallett read out certain remarks made by the Honourable the Home Member in the

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Assam Council while presenting that Bill. This is one side of the question. With your permission, Sir, I will read one or two sentences from the side of the opposition in the Assam Council, where the Members of the Assam Council have said definitely that there was absolutely no necessity for the Government to introduce their Bill there. Instead of reading extracts from the speeches of other Members, I want to read out a passage from the speech of one Srijut Sarveswar Barua, simply because our Honourable friend Mr. Barua dealt with the matter here and I perhaps think that that gentleman may be related to him; and therefore I want to bring before the House the views of that gentleman as to what he had to say about this Bill. He said:

“ Sir, this is a Bill which seeks to make may inroads upon the rights of the citizens. Sir, it has given immense power to the police and it has given legal sanctity to all sorts of tortures that could be perpetrated on the people merely on suspicion. Sir, in a way we may call it as some sort of martial law that is going to be declared in the province of Assam in order to meet the emergency that has been sought to be made out by the Government ”

Then, Sir, I also find from a speech of a Member, Srijut Rohini Kumar Chaudhuri, that there was no necessity of the Bill being brought before the Assam Council. He said :

“ Sir, the Members of the Lawyers' Association of Gauhati, Dhubri and Sylhet, the members of the Assam Association, which is a political body having members throughout Assam, have passed resolutions to drop this Bill. We in this House had made no motion to drop the Bill; we waited to see how the Bill could be amended in an acceptable form. Most of the amendments which are tabled by the Honourable Members of this House have been rejected ”.

To an outsider like me, Sir, it causes a great deal of confusion. The Government say that there is necessity for this Bill. The popular side say there is no necessity for it.

THE HONOURABLE THE PRESIDENT: Has the popular side the same material for forming an opinion as the Government side ?

THE HONOURABLE MR. VINAYAK VITHAL KALIKAR: Well, personally I do not know whether the Government put all this material very carefully before the popular side but if they had they would have been able to convert the opposition. That is the mistake of the Government. But, Sir, the associations of Assam have condemned this Bill. Not only that. But from the proceedings I find that various political associations of Assam sent certain telegrams to the President that he should not proceed with the Bill. That is one point. Then, Sir, there is another point that I would like to bring before this House, and that is about the breakneck hurry which the Government showed in passing this Bill in Assam. The popular side in that House in Assam tabled a motion for the circulation of this Bill. Government rejected that motion. Then they wanted the Bill to go to Select Committee so that all the obnoxious clauses in this Bill should be examined carefully and the Bill be amended. That very pertinent and reasonable request was also rejected by the Government. So to an outsider like me it looks in spite of the statement of my Honourable friend, Mr. Barua, as if this Bill is being forced on the people of Assam against their will. Now, Sir, we have to look on it as an all-India question. I do not challenge the statement of my Honourable

friend, Mr. Hallett, that the Bill has been passed in the Assam Council by a very large majority. It is true that this was the case, but what we find from the proceedings of the Assam Legislative Council is that the Bill was opposed by the popular side there and by the various political associations in Assam. (*An Honourable Member* : "What was the voting?") The voting was 9 to 35. I do not challenge it. I have already said that the Bill was passed by a very large majority. The question before us is whether we should support this measure on a permanent basis? The various popular Members of the Assam Council, Sir, said that there was absolutely no terrorist movement in Assam. If there are any manifestations of that movement in Assam, those manifestations may be due to the Bengali terrorists who might have come there. My Honourable friend, Mr. Hallett, has told us about the mail robbery cases and he has cited the speech of the Honourable the Home Member there to the effect that Government have in their possession material to show that the terrorist activities have existed there since 1928. Well, Sir, I do not call it terrorist activities. Such outrages have taken place in various provinces. The other day, when we were discussing the Bengal Criminal Law Amendment Bill here, my Honourable friend, Dr. Sir Nasarvanji Choksy, mentioned the terrorist activities in Bombay Presidency. I am driving at the point, Sir, that these sporadic terrorist activities, if I may call them so, have existed in various other provinces but the ordinary criminal law of the land is quite sufficient to deal with them and what I am afraid of is that if this measure is made permanent, the Bengal conditions may be repeated in Assam. I am convinced after reading the speeches of the popular side in the Assam Council and also the speeches of the responsible Members of the Assembly who come from Bengal and Assam, that in Bengal these terrorist activities could have been stamped out but for the way in which these measures are dealt with and therefore these terrorist activities are alive there. I know perfectly well that the Bill will be passed here in this Council. Therefore, I hope the Government will instruct their officials not to repeat what is going on in Bengal. Sir, in the Assam Bill we find that clauses 18 and 19 absolutely take away the powers of the Court and allow the Executive Government to deprive the people who are suspected of terrorist activities of their liberty. Sir, I do not want to take up the time of the House by narrating things which have been said in the Assam Council so far as these clauses are concerned. But I submit, Sir, that in the Bill before us—in clause 2—appeals have been allowed to the High Court from the decisions of the tribunals. Clause 3 should not have been put into the Bill so that suspects may have similar rights of getting decisions from the High Courts.

As my friend, the Honourable Rai Bahadur Lala Mathura Prasad Mehrotra, just now told us, and as I happened to read in the papers, we have come to know of cases in Bengal where the High Courts have acquitted people on the evidence before them, and as soon as they come out of the premises of the High Court, they have been arrested and put in detention. I therefore submit that this power of the High Court under section 491 should have been retained at least in the interests of the suspects. There are various provisions in the Assam Act for curtailing the terrorist activities. I have not been able to find any salutary provisions to safeguard the interests of the innocent. I find from reading the speech of an Honourable Member of the Assam Legis-

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lative Council that Assam students go to Bengal for study and still, he submitted before the Assam Council, that no young men of Assam have been infected by the terrorist activities of Bengal. The terrorist activities of Bengal have been going on admittedly for the last 30 years, and no misguided youth of Assam has been infected by this menace. I therefore cannot understand the propriety of getting such a measure passed. If they want to have a preventive measure, they ought not to have made this Bill permanent and they also ought to have provided provisions which would guard the interests of the innocent. Sir, it is a principle of judicial science that the judiciary ought to be independent of the executive. Unfortunately during the last four or five years, we have been seeing Acts passed here as well as in some Local Councils whereby the power of the judiciary is being reduced to a minimum. It is against the principle of English jurisprudence. As I said the other day, I am over zealous to guard the powers of the High Court and I cannot find my way to support a measure like this when I find that the powers of the High Court are being taken away, and the only safeguard which is available to the innocent person is being taken away, and the suspects are not being given a chance of vindicating their character in the High Court or in the ordinary law courts.

THE HONOURABLE MR. P. C. D. CHARI (Burma : General) : Sir, I feel it is my duty to oppose a drastic measure which follows closely on the heels of another similar measure passed on Saturday. The other day I implored the Honourable Members of this House to save the other provinces from the danger of infection of one kind, that is, the danger of the young men of other provinces being infected with the virus of the anarchist movement by the transfer of dangerous suspects from Bengal. Today it is my painful duty to appeal to you to save the other provinces from another danger of infection, the danger of an attack of a malady to which the Provincial Governments are easily susceptible. We find that the Government of Bengal has this malady in an incurable form, and they have taken all sorts of special powers with a view to stamp out the terrorist movement. Admittedly it is there. The Assam Government is a neighbouring Government and we find from the speeches made that the Assam Government has caught this infection, and we find Assam has been virulently attacked by this malady, whose symptoms are an insatiable thirst for unlimited and tyrannical powers and an extreme aversion to the interference of the judiciary to protect the liberties of the subject. That this malady has attacked them in virulent form is clear from the fact that the Assam Government did not even pause to consider whether the Assam Legislature had the necessary jurisdiction to confer on the Assam Government the powers which have been given to the Bengal Government. They rushed in with a Bill containing, among other clauses, clauses 15 and 29, which they asked the Assam Legislature to pass, and the Assam Legislature was only too willing to give the powers to the Assam Government. Other Provincial Governments are easily susceptible to this malady and we must therefore take care to see that this infection does not spread. We must express ourselves very strongly, though we cannot prevent the Bill being passed, so that other Provincial Governments may not follow suit and ask for similar powers, because it is easily conceivable that the Bengal anarchist movement which

consists of men with brains can easily hatch other conspiracies in other provinces. There have been sporadic instances in each and every province. In Assam, during the last three and a half years, there have been only five sporadic cases of dacoities. In one case, a sum of Rs. 15,000 was involved, and in other cases, a little more than Rs. 3,000 was involved. There were two murders no doubt. Murders have to be guarded against. I am not saying that the Assam Government should not take drastic steps to weed out this sporadic attack of anarchism. It is admitted that this disease has not become indigenous in Assam. It is only in the shape of stray imported cases during the last three and a half years. As has been pointed out by an Honourable Member from Assam in the other place, these cases were much fewer in numbers than the cases of dacoities committed in places like Benares and Cawnpore.

THE HONOURABLE THE PRESIDENT: May I draw the attention of the Honourable Member to the fact that we are not discussing in this Council the parent Bill. The Honourable Mr. Hallett referred to the parent Bill only to explain the genesis of that Bill so that we may understand the Bill which is before the Council. I would therefore request the Honourable Member to confine his observations to the Bill before the Council only. We are not going into the history and circumstances under which the Bill of 1934 was passed in Assam. Certain provisions were later thought necessary to give a fair and just trial to people convicted under the Assam Bill and therefore this legislation now seeks to provide protection to that extent. So I would ask the Honourable Member only to refer to the parent Bill so far as to explain or elucidate the provisions of this Bill before the House.

THE HONOURABLE MR. P. C. D. CHARI: Sir, I am only referring to these preliminary things to find out whether there are sufficient reasons for us to agree to the provisions of this Bill.

THE HONOURABLE THE PRESIDENT: That Bill has been passed. We have no power to revise the Assam Bill of 1934.

THE HONOURABLE MR. P. C. D. CHARI: I am coming to that point presently. Clause 2 of this Bill no doubt gives a right of appeal which is an advantage to convicted persons. It is an enabling provision and it ought to be supported if we endorse the underlying principles of the Assam Bill. My objection to clause 2 is this, that if we pass clause 2 the admission is that the objectionable features in the Assam Bill are acceptable to us, that is, we accept provisions which take away the ordinary safeguards of an accused person to get even-handed justice. Clause 2, which is clause 15 of the original Bill, is merely a sugar-coating for the bitter pills contained in the other provisions, and the Members of the Assam Legislature were induced to swallow those bitter pills because of this sugar-coating. If we refuse to pass this clause we will be telling the Assam Legislature that they have swallowed the bitter portions of their Bill without this sugar-coating, and this will lead to an agitation on the part of the Members of the Assam Legislature for the repeal of the other portions of the Assam Act. If, on the other hand, we pass clause 2, it will not strengthen their hands in agitating for the repeal of the other provisions of this questionable measure which is not justified by conditions in Assam. So that, though clause 2 contains a very good provision, it is our duty to oppose it, as otherwise we would be endorsing the principles underlying the other clauses of the Assam Bill which are highly objectionable. As regards clause 3,

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Honourable Members are aware, people trained at the Bar can never accept the principle underlying it. High Courts are temples of justice and they should not be interfered with in any circumstances. But whatever may be the reasons for taking away the powers of *habeas corpus* of the Calcutta and other High Courts having regard to the terrorist activities in Bengal, no case has been made out in the case of Assam. It is a very dangerous precedent to interfere lightly with the powers of High Courts. After all, the conditions in Assam are not so very serious, and we may take it that this anarchist movement is an exotic plant which has not infected the real people of Assam; it is confined to people from across the border and the people involved in the cases quoted belong to the districts of Sylhet and Cachar.

Another objection I have to this Bill is that, if there is reason for enacting legislation of this kind for Sylhet and Cachar, why should we enact it and make it applicable to all parts of Assam. Even in Sylhet and Cachar the danger is not very great; the menace is only in its infancy and can be dealt with under the ordinary provisions of the law. But if the ordinary law of the land is not enough to deal with it, we may arm the Government of Assam with provisions in respect of Sylhet and Cachar. But the Assam Government can in fact make the provisions of their Bill applicable to all the people of Assam. What has happened is that the Assam Legislature has given powers to the Assam Government in sections 15 and 29 which they were not entitled to give and now the Assam Government, having awakened to the fact that they could not do away with the safeguards provided by the judiciary and the interference from the Calcutta High Court, have come forward and requested the Government of India to empower them in this behalf. The Government of India seems to be very indulgent but it is our duty to tell the Assam Government that the powers already taken in the Assam Act are more than enough to deal with the situation and it is not necessary for them to arm themselves with these other powers on the lines of the Bengal Act, because Bengal stands apart. There the danger is really serious and what applies to Bengal ought not to apply to a province like Assam.

With these words, Sir, I oppose this measure.

THE HONOURABLE PANDIT PRAKASH NARAIN SAPRU (United Provinces Southern: Non-Muhammadan): Sir, when I read this Bill, I was not very clear in my mind as to the line which I should take in regard to clause 2 of the Bill, because at first sight it looks as if it were a safeguard in the interests of the accused, for it provides an appeal from Special Tribunals to the High Court of Calcutta. The Honourable Mr. Hallett has, however, made the task easy for me. He stated that by passing this Bill we shall be confirming the policy of the Assam Act. If, as the Honourable Mr. Hallett says, we shall be confirming the policy of the Assam Act by passing this measure, then I must indicate my strong dissent from the policy of the Assam Act. So far as the question of policy raised by the Assam Act is concerned, I stand by everything that I said in regard to that policy in my speech on the Bengal Criminal Law Amendment Supplementary Act and I do not desire to add anything to that speech. Sir, the Assam Act—the issue has been indirectly raised—the Assam Act is an Act of extraordinary stringency, and it has not

been indicated that conditions in Assam are such that you want an Act of that character to cope with the situation there. If you read that Act, you will find that there are some provisions which to a lawyer strike him as extraordinary. Commissioners will be appointed by the Local Government. Only two of those Commissioners will be men with judicial qualifications; the third we do not know who he will be. The Local Government has been given power to withdraw cases from one set of Commissioners and transfer it to another set of Commissioners at any time before the commencement of the trial of any person under the Act. That strikes me, Sir, as an extraordinary provision. The power of transfer is vested not in the High Court, which will be a court of appeal for cases tried by the Tribunal, but it has been vested in the Local Government. Then, Sir, Commissioners will have power to convict an accused not only of an offence detailed in Schedule I, but of any offence also which he may have committed. The Code procedure will apply only in those circumstances when it is not inconsistent with the provisions of the Act. New rules of evidence have been laid down. Evidence can be taken in the absence of the accused and what is more extraordinary is that new rules of procedure for the trial of co-accused have also been laid down. Now, again, Sir, clause 11 (4), says:

“No finding, sentence or order passed in a trial by Commissioners appointed under this Act shall be held to be illegal by any Court by reason of any omission or irregularity whatsoever arising from the absence of any or all of the accused whose attendance has been dispensed with under sub-section (1)”.

That substantially cuts the revisional power of the High Court in appeal. Sir, reasons may not even be recorded for any action in regard to this matter which the Commissioners consider necessary. Then, Sir, under clause 14 vast rule-making powers have been given to the Assam executive. Those powers include provision for all or any of the following matters, namely, times and places at which Commissioners appointed under this Act may sit—

THE HONOURABLE THE PRESIDENT: All that is not necessary to explain your opposition to clause 2 of the Bill. I will allow Members to refer to the parent Bill to explain anything in connection with the Bill before the Council. I think you are now going to criticise section by section the parent Bill.

THE HONOURABLE PANDIT PRAKASH NARAIN SAPRU: I am not criticising section by section of the parent Bill. What I am saying is this, that the power of appeal that has been given to the High Court will not be of much use to the accused in view of the provisions of the Act. After all, the High Court will have to come to a conclusion on the material before it, but in view of the procedure, what will the High Court be able to do? That is why I have considered it necessary to refer to some of these extraordinary provisions. Sir, my own attitude in regard to this matter is this. The High Courts in India have so far enjoyed a great reputation for impartiality, for fair dealing. I do not wish the reputation of the High Courts to suffer, and I think if you lay down for the High Courts an extraordinary procedure you may be placing the High Court Judges in a very, very difficult position indeed. Therefore, for this reason, while I am not prepared to deny to the accused the right of appeal to the High Court altogether—if you must have an Act on the lines of the Assam Act—I am not very happy over the right of appeal which has been given to the High Court.

[Pandit Prakash Narain Sapru.]

Sir, with these words on this part of the Bill, I come to the other part of the Bill, the one relating to *habeas corpus*. Now, Sir, we know that, strictly speaking, in India we have outside presidency towns, no remedy known as the writ of *habeas corpus*. What we have is a remedy in the nature of a writ of *habeas corpus*. Now, Sir, what a court does under the *habeas corpus* procedure is to inquire into the legality or propriety of the arrest. Now the arrest here will be under the Assam Criminal Law Amendment Act. That Act is not, in view of the decisions of Their Lordships of the Privy Council, *ultra vires* of the Legislature. It is an Act which the Assam Legislature has passed and therefore it is not *ultra vires* of the Legislature. Now, Sir, if any man is arrested, and he applies for a writ of *habeas corpus*, what will happen? The High Court will simply say:

“Here is an Act which empowers the executive to detain without trial. You have been arrested under this Act. Therefore your arrest is legal. We will not go into the matter any further”.

They will not even issue a rule to show cause why the accused should not be produced before the High Court. Where is therefore, I ask, the necessity for this provision? My Honourable friend, Mr. Hallett, stated the other day in connection with the debate on the Criminal Law Amendment Act that they were inserting this provision by way of over-caution. I should like him to explain why it is necessary to take away the jurisdiction of the High Courts under section 491. The High Court cannot go into the question of evidence or anything like that. All that the High Court will have to consider is whether there is a legal order. You will have a legal order here, because the Assam Act is an Act which is *intra vires* of the Legislature, and all that you have to do is to show that the arrest is under the Assam Act and that you have conformed to the procedure in regard to arrest laid down by the Assam Act. Where is therefore, I ask, the necessity for this particular clause, clause 3, and I should like the Honourable Mr. Hallett to indicate to us the necessity for this clause in this Bill? I know that in section 491, sub section (3) says:

“Nothing in this section applies to persons detained under the Bengal State Prisoners Regulation, 1818, Madras Regulation II of 1819, or Bombay Regulation XXV of 1827, or the State Prisoners Act, 1850, or the State Prisoners Act, 1858”.

I have never been able to understand, Sir, the reason why these Regulations were included and in any case I can see no justification for including the cases under the Assam Act also under this clause.

Sir, I indicate my dissent again from the Assam Act. I do not think that it has been shown that the situation in Assam is such that it cannot be dealt with by the ordinary law of the land and in any case it has not been shown that the situation is such that you want there a permanent measure. Sir, it has been said that we have made too much of this question of permanency. Well, Sir, an Act which suspends constitutional guarantees or which substitutes the reign of executive discretion for the reign of law can be justified if at all only as a temporary measure. It is a question of principle and I do not think, Sir, the criticism that the Act is not temporary but permanent can be dismissed so lightly as it has been dismissed by the other side of the House.

12 NOON.

With these few words, Sir, I will indicate my dissent from this Act, more particularly because the Honourable Mr. Hallett has indicated that by accepting this Act we shall be confirming the policy of the Assam Act.

THE HONOURABLE DIWAN BAHADUR G. NARAYANASWAMI CHETTY (Madras : Non-Muhammadan) : Sir, the Honourable mover of the Motion has clearly stated the reason why the Assam Government wants this Bill to be legislated here. I think my Honourable friend Mr. Chari said that because there were only two murders we did not want any of these measures to be introduced in Assam, but that the Assam Bill is quite enough. But I may inform him that this is only a permissive measure so that the hands of the Assam Government may be strengthened to see that this contagion does not spread and is put down with a strong hand. It is a very simple question. Bengal and Assam are not very far apart and any of these people may take shelter there and induce some of the young men there to follow in their footsteps. Therefore, I think that the Assam Government will not be able to use these provisions unless this Act is put on the Statute-book.

Sir, my Honourable friend, Mr. Barua, the representative of Assam, has very strongly supported this measure. He thought that it should be enacted and he hoped that when the movement subsided there would be no necessity for continuing these provisions on the Statute-book. When an elected Member coming from that province gives the measure his support, there can be no doubt as to its necessity. Sir, the Assam Council has passed the Bill by an overwhelming majority of 35 to 9, which shows that a large number of elected representatives have supported the measure, all that is required is that we should put our seal-mark on it and I do not see any reason why there should be any opposition in a matter of this kind. There can be no two opinions as to where our duty lies. When the Government wants to pass a measure of this sort, it is our duty to strengthen their hands by giving it our whole-hearted support to suppress the menace of terrorism.

Sir, I support the Bill.

THE HONOURABLE NAWAB MALIK MOHAMMAD HAYAT KHAN NOON (Punjab : Nominated Non-Official) : Sir, my friends the Honourable Mr. Mehrotra and the Honourable Mr. Chari have said that when the conditions in Bengal and Assam are not similar, what is the reason for a similar law being passed for both places ? To me, Sir, the reply is very simple. The Government of the people of the province do not want that the conditions in Assam should become similar to the conditions in Bengal and that is the reason why in Assam the main Bill was passed by such a vast majority in the Local Council.

Then, Sir, my Honourable friend, Mr. Mehrotra, has said in Assam there were only two murders. May I ask my Honourable friend what is the minimum number of murders in his opinion which would justify the Government in taking preventive measures ?

THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA : On a point of explanation, Sir, I meant, by putting these figures, to show that there is a difference between the conditions in Bengal and Assam.

THE HONOURABLE NAWAB MALIK MOHAMMAD HAYAT KHAN NOON : The Honourable Member said two murders only.

[Nawab Malik Mohammad Hayat Khan Noon.]

Then, Sir, it is true that in Assam proper, the residents have so far escaped the infection of terrorism but at the same time there is a danger of that infection and when the Honourable Member from Assam admits the necessity and the desirability of this law, I would say, Sir, that we the outsiders have no good reason to disbelieve him. The Honourable Mr. Mehrotra who lives hundreds of miles away from Assam and who has perhaps never been to Assam I would say is not justified in contradicting the opinion of the Honourable Mr. Barua as regards the situation in Assam.

Then, Sir, my Honourable friend's opposition to the Bill is not so much in the interests of the people as in the interests of the outsider who may go to take shelter and get arrested in Assam. My Honourable friend, Mr. Chari, has said so much about the infection of provincial Governments. I confess, Sir, I have not been able to follow that argument. Now before us is the question of infection of terrorism from province to province, and if the Government of the provinces concerned take action to prevent that infection I would not call that as an infection of Local Governments.

With these words, Sir, I support the Bill.

THE HONOURABLE MR. M. G. HALLETT : Sir, I do not think it is necessary for me to speak at any great length in reply. I am afraid that if the opposition were not converted by the arguments which were put forward on the two previous occasions I have not much hope of converting them by any new argument. It was contended that there was not sufficient justification for this Act in Assam, that the situation was not as bad as it was painted. The Honourable Mr. Kalikar quoted two non-official Members of the Council as against the quotation made by me from the speech of the Honourable the Home Member. The whole difficulty in regard to these terrorist matters is that Government cannot, owing to the very nature of the movement which they are fighting, put all their cards on the table. We cannot show to all the non-official Members either of the Local Council or of the Central Council all the evidence we have got regarding the activities in the province. In the case of Assam, as I have said, the Honourable Member in charge, although he was himself reluctant to take these special powers, was at last convinced by the evidence produced before him that it was absolutely necessary. We must accept his word for it and that was the view taken by the Honourable Mr. Barua, whose support to this Bill is extremely valuable as it represents the opinion of the people of Assam themselves. The Honourable Mr. Mehrotra was apparently disposed to minimise the dacoities committed. I quite admit there have not been very many dacoities but you must remember that these dacoities have taken place over a very small area, a single district, whereas in Bengal the terrorist movement extends over a much larger area. Having regard to the size of the area, the number of dacoities must be regarded as serious. The Honourable Member does not apparently regard dacoities as serious ; this makes me inclined to express the hope that similar crimes may take place nearer his own home, then perhaps he will realise the seriousness of these dacoities and mail robberies. Then, Sir, he went on to refer to the fact that I had stated that for certain reasons we could not always prosecute people in court, and that therefore we had to take executive action.

That is quite true, but I wish to make it perfectly clear that wherever possible Government do prosecute people in court. Look at the numerous cases going on in Bengal today : look at the case in Darjeeling now ; look at the important conspiracy case which has been going on for nearly a year in Calcutta, of which possibly people have not heard. Wherever there is no danger to our witnesses, when the evidence can be made public, then we do institute prosecutions. But in some cases, for the reasons I have explained the other day—I may remind Honourable Members of the quotation I gave from a letter of Lord Morley—we have to use these special executive powers.

Another point which was made was that in some cases an accused acquitted by a High Court is immediately afterwards arrested by the police. That, I admit, does happen in certain cases. But I would refer Honourable Members to the speech delivered by the Honourable the Home Member in another place. He quoted from his own experience of the case of an accused who was acquitted by the High Court. The Judge with whom he happened to have a talk about the case admitted that he was quite satisfied that the accused was guilty. The accused was dealt with under Regulation III and was put away. Shortly afterwards, the accused himself made a complete statement admitting his guilt and giving a whole history of the case. The reason for such action is, as the Honourable Sir Henry Craik pointed out, that the rules of evidence are such that the High Court being bound by these rules, occasionally—not very often, but occasionally—have to direct the acquittal of a man who is known to be guilty. In such cases, Government have to take action ; they would be failing in their duty if they did not. Another point which was raised, and to which I may refer briefly is, “ Why not have these powers for all the provinces ?” I tried to make it clear that Sylhet is really a part of Bengal. That is the real reason why Assam wants these powers. It is one and the same organization functioning in Bengal and in that part of Assam. The organization, I am glad to say, has not spread to the other provinces. There have been signs of it in Burma, but Burma took special powers in the year 1931 when they were threatened with terrorist activities by the Bengalis who have settled there. Those powers are still on the Statute-book. In Bihar, the province from which I come, they have some additional powers which were obtained by the Act which was passed last year, and which are not very drastic but help them in dealing with terrorist suspects. The real difference between Bengal and Bihar, the real reason why Bihar does not as yet need such drastic powers, is that the people of Bihar are ethnologically and linguistically different from the people of Bengal. If a Bengali comes into any part of Bihar, especially the aboriginal tracts of the Sonthal Parganas which are adjacent to Bengal, he can be spotted at once and can be watched and that is one of the reasons why the police of Bihar have been specially lucky or specially efficient in dealing with attempts to carry on the terrorist movement in their province.

I do not propose to go into the details of the Assam Act which was exhaustively analysed by the Honourable Mr. Sapru ; that does not seem to be relevant to this discussion. The Assam Council considered all these points of detail very fully ; they had a very full debate, they had numerous divisions, and I see that at the end of the discussion the President congratulated them on the manner in which such an important Bill had been discussed. An

[Mr. M. G. Hallett.]

attempt has been made to discredit the Assam Council. An attempt was made the day before yesterday to discredit the Bengal Council. I think that is a very unfair view to take of these representative institutions. After all, they are elected bodies, and we must assume that they come to their decisions with a full sense of their responsibility. They in fact in my view deserve the greatest credit for not being afraid of the situation and for arming the Government with the powers which are necessary.

Sir, I have nothing more to add and I trust the House will agree by a large majority to take this Bill into consideration.

THE HONOURABLE THE PRESIDENT : The Question is :

“That the Bill to supplement the Assam Criminal Law Amendment Act, 1934, as passed by the Legislative Assembly, be taken into consideration.”

The Motion was adopted.

Clause 2 was added to the Bill.

THE HONOURABLE THE PRESIDENT : The Question is :

“That clause 3 stand part of the Bill.”

THE HONOURABLE PANDIT PRAKASH NARAIN SAPRU : Sir, I oppose clause 3 for the reasons I have already given.

THE HONOURABLE RAI BAHADUR LALA JAGDISH PRASAD (United Provinces Northern : Non-Muhammadan) : Sir, I beg to oppose clause 3 standing part of the Bill. This clause contains a provision which has been the subject of criticism and opposition both in this House and in the lower House in connection with the discussion of the Bengal Criminal Law Amendment Supplementary Act, this year as well as in 1932, as also in the course of discussion on the floor of this House this morning. The provision contained in this clause seeks to curtail the powers of High Courts which they possess under section 491 of the Criminal Procedure Code, *i.e.*, powers of the nature of a *habeas corpus*. If the clause is allowed to stand as part of the Bill, it would mean the taking away of the only effective remedy available to a subject of questioning the acts of the executive. This, Sir, is to my mind a serious matter. We must remember that under the provisions of the Bill we are conceding the principle of detention without trial. Now supposing that the detention of a person under the Assam Criminal Law Amendment Act is unlawful because the conditions of the Statute have, for example, not been complied with, or say, the order has not been passed 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 an important principle of law, namely, that a person has a right to be protected from illegal imprisonment, should be departed from in the case of these suspects. In my opinion, a very important principle of law is involved in the provisions of this clause, and we should not be a party to the enactment of such a clause, especially when, as has been admitted by the Government, the conditions are not so serious in Assam as in the sister province of Bengal. Then, Sir, the Honourable Mr. Hallett in his speech on the Bengal Criminal Law Amendment Supplementary

(Extending) Act stated the other day that the Government were making provisions of this nature by way of over caution, as has just been pointed out by my Honourable friend Mr. Sapru. I do not, therefore, think that it is right or necessary to make provisions of this nature in this Bill. I therefore oppose this clause standing part of the Bill.

THE HONOURABLE THE PRESIDENT: The Question is :

“That clause 3 stand part of the Bill.”

The Council divided :

AYES—32.

Akbar Khan, the Honourable Major Nawab Sir Mahomed.	Miller, the Honourable Mr. E.
Banerjee, the Honourable Mr. Jagadish Chandra.	Mitchell, the Honourable Mr. D. G.
Barua, the Honourable Srijut Heramba Prosad.	Mitha, the Honourable Sir Suleman Cassim Haji.
Charanjit Singh, the Honourable Raja.	Nair, the Honourable Mr. C. Govindan.
Chetty, the Honourable Diwan Bahadur G. Narayanaswami.	Noon, the Honourable Nawab Malik Mohammad Hayat Khan.
Choksy, the Honourable Khan Bahadur Dr. Sir Nasarvanji.	Padshah Sahib Bahadur, the Honourable Saiyid Mohamed.
Crosthwaite, the Honourable Mr. H. S.	Pandit, the Honourable Sardar Shri Jagannath Maharaj.
Devadoss, the Honourable Sir David.	Parsons, the Honourable Sir Alan.
Fazi-Husain, the Honourable Khan Bahadur Mian Sir.	Philip, the Honourable Mr. C. L.
Ghosh Maulik, the Honourable Mr. Satyendra Chandra.	Ray of Dinajpur, the Honourable Maharaja Jagadish Nath.
Hafeez, the Honourable Khan Bahadur Syed Abdul.	Raza Ali, the Honourable Saiyid.
Hallett, the Honourable Mr. M. G.	Russell, the Honourable Sir Guthrie.
Hidayatallah, the Honourable Sir Ghulam Husain.	Stewart, the Honourable Mr. F. W.
Kameshwar Singh of Darbhanga, the Honourable Maharajadhiraja Sir.	Stewart, the Honourable Mr. T. A.
Menon, the Honourable Diwan Bahadur Sir Ramunni.	Suhrawardy, the Honourable Mr. Mahmood.
	Ugra, the Honourable Rai Sahib Pandit Gokaran Nath.
	Wingate, the Honourable Mr. R. E. L.

NOES—6.

Chari, the Honourable Mr. P. C. D.	Mehrotra, the Honourable Rai Bahadur Lala Mathura Prasad.
Jagdish Prasad, the Honourable Rai Bahadur Lala.	Sapru, the Honourable Pandit Prakash Narain.
Kaliker, the Honourable Mr. Vinayak Vithal.	Sethna, the Honourable Sir Phiroze.

The Motion was adopted.

Clause 3 was added to the Bill.

Clause 4 was added to the Bill.

THE HONOURABLE THE PRESIDENT: The Question is:

“That clause 1 stand part of the Bill.”

THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA: Sir, I beg to move:

“That to clause 1, the following be added, namely:

‘It shall remain in force for a period not exceeding three years.’”

The object I have in view is that the Bill should not be made permanent from the very outset. We all know that when the Bengal Criminal Law Amendment Supplementary Act was introduced in 1932 it was for three years only, and after two and a half years that the Government has come forward to make it permanent. But I find that in the case of this Act the Government wants to make it permanent from the very beginning. Sir, we have all agreed that the conditions in Assam and Bengal differ and I do not want to dwell on the fact, which has been accepted by the Honourable Mr. Hallett here and by the Honourable Home Member in the other House. So I do not see what is the reason for making this Act permanent from the very outset. I do not know whether the Honourable Members on the other side are aware of it, but it is publicly said that the Government is taking advantage of the present Legislatures, which are very amenable to their wishes, and bringing forward repressive measures and having them put permanently on the Statute-book. It is said that with the threatened advent of the Congress into the Legislatures the Government is hurrying up all these measures. I would request the Government not to do such things by which they place themselves in a false position, as well as us, who are responsible co-operators and are prepared to support the Government in all reasonable actions. Therefore it is not out of regard for them alone but for ourselves also that we press the point and request that the Bill, if passed at all, should be for three years only, during which the Government can see what happens and how things go. They will also thus give the lie to the rumour current outside the Council Houses.

THE HONOURABLE THE PRESIDENT: Amendment moved:

“That to clause 1, the following be added, namely:

‘It shall remain in force for a period not exceeding three years.’”

THE HONOURABLE THE PRESIDENT: The Question is:

“That that amendment be made.”

The Motion was negatived.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. M. G. HALLETT: Sir, I move:

“That the Bill to supplement the Assam Criminal Law Amendment Act, 1934, as passed by the Legislative Assembly, be passed.”

THE HONOURABLE PANDIT PRAKASH NARAIN SAPRU: Sir, it only remains for me to express my dissent with the main policy of the parent Act. The question of the policy of the parent Act was raised by the Honourable Mr. Hallett and therefore it is necessary for us to indicate our dissent from that policy.

THE HONOURABLE THE PRESIDENT: I have already explained to Honourable Members that the Honourable Mr. Hallett referred to the parent Bill only to explain the provisions of this Bill.

THE HONOURABLE PANDIT PRAKASH NARAIN SAPRU: With all respect to you, Sir, may I say that the Honourable Mr. Hallett stated that by passing this Bill we shall be confirming the policy of the parent Act. What I want to say is that our objection is not so much to clause 2 of the Bill as to the parent Act itself. Now, Sir, so far as clause 3 is concerned, I have heard nothing from him as regards the necessity of that clause, votes have gone against us—they were bound to go against us—but our arguments have not been answered. In view of that fact, Sir, it becomes necessary for us to place on record our dissent.

THE HONOURABLE MR. VINAYAK VITHAL KALIKAR: Sir, as a very innocent amendment moved by my Honourable friend Mr. Mathura Prasad Mehrotra has not been accepted by the Government, we have no other way but to oppose this Bill. Sir, I am personally opposed to give, as I said in the beginning of my speech, more powers to the executive and to make inroads on the powers of the judiciary; especially in the case of Assam, it is against my conscience to give powers to the executive when conditions in Assam and Bengal are different. The other day my Honourable friend Mr. Hallett quoted John Morley, and—

THE HONOURABLE SIR GHULAM HUSAIN HIDAYATALLAH (Bombay: Nominated Non-Official): Sir, I rise to a point of order. Is the Honourable Member entitled to criticise the decision of this House, which has passed the First and Second Reading of the Bill?

THE HONOURABLE THE PRESIDENT: He is only explaining his attitude towards the Bill. He is at perfect liberty to make any reference to it.

THE HONOURABLE MR. VINAYAK VITHAL KALIKAR: Sir, if I read this passage, I read this only to show to my Honourable friend Mr. Hallett how deeply John Morley, our late Secretary of State, was concerned with the repressive laws. He was most unwilling and most unsatisfied with the policy of the Government. Therefore in order to show him how deeply concerned he was I am going to read this passage. This passage will be found at page 215 of John Morley's Recollections:

“ 'Tis like the Czar and the Duma. Are we to say, You shall have reforms when you are quiet. Meanwhile, we will not listen to a word you say. Our reform projects are hung up. Meanwhile plenty of courts martial, *lettres de cachet*, and the other paraphernalia of law and order. People here who have been shouting against the Grand Dukes in Petersburg for bullying the Duma, will shout equally vociferously against you and me if we do not in our own sphere borrow the Grand Duke policy ”.

Then, Sir, on page 217, about deportation he says:

“ Deportation is an ugly dose for Radicals to swallow; in truth if I do not happen to possess a spotless character as an anti-coercionist in Ireland our friends would certainly

[Mr. Vinayak Vithal Kalikar.]

have kicked a good deal. As it is, if a division is forced after my speech, we shall have against us the Irishmen, most if not all of the Labour men, and a fair handful of our ordinary rank and file. This may put me personally into something of a hole; for I do not see how I can carry on, if I found myself opposed by a majority of our own party. However, we need not say good morrow to the Devil until we meet him.

"I suspect your difficulties will only now be beginning, for the reactionaries are sure, after getting their first mouthful of energy, to clamour for more—right and left. Personally I am not at all squeamish in such a community, or mass of communities, as India is, for a conflagration there would be too terrible. The worst of it is that we do not really know, and cannot know, what is going on in the subterranean depths of the people's own minds".

That shows, Sir, how deeply he was concerned with these repressive laws. As I said in the beginning of my speech, I would have considered the claims of the Government in passing this repressive law if they had taken us into their confidence and shown us the material justifying the necessity of these repressive laws.

As stated by my Honourable friend, Mr. Hallett, Government cannot lay their cards on the table, and therefore we on this side are not willing to allow Government to pass repressive laws when we do not feel any necessity for those laws in Assam, and therefore, Sir, we protest against it and I oppose the Bill.

THE HONOURABLE MR. M. G. HALLETT: I do not wish to say much more on this Bill, nor do I attempt to answer all the arguments put forward for I have dealt with most of these points in my speeches on the Bengal Bill. I would like however to make a reference to the point raised by the Honourable Mr. Barua at the end of his excellent speech in support of the Bill and by so doing I may meet some of the objections urged by the opposition. The Honourable Mr. Barua hoped that the Government of Assam would not allow this Bill to continue in force any longer than was necessary and that they would be very careful as regards extensions of the Act. I think I can satisfy the Honourable Member on those two points; I mentioned in my first speech that the Assam Government have only put it into force in two districts, and I am sure they will not extend it to other districts unless there are urgent reasons for so doing. The Honourable Sir Muhammad Saadulla, the Home Member, explained how reluctant he was to enact this legislation; and that he only did so when he had convincing reasons of its urgent necessity. It may be inferred from that that the Assam Government was reluctant to extend its provisions and will only agree to an extension if they find it absolutely essential. They will no doubt take the earliest opportunity of withdrawing this Bill from those districts in which it is in force as soon as they consider it safe not only in their own interests, but also in the interests of Bengal.

THE HONOURABLE THE PRESIDENT: The Question is:

"That the Bill to supplement the Assam Criminal Law Amendment Act, 1934, as passed by the Legislative Assembly, be passed."

The Motion was adopted.

The Council then adjourned till Eleven of the Clock on Wednesday, the 22nd August, 1934.