

Tuesday, 17th April, 1934

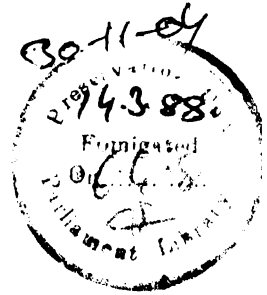
THE  
COUNCIL OF STATE DEBATES

VOLUME I, 1934

*(8th February to 27th April, 1934)*

---

SEVENTH SESSION  
OF THE  
THIRD COUNCIL OF STATE, 1934



PUBLISHED BY MANAGER OF PUBLICATIONS, DELHI.  
PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, NEW DELHI.  
1934.

	Pages.
<b>Thursday, 29th March, 1934—</b>	
Indian Finance Bill, 1934—Considered and passed . . . . .	609—31
Salt Additional Import Duty (Extending) Bill—Considered and passed . . . . .	631—35
Statement of Business . . . . .	630
<b>Thursday, 12th April, 1934—</b>	
Members Sworn . . . . .	637
Questions and Answers . . . . .	637—45
Short Notice Question and Answer . . . . .	645—46
Statements laid on the table . . . . .	646—47
Bill passed by the Legislative Assembly laid on the table . . . . .	647
Motion for the election of six non-official Members to the Central Advisory Council for Railways—Adopted . . . . .	647
Motion for the election of one Muslim non-official Member to the Standing Committee on Pilgrimage to the Hejaz <i>vice</i> the Honourable Mr. Hossain Imam, resigned—Adopted . . . . .	648
Indian Trusts (Amendment) Bill—Considered and passed . . . . .	648—49
Statement of Business . . . . .	649
<b>Monday, 16th April, 1934—</b>	
Member Sworn . . . . .	651
Short Notice Questions and Answers . . . . .	651—52
Ruling re putting of questions standing in the names of absent Members . . . . .	652—55
Statements laid on the table . . . . .	655—56
Motion for the election of one non-official Member to the Standing Committee on Emigration <i>vice</i> the Honourable Sir Kurma Venkata Reddi—Adopted . . . . .	656
Motion for the election of three non-official Members to the Standing Committee for Roads—Adopted . . . . .	656
Indian States (Protection) Bill—Motion to consider, adopted . . . . .	656—58
Election of one non-official Muslim Member to the Standing Committee on Pilgrimage to the Hejaz . . . . .	658
Nominations for the election of six non-official Members to the Central Advisory Council for Railways . . . . .	658
<b>Tuesday, 17th April, 1934—</b>	
Member Sworn . . . . .	699
Questions and Answers . . . . .	699—700
Bill passed by the Legislative Assembly laid on the table . . . . .	701
Indian States (Protection) Bill—Considered and passed . . . . .	701—32
Statement of Business . . . . .	732
<b>Friday, 20th April, 1934—</b>	
Questions and Answers . . . . .	733—45
Statement laid on the table . . . . .	746
Bill passed by the Legislative Assembly laid on the table . . . . .	747
Election of a non-official Member to the Standing Committee on Emigration <i>vice</i> the Honourable Sir Kurma Venkata Reddi . . . . .	747
Election of three non-official Members to the Standing Committee for Roads . . . . .	747
Election of six non-official Members to the Central Advisory Council for Railways . . . . .	747

# COUNCIL OF STATE.

*Tuesday, 17th April, 1934.*

---

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

---

## MEMBER SWORN :

The Honourable Diwan Bahadur Sir K. Ramunni Menon, Kt. (Madras : Nominated Non-Official).

---

## QUESTIONS AND ANSWERS.

### CONDITION OF THE SUGAR CULTIVATION AND SUGAR INDUSTRY IN THE AREA AFFECTED BY THE EARTHQUAKE IN BIHAR.

131. THE HONOURABLE MAHARAJADHIRAJA SIR KAMESHWAR SINGH OF DARBHANGA : Will Government be pleased to state :

(a) When the report of the condition of the sugar cultivation and sugar industry in the area affected by the earthquake in Bihar will be available to the public ?

(b) How far has the investigation proceeded ?

(c) Has the Chief Commissioner for Railways made any recommendations regarding the railway freights on sugar ? If so, what are they and when does Government propose to take action on them ?

THE HONOURABLE KHAN BAHADUR MIAN SIR FAZL-I-HUSAIN :  
(a) and (b). I regret I have no information other than that contained in the communiques issued by the Government of Bihar and Orissa, which the Honourable Member has doubtless seen already. I am arranging to have placed in the Library of the House copies of communiques issued on the 9th and 21st March and the 4th April which contain *inter alia* an account of the arrangements made by the Local Government to help cultivators to dispose of their sugarcane.

(c) The visit of the Chief Commissioner of Railways was in connection with the supply of wagons for the carriage of cane. Railways have already quoted special rates for the carriage of cane from the distressed areas to certain mills outside those areas on a basis which approximates to the average cost of haulage. As regards freight on sugar, appreciable reduction has been made during the last twelve months in the rates from stations on the Bengal and North-Western Railway to stations on other railways and Government are not aware that any further reductions are at present called for.

**THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA :** With regard to part (c), may I ask the Government whether it is aware that the factories are prepared to take cane from Bihar but on account of the difficulties of wagons they are not able to take cane from that area, and will the Government be pleased to make special arrangements for the wagons to help them ?

**THE HONOURABLE KHAN BAHADUR MIAN SIR FAZL-I-HUSAIN :** It would have been much better, Sir, if the Honourable Member had been good enough to state the names of the mills who wanted cane from the areas for which he wanted facilities to be provided.

**THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA :** Sir, my own factory, the United Provinces Co-operative Sugar Factory, Limited, wants cane from that area. We sent out Chief Engineer to that part as well as to the Cane Controller, Bengal and North-Western Railway, but the Cane Controller could not hold out any hopes of giving wagons and therefore it was hopeless to settle about the cane from the Cane Board in Muzaffarpur. He went there and found that the cane was in abundance and everybody wanted—

**THE HONOURABLE THE PRESIDENT :** I hope the Honourable Member is not going to make a speech ?

**THE HONOURABLE KHAN BAHADUR MIAN SIR FAZL-I-HUSAIN :** Is that the only instance ?

**THE HONOURABLE MR. HOSSAIN IMAM :** Mr. Hari Raj Swarup is also willing to buy.

**THE HONOURABLE KHAN BAHADUR MIAN SIR FAZL-I-HUSAIN :** I think it would be much better if the Honourable Members limited themselves to things within their own knowledge, as undoubtedly the Honourable Mr. Mehrotra's own factory was within his. As to the factories of their friends, I think it would be best if the Honourable Members were to leave them out of account.

**THE HONOURABLE MR. HOSSAIN IMAM :** We have authority from Mr. Hari Raj Swarup to say that he is willing and probably he has approached the Chief Commissioner for Railways too.

#### PUBLICATION OF THE PROCEEDINGS OF THE CONFERENCE OF PROVINCIAL MINISTERS.

**132. THE HONOURABLE MAHARAJADHIRAJA SIR KAMESHWAR SINGH OF DARBHANGA :** Will Government be pleased to state whether the proceedings or the results of the Conference of Provincial Ministers for an economic recovery will be published ? If so, when ?

**THE HONOURABLE SIR ALAN PARSONS :** An announcement will be made on the subject at a very early date.

BILL PASSED BY THE LEGISLATIVE ASSEMBLY LAID ON THE  
TABLE.

SECRETARY OF THE COUNCIL : Sir, in pursuance of rule 25 of the Indian Legislative Rules, I lay on the table copies of the Bill further to amend the Indian Tariff Act, 1894, for certain purposes, which was passed by the Legislative Assembly at its meeting held on the 16th April, 1934.

INDIAN STATES (PROTECTION) BILL—*continued.*

THE HONOURABLE THE PRESIDENT : We will now proceed with the consideration of the clauses of the Bill.

The Question is :

“That clause 2 stand part of the Bill.”

THE HONOURABLE MR. HOSSAIN IMAM : Sir, I wish to oppose this clause. The reason for my opposition is, as I said yesterday, that the element which constitutes the justification for section 124 and the like sections of the Indian Penal Code is not to be found in section 2 of this Act. The reason for section 124 is that there the offence is committed against an authority which is the suzerain power and the people who are liable to prosecution are those who owe allegiance to that authority and that is the justification for that provision. Here we do not owe any allegiance to the Indian princes. Therefore, there is no crime committed of the same nature as that contemplated by section 124, but the punishment provided in section 124 has been provided under this clause. Even if this provision had to be made, the same punishment ought not to have been fixed. In section 124 the authorities against whom the offence is committed for which a prosecution can be had are explicitly stated. The wording is :

“Whoever with the intention of inducing or compelling the Governor General of India, or the Governor of any Presidency, or a Lieutenant-Governor, or a Member of the Council of the Governor General of India, or of the Council of any Presidency, to exercise or refrain from exercising in any manner any of the lawful powers of such Governor General, Lieutenant-Governor or Member of Council, assaults or does, etc.”

The people against whom this section can be applied are very few and they stand on a very high pedestal. Here, all and sundry are included in the category and offences committed against even the village chowkidar will have the same punishment as offences against the Governor General. That is obnoxious to the sense of legal propriety. The criminal force which is penalized under section 124 is of a different type to that contemplated in clause 2 of this Bill. The words in section 124 are :

“assaults or wrongfully restraints, or attempts wrongfully to restrain, or overawes by means of criminal force, etc.”

whereas in clause 2 of this Bill we have only the words

“conspires to overawe”.

There is a radical difference between a conspiracy to overawe and actual action. Section 124 contemplates an actual overt act, while here we are penalizing only a fear of an overawe. These are the two items which rather force me to oppose this clause.

I do not wish to take up any further time of the House, Sir.

**THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA** (United Provinces Central : Non-Muhammadan) : Sir, I am in agreement with my Honourable colleague, Mr. Hossain Imam, in opposing this clause. So far as the spirit of the clause is concerned, it is already existing in section 121A of the Penal Code. I do not see any reason why this clause has been included in this Bill when a similar and more stringent section is already existing in the Indian Penal Code. It may be said that this section has been brought in specially for the protection of the princes. May I ask from the Government whether they are going to have another section for meeting cases of conspiracies against our allies, Afghanistan, Nepal and others ? If they can meet conspiracies against our other allies under the existing section, there is no reason why Government could not meet similar cases against the princes. I am of the opinion that such conspiracies should be nipped in the bud whether they are against the princes or our other allies, but my quarrel is about providing this clause in this Bill when there is another section already existing in the Indian Penal Code. There is another difficulty. In the Indian Penal Code you have got cut and dried definitions for every word. Here you have not given definitions of technical words, and it will be for the lawyers and the courts to give meanings to these words, and to stretch them in any way they like. The definitions of the Indian Penal Code will not be applicable to this Act. For instance, the words "conspires to overawe". I think it will not be easy for any one to give a correct definition of the word "conspires". There may be different meanings given by different lawyers. In the same way, it is not said whether "administration" means acts done by the princes or the ministers or the executive councillors if any, or the legislative councils, if any. There are so many things which can be covered by this word. It was therefore proper to give correct definitions of all technical words. I would therefore request the Government if their purpose is being served by section 121A of the Indian Penal Code, to be pleased to withdraw this clause from the Bill.

**THE HONOURABLE SIR BROJENDRA MITTER** (Law Member) : Sir, the Honourable Members who have just spoken are under a complete misapprehension as to the meaning and scope of this clause. The Honourable Mr. Hossain Imam said that there was section 124 of the Indian Penal Code that ought to be enough. Sir, section 124 is not the analogous section to clause 2 of this Bill. Section 124 is a section which deals with assaulting the Governor General and other persons with intent to compel or restrain the exercise of any lawful powers. Clause 2 of the Bill corresponds to section 121A, that is, conspiracy to commit offences punishable under section 121.

**THE HONOURABLE MR. HOSSAIN IMAM** : Will the Honourable Member read section 121 ?

**THE HONOURABLE SIR BROJENDRA MITTER** : Wait. Section 121A is the corresponding section in the Indian Penal Code. Section 121A says :

"Whoever \* \* \* conspires to overawe, by means of criminal force or the show of criminal force, the Government of India or any Local Government, shall be punished, etc."

Under section 121A, the offence is conspiracy to overawe by criminal force or show of criminal force Governments in British India, either the Government of India or a Local Government. Clause 2 is the corresponding section which deals with conspiracy to overawe, not any British Indian Government, but the Administration of any State, that is, the Government of any State. Section 124 has nothing to do with it.

Then it has been said that 121A is enough. The last speaker said 121A was enough and it was more stringent. But it is not enough, because section 121A is limited to offences against Governments in British India. That section does not cover offences against the Governments of the States ; clause 2 deals with offences against the Governments of Indian States.

Then, Sir, the Honourable Member who spoke last said, "Are you going to have similar sections as regards foreign powers?" We have got similar sections as regards foreign powers. If the Honourable Member would look to sections 125 and 126 of the Indian Penal Code he will find that they deal with offences against Asiatic powers in alliance with the Queen. He mentioned Afghanistan. As regards Afghanistan, Nepal or Persia or China or Siam, which are adjoining foreign countries, section 125 says :

"Whoever wages war against the Government of any Asiatic power in alliance or at peace with the Queen or attempts to wage such war or abets the waging of such war, shall be punished".

Section 126 says :

"Whoever commits depredation or makes preparations to commit depredation on the territories of any power in alliance or at peace with the Queen, shall be punished".

The Indian Penal Code has provided for offences against friendly neighbouring powers, but the Indian Penal Code does not contain any provision for the protection of the States in India and the present measure is a measure designed to protect States in India. It does not deal with British India. It does not deal with foreign powers. It deals with States under the suzerainty of His Majesty the King.

Then, Sir, the next point which was made by the last speaker was that the definitions of the Indian Penal Code did not apply to the present measure, and therefore the Bill was vague. I submit it is not vague at all. First of all, if there be technical words, in criminal law technical words have got a meaning. You need not go to the Penal Code for the meaning of everything. When you find a word requires definition, you turn to the General Clauses Act. The General Clauses Act defines various technical words. Supposing the General Clauses Act is silent with regard to any particular expression, then the ordinary dictionary meaning will apply. For instance, take the word "administration". Administration is not a term of art ; it is not a technical word ; it is an ordinary English word for which you have to turn to the Oxford Dictionary for its meaning, and you will find the meaning to be the same as "government". The administration of a State means the government of the State. There is no difficulty about it. With regard to the expressions used in this Bill I say that first of all you turn to the General Clauses Act. If you find a definition there that definition will apply. If you do not find any definition in the General Clauses Act, turn to any book on criminal law to see in what sense that particular expression is understood in criminal law. There are many well known text books on criminal law and you will find meanings and connotations there. Supposing the text books are silent, then turn to the ordinary dictionary for its meaning and you will find the meaning there. For instance, the word "administration" ; you will not find it defined in the General Clauses Act or in Russell on Crimes or any other recognized text book on criminal law. You should next turn to a recognized dictionary and there you will find that "administration" means government. Therefore there is no ambiguity or difficulty about it. We are using words well known in criminal law and any one either dispensing justice or practising in criminal courts would know in what connotation such words are used.

[Sir Brojendra Mitter.]

I think these are all the points which have been made and I submit that the criticisms are not valid.

Clause 2 was added to the Bill.

THE HONOURABLE THE PRESIDENT : The Question is :

“ That clause 3 stand part of the Bill.”

The Honourable Rai Bahadur Lala Jagdish Prasad has an amendment to this section but I am afraid I cannot allow that amendment to be moved. It is in consonance with my previous rulings and also the rulings established by my predecessors on this point. His amendment has merely the effect of a negative vote and under Standing Order 32, clause (2), it is not admissible. However, the Honourable Member will be allowed to speak on this clause without moving his amendment and he is at liberty to vote against it when I put the clause to the House.

THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA : On a point of order, Sir. May I know why such amendments which have a negative force are being allowed in the other House and in Provincial Councils ? May I know on what grounds they are allowed there ?

THE HONOURABLE THE PRESIDENT : Discretion entirely rests with the President under Standing Order 32 of this Council, to which I refer the Honourable Member. Moreover the Honourable Member must remember that I am presiding here and I have nothing to do with any other House.

THE HONOURABLE RAI BAHADUR LALA JAGDISH PRASAD : Sir, in that case I beg to oppose this clause standing part of the Bill. In opposing this clause I am encouraged a good deal by the almost unanimous opposition which this clause met at the hands of non-official Members of the House who spoke on the Bill yesterday. Whatever divergent views might have been expressed on other clauses of the Bill, this clause found little support in the House as a whole. The Home Secretary in his speech in moving the consideration of the Bill yesterday, anticipating discussion on my amendment as it stood on the Order Paper, dwelt considerably on this clause, and the Honourable the Home Member in his reply to the debate also spoke at length on the provisions of this section. Both of them argued that there was no danger to the press if it indulged in honest criticism of the actions of the Indian States. But, Sir, it is my misfortune that I do not happen to see eye to eye with them so far as the possibilities of the operation of this clause in actual practice are concerned. It is the general belief which I myself share that if this clause stands part of the Bill it will be a very risky affair for any journal in British India to give publicity to acts of autocratic high-handedness perpetrated in any Indian State, and knowing as we do that the States generally, barring a few honourable exceptions, treat their subjects as if they were no better than so many cattle, the only remedy which the people belonging to Indian States have against the oppressions of the ruler of a State will be taken away from them. It is a well known fact that the Indian princes generally do not afford scope for independent newspapers in their States, and it is only the pressure of enlightened public opinion ventilated in the press in British India that is one of the most potent forces making for an improvement in the administration of the more backward States, and if the salutary check which the fear of



publicity in the press exercises on the States is removed by the fresh disability sought to be imposed on the press in British India by this clause, then I fear that the cause of good government will not only be not promoted but misrule will thrive in the States. Sir, it is not only non-official public opinion which strongly holds this view, but some of the officials also whose opinions on the Bill the Government of India invited share this suspicion and have frankly opposed this clause. A reference to this fact was made by some Honourable Members yesterday, but with your permission, Sir, I will just quote on this occasion the views of some of the officials of Government to corroborate my point. The District and Session Judge of Raipur opines :

“ It is not possible to avoid facing the fact that there is much maladministration in many of the States, for remedying which there is very little means within the States, available to the masses. Further, as has been pointed out, the very publication of certain facts would in itself tend to bring the administration of a State into hatred or contempt, or at least to excite disaffection towards it, although the object of publication is a worthy one. The wording of clause 4 would be appropriate to British India, where the administration is admittedly good, but—

**THE HONOURABLE MR. M. G. HALLETT (Home Secretary):** Might I ask the Honourable Member whether that criticism which he is reading out has not been met entirely by the Explanation which was inserted in the Bill when it was under discussion in the Assembly ?

**THE HONOURABLE RAI BAHADUR LALA JAGDISH PRASAD:** I will come to that point, Sir, later on.

—“ but the circumstances in many States are so different, that the scope of the clause is automatically widened. In my opinion it would be very difficult for honest criticism in many instances to escape the liability of section 4, Indian Press (Emergency Powers) Act, as proposed to be amended. I consider it necessary in making the Act apply in respect of Indian States, to modify the amendment so as to include the ingredient of intention ”.

I will come to this ingredient of intention later on in the course of my speech. Then, Sir, the Commissioner of the Tirhut Division, opposing this clause, says :

“ Regarding paragraph 4, and the proposed amendment of the Press Act, I am opposed to the amendment. The arguments used by Sir Cowasji Jehangir are cogent and well founded. It is perfectly true that a mere dispassionate mention of some things still done in Indian States would raise very profound feeling, and it would be very difficult to say whether this did, or did not, amount to hatred, contempt, and disaffection. I do not consider the Indian States can or should be put on a par with British India. Their administration in the majority of cases lags far behind ours. Nor can they be put on a par with Asiatic allies of the King-Emperor, for the well-being of whose subjects we have in no way made ourselves responsible, and for the protection of whose rulers from the results of maladministration we are in no way bound to interfere ”.

**The District Magistrate of Belgaum opposing this clause says :**

“ I see nothing objectionable in the provisions of the Bill except clause 4. I fear that if this clause is passed legitimate criticism of misdoings in an Indian State will be discouraged. Even in the case of British India, the Indian Press (Emergency Powers) Act was passed as a measure of emergency and I do not see why its provisions should be extended to protect State administrations which in many cases are not above criticism and are able within their own boundaries to stifle comments on themselves. It would be in the interest of the population of such States if free scope was given at least to the outside press to criticise their maladministration wherever such exists ”.

The District Magistrate of Larkana thinks that this clause is open to the objection that it will prevent the ventilation of genuine grievances and the criticism of real misgovernment. Then, Sir, two Deputy Commissioners in the

[Rai Bahadur Lala Jagdish Prasad.]

Punjab are said to have criticized this clause on the ground that if the subjects of an Indian State are prevented from airing their grievances, which may well be legitimate, in the press in British India, they have in practice no place where these grievances can be aired.

Sir, all these official views go to support my opposition to this clause and to confirm the general impression that the clause will virtually gag the press in British India and will not be in the best interests of the country. But if the Government of India think that my suspicion in this behalf is unfounded, I have at least the satisfaction to think that if I err at all I do so in good company—in the company of Government's own agency. But the Government brushes aside even the official views in this case with the remark, as is reported to have been made by the Honourable the Home Member in another place, that although Government always attaches importance to the opinion of district magistrates, it has not surrendered its judgment to them and that in this case these opinions have been rejected. This statement of the Honourable the Home Member only shows that the Government accept the opinions of their officials only when such opinions are in favour of the Government's view point, but disregard them if such views ever happen to accord with Indian public opinion. If this is the case, Sir, then I am afraid no amount of reasoning or argument will be able to convince the Government once they are determined to do a certain thing.

Now, I come to the point which my Honourable friend the Home Secretary just raised, namely, that since the official views were received an important Explanation has been added to the clause in the Select Committee which mitigates the rigours of the original provision. Sir, I recognise that the ingredient of malicious intention has been provided in the Explanation, but I think that it does not go to help very much, as the burden of proving want of malicious intention will on the one hand fall on the offending press and on the other hand the person to judge of this ingredient will be an executive and not a judicial officer. Because, Sir, one great point of difference is that the present Bill proposes to substitute for the judicial trial now provided an executive trial, otherwise the offence sought to be penalized in this clause is not a new offence but is already covered by the provisions of the existing law and is punishable for five years. Besides this, Sir, the all-pervading section 144 of the Criminal Procedure Code is there which covers within its purview almost anything and everything. I do not therefore see any necessity for enacting this clause. It is feared, Sir, that with the existence of the proposed clause in the Bill mere statements of facts of certain States if related in the press accurately, even faithfully with a desire not to create hatred or contempt but with a desire to draw the attention of the Administration to these facts in order to get a remedy will come within the mischief of this clause. I cannot therefore see my way to support this clause and hope that the House will think twice before lending its support to it.

Sir, I oppose this clause.

THE HONOURABLE MR. VINAYAK VITHAL KALIKAR (Central Provinces : General) : Sir, it was said yesterday on behalf of the Government that the rigour of this clause has been toned down by the addition of Explanation 5 and the two Explanations that already exist in the Act of 1932. This clause lays down a certain principle which at least I have not been able to follow and that is, Sir, that, if I, as a subject of the Crown, bring into hatred

or contempt or excite disaffection against the ruler or against the administration of a State, how can I be held responsible for that offence, because, as far as I understand the criminal law and the common law of England, the liability on me comes in because I owe allegiance to the Crown. I do not owe allegiance to the ruler or the administration of the Indian State. So I have not been able to follow, Sir, how I can be brought within the clutches of this clause and be punished because, though I do not owe any allegiance to the ruler still I will be punished under this clause.

Then, Sir, in the Explanation it has been stated that :

“ Statements of fact made without malicious intention and without attempting to excite hatred, contempt or disaffection shall not be deemed to be of the nature described in clause (j) of this sub-section ”.

And the other two Explanations, Explanation 2 of the Act of 1932 says :

“ Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite hatred, contempt or disaffection shall not be deemed to be of the nature described in clause (d) of this sub-section ”.

And a similar Explanation follows section 3.

My submission is if, for instance, I make a statement of fact that a particular ruler has committed a murder, or has abducted somebody's wife, or done all sorts of tortures, they are all statements of fact without any malicious intention on my part and are likely to create disaffection or hatred or contempt against the administration of the ruler, so I fail to understand how this Explanation 5 and the other two Explanations 2 and 3 of the Criminal Law Amendment Act of 1932 can allow legitimate criticism of the action of the State, or of the ruler of the State.

Then, Sir, a third difficulty has been referred to by Lala Jagdish Prasad about the burden of proof. In ordinary criminal trials, as far as I understand, the burden of proof lies on the prosecution.

**THE HONOURABLE SIR DAVID DEVADOSS :** Except in certain cases.

**THE HONOURABLE MR. VINAYAK VITHAL KALIKAR :** I say in general terms. Here the procedure of a trial court is barred and the discretion is left with the Local Government. So the press proprietors or editors of newspapers have no means of establishing their case before the Local Government and moreover no question of burden of proof comes in because the Local Government in its own discretion, on the reports of its own agents will pass orders against the press and those orders will only be discussed when the pressmen or the proprietor goes to the High Court. Then the difficulty is that the press proprietor is deprived of the means of proving his own case, while if the ordinary procedure had been resorted to the pressman would have had ample opportunity of establishing his own case in a court of law and would have had ample opportunity to prove his innocence.

Then another difficulty which occurs to me is this, that is, the discretion of the Local Government in this matter. As far as I know now, the administrations of these Indian States have been transferred to the Government of India. If anybody can know about the administration of these Indian princes, the Government of India is in a position to know it, because they have got the Political Department at their beck and call and they can get information. But how can Local Governments get information about the good administration or

[Mr. Vinayak Vithal Kalikar.]

maladministration of an Indian State? So, Sir, from all points of view it appears to me that this clause has not been well drafted or, if it has been drafted after careful consideration by the legal luminaries of the Government of India, then I say it has been drafted simply to curtail the liberties of the press and these Explanations are merely eye-wash. I would therefore like to oppose this clause.

**THE HONOURABLE SIR BROJENDRA MITTER:** There is some misconception about the meaning of the clause and I think it will shorten the debate if I were to explain what it means. The Honourable Rai Bahadur Lala Jagdish Prasad complained that intention was not mentioned here. One of his criticisms was that the element of intention ought to be there. I want to tell the Council that the element of intention is always present in the offence of sedition. Intention is essential to the offence of sedition. Sir, I need only refer the House to a passage in the well-known Tilak case. There the learned Judge says :

“ The essence of the crime of sedition consists in the intention with which the language is used. But this intention must be judged primarily by the language itself. The intention for this purpose is really no more than the meaning. When a man is charged in respect of anything he has written or said, the meaning of what he said or wrote must be taken to be his meaning and that meaning is what his language would be understood to mean by the people to whom it is addressed ”.

Therefore, when we are dealing with the offence of sedition, the element of intention is always present. It is not necessary to mention it expressly in the section.

Then, the Honourable Mr. Kalikar said, “ How can a British subject entertain feelings of disaffection towards a ruler ? ” That is a perfectly valid criticism, but that is not the meaning of the clause. Disaffection means in popular language disloyalty. You can be disloyal to a man to whom you owe allegiance. You cannot be disloyal to a man to whom you do not owe allegiance. Therefore, in this clause, when we are talking of disaffection towards a State, it must mean disaffection in the minds of the State subjects and not disaffection in the minds of British Indian subjects. If Honourable Members will look at the section in the Indian Press (Emergency Powers) Act, 1931, as amended in 1932, they will find that clause (j) which is sought to be added corresponds to clause (d) which already exists. Clause (d) runs thus :

“ Whoever prints or publishes any newspaper, book or other document containing any words, signs or visible representations which tend directly or indirectly—

\* \* \* \* \*

“(d) to bring into hatred or contempt His Majesty or the Government established by law in British India or the administration of justice in British India ,”

and so on.

Clause (d) under the existing law provides for disaffection against His Majesty and the Governments in British India. All that clause (j) does is to provide for disaffection against administrations of Indian States. It does nothing more than that. The protection which the British Indian Governments in India, either the Government of India or any Local Government, enjoy at the present moment—that protection and nothing more than that—is being extended to the administrations of States. So, clause (j) corresponds to (d). Clause (d) applies to British India, clause (j) will apply to the States. That i

all. The position is not only not worse, but a little better than in the case of British India. In the case of British India, we have some Explanations. The relevant Explanations are 2 and 3. Explanation 2 deals with comments expressing disapprobation of the measures of the Government and Explanation 3 deals with comments expressing disapprobation of the administrative action of the Government. These two Explanations will be available to the press when they are dealing with Indian States, and in addition to that, there is another Explanation in the Bill, Explanation 5, which deals with statement of facts. Therefore, the press would be, if anything, in a slightly better position *vis-a-vis* the Indian States than it is *vis-a-vis* British India. There cannot be any possible ground of grievance on that score.

Then, the Honourable Mr. Kalikar said, "Suppose a statement of fact like that a ruler committed a murder, or a ruler abducted a woman, be published, what will happen?" That does not come within the purview of this Bill at all. This Bill protects administrations; it does not protect the ruler. That is the mistake, if I may say so, without offence, which the Honourable Mr. Kalikar made. When the press says anything about a ruler, no action can be taken under this measure.

The next point which he raised was about the burden of proof. He said rightly that in every prosecution the burden of proof was upon the prosecution, but he forgets that although it is the duty of the prosecution to prove that an offence has been committed, if the accused seeks to take advantage of an exception, then the burden under the ordinary law is upon him being the party which sets up the exception. The prosecution has to prove that a certain offence has been committed. If the accused says, "Well, ordinarily, it would be an offence, but I come under an exception; I want to be protected by the exception", then under the ordinary law, the burden of proof is upon him who seeks shelter under the exception. Sir, there is nothing unusual here. Here, the prosecution will have to prove that a seditious article against the administration of a State has been published. But if the newspaper seeks to take itself out of the purview of that section, it will have to prove that it did it *bona fide*, whether it was a statement of fact, or mere comment. It will be for the press to prove the *bona fides*. Under the ordinary law it would be so. There is nothing extraordinary here. Further, power has been given to the High Court to revise an executive order. If there be any legitimate grievance, you can go to the High Court. Onus of proof will be considered there. Sir, there is a general misconception as regards the meaning of the expression "onus of proof". That expression is used in two senses. One meaning is the burden to lead evidence. If no evidence is adduced, who will lose? The party which will lose if no evidence is adduced has the burden of proof upon it. The prosecution has to prove certain things. But if the prosecution adduces no evidence, there cannot be any conviction. Therefore, the burden of proof is upon the prosecution. The second meaning of burden of proof, which is the real meaning, is this. Whoever starts the evidence certain materials are placed before the tribunal, be that tribunal executive or judicial. I am not dealing with that at the moment. A certain amount of material is placed before the tribunal. Then the tribunal has to weigh which side's story is to be accepted. Now, that is the second connotation of burden of proof. One set of facts may dispose of another set of facts. There is a constant shifting of the burden. Then ultimately, if certain matters remain unexplained, the party whose duty it was to explain has failed to discharge the onus. Onus or burden of proof has thus got two meanings, the first and primary meaning is leading evidence in the first instance, and the second refers to weighing the

[Sir Brojendra Mitter.]

whole evidence. Now, in this case, when an aggrieved press goes before the High Court, no question of leading evidence arises because the High Court takes into consideration all the materials before it. On weighing the whole material the High Court will decide whether the executive has established its case or whether the accused has established that it is protected by one of the Explanations. There is no practical difficulty when the matter goes before the High Court. All the material will be there and the High Court will see whether an Explanation applies to the particular case or not, or whether the executive has made out a case for taking action.

The last point which the Honourable Mr. Kalikar made was, "How can the Local Government know what is going on in a State?"

12 NOON. Sir, it is the business of the Local Government to know it. These things happen on the borders in the adjoining districts and no magistrate of a district adjoining a State would be fit to hold his position unless he knew what was going on in his own district and what was going on across the border. Therefore, a Local Government through the magistrate would be in a much better position to know the actual conditions of things than the Government of India hundreds of miles away. Although the princes are under the Government of India, knowledge of local conditions is available to the district magistrate much more readily than to the Secretariat at Simla or Delhi. Sir, Honourable Members should fully appreciate the scope of the clause. It is nothing but extending the protection which we in British India enjoy at the present moment to the administrations of the States; the press will be, if anything, in a slightly better position with regard to the States than it is with regard to British India by reason of the additional Explanation in this measure. I submit that this is a salutary provision and the House ought to accept it.

Sir, before I sit down I want to say one word about the constant reiteration of the statement, "Oh, public opinion is against the Bill". Sir, whoever stands up to speak asserts that he is public opinion. What is public opinion? Is Congress opinion the only opinion in this country? Is not there any other opinion in this country? The Congress press takes one view. But there is also a non-Congress press; there is the European press. There are so many different public opinions in this country, but every time Members opposing a Government measure stand up, they say, "Public opinion is against it". Which public opinion? Congress does not exhaust public opinion in this country. Mr. Gandhi does not exhaust public opinion in this country. There are other opinions also. The Government have to consider the realities of the situation. If the realities of the situation require that a particular protection should be given to friendly Indian States, it is immaterial whether a particular section of public opinion is opposed to it or in favour of it. This House is to consider not what this journal or that journal says, but it has to consider the matter on its merits. If Government make out a case that Indian States need protection against vilification in the reptile press, then this House ought without hesitation to give that protection to the States. If, on the other hand, this House be of opinion that the Indian States do not need protection, then by all means reject the Bill. My submission is this, that we have made out a case that the vilification of the administrations of States has been going on in such a scandalous manner that protection is needed, not only for the peace and tranquillity of the States themselves but for the peace and tranquillity of British India, and I submit that this House should have no hesitation in accepting this clause.

**THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA :** Sir, if I am intervening in the debate it is not to repeat the arguments that have been advanced by my colleagues here but because of one or two novel propositions that have been made by my friend the Law Member. I will take his last point first, that is, "What is public opinion?" We here are not to be guided by the press but have to form our own opinion. Sir, we have come here to represent our constituencies and we have to find out what is their opinion and give vent to it in the House. That is the opinion we express here and I think it must be given its proper value and treated with respect at the hands of Government. Then, Sir, we have placed the opinions of Government officials, the trusted servants of Government who are known as the steel frame of the Government of India. Those officials, not one or two but dozens, collectors, commissioners and judicial officers, have given their opinion against this section and have definitely said that it is not required. In view of the opinion expressed by Government officials themselves if the Government is not prepared to give any weight to the opposition by this section of the House merely considering it to be due to the agitation in the press, then I fail to understand what more proof they require. Sir, these opinions have fortunately been circulated to us. If that had not been done we would have been in the dark as to what Government officials thought about this section. With these opinions in our hands in black and white it does not look nice for the Government to say that public opinion is nothing or that we must not value public opinion on this clause.

**THE HONOURABLE SIR BROJENDRA MITTER :** Sir, I think my Honourable friend has misunderstood me. What I said was that there was not only one public opinion in India. Public opinion is divided. Any section of the public may claim to be the public. There are various opinions and we have to choose between them.

**THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA :** Sir, I stand corrected. I think however that whatever is the opinion of even a section of the public if it is supported by officials it ought not to be looked down upon, but ought to have a proper value and receive better consideration at the hands of the Government. Sir, my friend says this is the Congress opinion, but he is mistaken there as it is not the Congress opinion; it is the opinion of Government officials themselves that this section is not required under present circumstances.

Then, Sir, my friend has said that the object of this Bill is not to protect the individual acts of the princes but their administrations. I would like to ask my Honourable friend how many States have got a regular administration in the sense that he means. More than 50 per cent. of rulers are themselves the administration. Their word is law; whatever they say is a *firman* and has the force of law. They do what in other States is done through legislative and executive bodies. So, Sir, how are we free to criticise the actions of princes who are themselves the administration, who are themselves their own legislative or executive councils or whatever may be the constitutional equivalent in other States? Under this Act we shall be deemed to be criticising the administration of the State and not the prince. Had there been any differentiation in this Act between those States which have established popular assemblies and those who have not, it would have been more proper for my friend the Law Member to say so. Sir, I would submit that this clause itself is a misfit here in the Bill. The clause is only an amplification of section 4 of the Indian Press (Emergency Powers) Act, 1931, as amended by the

[Rai Bahadur Lala Mathura Prasad Mehrotra.]

Criminal Law Amendment Act, 1932. The object of this clause is to amend that section and it would have been in the fitness of things if the Government had chosen to bring an amending Bill to the Indian Press Act of 1932 and not introduced this amendment in the States Protection Act. Then, Sir, my last objection to this clause is that I quite see the force of the argument of my friend that Explanation 5 has been added and this softens a little the stiffness of the clause; but as has been pointed out by my friend Mr. Kalikar, even statements of facts can be interpreted in any way. For example, we here occupy the Opposition benches and criticise the acts of the Government. Our object is *bonâ fide*. We want to bring to the notice of the Government the other side of the picture so that when they choose to decide they must not be in the dark and must weigh matters before coming to conclusions. That is our object. This object of ours can be misinterpreted; it might be said that we are obstructing and we do not want the Government to pull on properly. That can be taken in that light. However simple the criticism might be, it could be put in another garb and that is not very difficult. The Explanation says :

“ Statements of fact made without malicious intention and without attempting to excite hatred . . . ”.

Sir, any simple thing can be treated in that light. The Explanation does certainly improve the section, but it does not solve the problem which we have put before the Government, and therefore, Sir, we are not in a position to support this section.

THE HONOURABLE MR. HOSSAIN IMAM : Sir, I shall first commence with dealing with the two points which the Honourable the Law Member has raised. The last point was, “ What is public opinion and what should guide us ? ” I will present him with the facts to show what is public opinion and what we ought to rely upon. I come from Bihar and Orissa and therefore I shall deal with that province. Here are six opinions of non-official associations which have been given to us in this paper. All of them are unanimous in saying that this is an encroachment on our rights and that it should not form part of the Bill. This is public opinion.

THE HONOURABLE THE PRESIDENT : You do not contend that the Government of India is bound to accept that ?

THE HONOURABLE MR. HOSSAIN IMAM : The Government of India, Sir, is an irresponsible Government which is bound to accept nothing ; it can override us ; but that is no reason why we should be bound by their irresponsible attitude. The Central Provinces, Sir, have sent us three opinions from non-officials. They also are unanimously opposed to this measure. And what is more, the Leader of the Independents, who very rarely if ever finds fault with the Government, he also could not bring himself to support this clause. Then even the nominated Members, who are here on the suffrage of the Treasury benches and whom I must admire for ever representing the views of their constituents, even they could not bring themselves to support this measure. All this is due to the strength of public opinion in the country. Even the Government officials, whose opinions form part of these papers, have gauged public opinion and have said that public opinion is like this. I am quoting from the opinion of the Deputy Commissioner of Nagpur :

“ It will be seen that the non-official opinion consulted is frightened that the effect of the Bill will be to stifle *bonâ fide* criticism of the undoubted abuses that disfigure the administration of some Indian States ”.



This is public opinion. The whole country is unanimously against this measure —

**THE HONOURABLE THE PRESIDENT:** I am afraid the contention of the Honourable the Law Member has not been understood by Honourable Members on this side. All that he pointed out was that you could not call a particular section of opinion as public opinion. There may be half a dozen sections of public opinions. Probably your public opinion is your own constituency's opinion. My public opinion may be the opinions of the papers which I read. Public opinion is different. All that he emphasized is that there may be divergent public opinions. You can not call any particular set of opinion public opinion.

**THE HONOURABLE MR. HOSSAIN IMAM:** We should like to have a criterion on which to judge. How to find out what is the public opinion, if such unanimous opinion cannot be regarded as established opinion. The Honourable the Law Member has not cited one public opinion to say that this measure is acceptable. The Home Member told us that the princes wanted this measure. He did not take us into his confidence. He did not lay any papers to show that they have demanded it; and up to now neither in the other place nor here, have we been given anything to substantiate that statement, which is nothing but an empty assertion.

**THE HONOURABLE MR. M. G. HALLETT:** Does the Honourable Member imply that the Honourable the Home Member made an incorrect statement?

**THE HONOURABLE MR. HOSSAIN IMAM:** In the course of his reply yesterday he said that unofficially the States were wanting this sort of protection.

**THE HONOURABLE MR. M. G. HALLETT:** May I ask whether the Honourable Member is implying that the statement is incorrect?

**THE HONOURABLE MR. HOSSAIN IMAM:** I do not say it is incorrect. He has not substantiated the statement. He has not taken us into his confidence. We ought to have been convinced. Why this hole and corner business?

Now, Sir, I come to the legal propositions which have been so ably propounded by the Honourable the Law Member. He wanted to convince us that our objection that the onus of proof has been shifted from the prosecution to the defence is not substantiated. He tried to tell us that in criminal prosecutions the onus of proof is judged by the fact who will lose if no evidence is adduced. Here, Sir, on the materials before us we have come to the conclusion that the onus has been heavily shifted towards the defence. What is the position? The Local Government comes to a decision that a press has done a certain thing and therefore it is punished by forfeiture of security. Now, on that *prima facie* conclusion the Local Government does a certain act. Now the newspaper-wallah has got to appeal to the High Court and prove that the conclusion which the Local Government came to was incorrect. That is proving a negative and we all know how difficult, almost impossible it is to prove a negative. If the Law Member had gone further and dealt with the laws of libel and slander, he would have found that there even truth is no defence.

**THE HONOURABLE SIR DAVID DEVADOSS :** The greater the truth, the greater the slander.

**THE HONOURABLE MR. HOSSAIN IMAM :** The greater the truth, the greater the slander, a High Court Judge remarks. Sir, the slanders will be covered to a great deal by the Bill before us. Therefore, the very facts that I could have said in my defence will enhance my liability. The fact has also been lost sight of that invariably in Press Acts, the High Courts have given dictums which are obnoxious to the executive authorities. I refer particularly to the Madras High Court case in which an Honourable Member of the other House while acting as Chief Justice of the Madras High Court made a famous ruling. That ruling and the ruling of Chief Justice Jenkins are the two things on which we rely more than on the statements of the Treasury benches. Judicial officers have told us that all the laws that you have made and all the safeguards that you have provided are mere eyewash. They do not strengthen the hands of the judiciary. They simply strengthen the hands of the executive and make a plaything of this august body. It is for this reason that we are opposed to this measure.

Then, Sir, there was another element—the fact that in India all the administration has got a legal basis. When I am attacking a person in British India, I know by the rules and regulations whether he comes under the category of the protected administration or not. In the Indian States there is no law. The sweet will of the prince is a law unto itself. And therefore one never knows who forms part of the administration and who does not. Ignorance of law is no defence, but where there exists no law, ignorance is and ought to be a defence and therefore I say, Sir, that we are passing a law to allow unlawful things to be done.

**THE HONOURABLE SIR DAVID DEVADOSS (Nominated Indian Christians) :** Sir, the question is whether this section is needed or not. Unfortunately, if I may say so without offending anybody, a number of side issues has been raised. As regards public opinion, I may quote what Bishop Warburton said once in the House of Lords :

“Orthodoxy is my doxy, and heterodoxy is another man's doxy !”

When a certain opinion coincides with ours we say public opinion is on our side, and when it does not, we say there is no public opinion. The question, Sir, is simply this, whether the Government is bound to protect neighbouring Indian States from mischievous activities within our borders. Sir, unnecessarily, if I may say so, those who spoke about this Bill brought in the question of Federation and other things. Federation, or no Federation, it is the duty of our Government to see that mischievous activities are not promoted within our borders to cause trouble in the Indian States. Now, recently, at least within the last few years, a number of newspapers have been indulging in very vile attacks upon princes and their administrations. It is our duty to see that this sort of vilification is not continued and that such vilification is not promoted from inside, and this section is intended to prevent such mischief in British India. The section, Sir, is carefully worded. The Indian Press (Emergency Powers) Act as amended by the Criminal Law Amendment Act should be interpreted in certain ways—I need not read it all. Then it goes on—

“or to bring into hatred or contempt or to excite disaffection towards the Administration established in any State in India”.

The word "administration", as the learned Law Member explained, is a well-known expression. It does not mean a chowkidar or a sub-inspector or anybody. It means the Government of the State. If a paper abuses a chowkidar or even a higher official, that does not mean the administration is attacked. The administration if attacked must be protected and therefore I think, Sir, that the criticism that the word is not defined and may mean anything cannot hold water. In order to make matters clear Explanation 5 has been added. Explanation 5 in my view, Sir, is a sufficient guarantee and safeguard against a misuse of the section. It says :

"Statements of fact made without malicious intention and without attempting to excite hatred, contempt or disaffection".

Here the words are "malicious intention"—it is not merely the intention but it must be malicious intention. If a mere statement of fact is made it cannot be said by anybody that there is a malicious intention behind it but the context may show that there is an intention behind it. We must understand these things as reasonable men and we hope that the Government when it considers whether a certain paper has or has not contravened the provisions of the section, it will act as reasonable men. When we say "Government" we do not mean any unsubstantial body but a body of reasonable men, men with a good deal of common-sense and a sense of responsibility, not only towards themselves but towards administration as a whole. We may take it that they will not act hastily. Therefore, we may assume that the words "malicious intention" go a long way towards mitigating the rigour if any of this section. In this connection, I may quote certain incidents which occurred some time ago. Some years ago it was thought that a young member of the Bar or a practitioner had the ear of the judge and so was getting a lot of work. Some paper wanted to stop this. From day to day it recorded the cases in which this practitioner appeared. Case No. so and so, X appeared for the plaintiff. Case No. so and so, X appeared for the defendant. It gave a long list of cases in which this same junior practitioner appeared before a particular judge. It went on for a short time and its object was achieved. I will give another instance. Many years ago when the right of interpellation was given to the Members of the Legislative Councils a question was asked as to how many relations a particular *sharishtedar* had in his department. The Government could not very well give a satisfactory reply but the paper published a list of his relations and made out within a short time that there were 250 of his relations serving in his department. And I believe the Government took action. So then, Sir, mere statements of facts in order to get relief would achieve their object provided you do not import into it any malicious intention.

Supposing a paper publishes tomorrow a statement that such-and-such a prince went to England. That is a fact. He took with him Rs. 5 crores. That may be a fact. There is no malicious intention. The revenue of the prince is only Rs. 2 crores. That is a fact. Would not the Government see that things are improved? If you confine yourself to facts, I think no paper could be proceeded against. This explanation, therefore, gives plenty of scope to people who want to benefit the subjects of the States by bringing forward facts. Of course, such facts as a man committed adultery. That cannot be right. As I said, the greater the truth, the greater the libel. That is not for improving the administration of the country. If a paper publishes that a prince is guilty of murder, and if it can be proved, and if it is the truth, certainly the Political Department of the Government would take notice of it. Not only this explanation, but there are other safeguards in this Bill.

[ Sir David Devadoss.]

There is an application lying to the High Court. Some Honourable Members said this provides only for revision. I have been reading this carefully and I find that it is an application under this section. When an application under this section is made, the High Court will not confine itself to mere questions of law. In a case of revision, as is well known, the High Court does not go as a rule into questions of fact. It only deals with questions of law unless there has been gross miscarriage of justice in which case the High Court is not prevented from going into questions of fact. So, when an application is made to the High Court, all the facts could be placed before the High Court. Government can be called upon to show why it took a certain kind of action against a certain newspaper. Government will have to place all the cards on the table. Then, the newspaper or the editor will be able to show that the facts are not as represented by the Government. I fail to see how the onus is upon the defendant and not upon the Government. As the Honourable the Law Member has said, the High Court will have to weigh both sides of the question properly. No doubt, the application will have to be made by the person against whom the order has been passed but the moment the High Court takes up the case, they will ask Government, "What have you got to say?" The Government will say, "This man has done these things," and the man will say, "No, I have not." If they are facts, and they are disputed, no doubt the burden of proof will be upon him. A man who makes an assertion is bound to prove it. If a man says that so and so has done such and such a thing, and if the Government choose to deny it—Government will not easily deny it, because it can be easily proved—he will be asked to prove it. Then the High Court will ask the Government to show what malicious intention there is. That is a second safeguard. The third safeguard is that no Court shall take cognizance of any offence punishable under section 2 unless upon complaint under clause 7. The Government will not act hastily or ill-advisedly or without proper care and caution. So, considering that we have got these safeguards, I do not think that this clause is too rigorous or is a clause which is unnecessary. As I said, the only question is whether this is necessary or unnecessary? If the Government have got sufficient materials before it to show that there are a number of papers who have been vilifying and creating trouble in Indian States, then it is the duty of the Government to come forward with a Bill like this. It is not a question of public opinion. Public opinion, as the Honourable the Law Member said, may be this way or that way. Public opinion in one province may be different to public opinion in another province. Government will have to consider no doubt the public opinion. I do not say that Government should ignore all public opinion. No. But if the great mass of opinion is against a certain measure, then Government ought to hesitate before passing that measure. But where in a case like this, public opinion may be divided, Government is entitled—

**THE HONOURABLE MR. HOSSAIN IMAM :** Is it divided ?

**THE HONOURABLE SIR DAVID DEVADOSS :** I think so.

**THE HONOURABLE MR. HOSSAIN IMAM :** What is the proof ?

**THE HONOURABLE SIR DAVID DEVADOSS :** I am not called upon to prove it. Public opinion is either way. Government opinion also is entitled to weight. It is clear from the speeches made that they have got enough materials. You may trust them. We should not say that all that the Government

does is wrong. That will be a wrong attitude to take. Nor should we implicitly accept everything. I do not say that either. Let us judge between the two. When the Government say that they have got materials about all the trouble that is brewing, and that they know for a fact that trouble has cropped up in so many places—we should accept their statement. Of course even other people know that.

THE HONOURABLE MR. HOSSAIN IMAM : Was it proved ?

THE HONOURABLE SIR DAVID DEVADOSS : They feel that a measure like this ought to be enacted. All the other questions are beside the point. With regard to the onus of proof there is a difference between onus of proof in civil cases and that in criminal cases. In a criminal case, it is the duty of the prosecution to prove without any reasonable doubt that the accused is guilty. If it proves a *prima facie* case and if the accused pleads any of the exceptions, then it is his duty to prove the exception. But I do not see how under this provision the onus is on the defendant. No doubt, if he relies on facts, if he says that they are facts, and if Government denies it, then the High Court will call upon him to prove his facts, because it is denied on the other side. That being so, Sir, I do not see any objection to our passing this clause as it stands. I strongly support the Motion.

THE HONOURABLE MR. G. S. KHAPARDE (Berar Representative): Sir, I do not wish to prolong this discussion or to take up much of the time of the Council. A great deal has been said. What I wish to point out is that this legislation is a sequence, and that sequence has not yet been pointed out here. When the British Government took over the Government, they first put down dacoities, then they put down rebellion, then they put down various other kinds of crime, that were general in the country, and now they have come to the last crime which is very general in the country, and that crime is very difficult to detect and almost impossible to punish. And that crime is this, that in India as has been well observed the climate is such that it never permits two or more persons to act together. They will always fight with each other. That is our hereditary right. Wherever five sit together to discuss something each is his own master and is not guided by any other opinion at all. Now, there were dacoits and thugs whom we know got disposed of, but these gentry have been existing and doing their work for a long time and waxing prosperous and never being detected. There is hardly a place in which they are not found and their business it is to see how people can be set by the ears, how a difference of opinion can be created and how best to attach themselves to the person most likely to pay and eventually thus to make a living for themselves. In the villages they get zamindars to fight each other; in the law courts they are known as touts; in other places we know them by different names which are too bad for me to repeat here. Now there is this element working in our country and Government has come to the most difficult part of its job, to deal with these gentry. It is its duty to do so. Unless they deal with this menace successfully Government would never be safe. This gentry—(An Honourable Member: “Do not call them ‘gentry’, say this crowd!”) As I use it I think “gentry” explains itself. Well, these people, what they are doing very successfully now is to attach themselves to various places and when a prince gets his powers, they look at him and say, “He has his powers, has he?” Then they begin and write something wrong about him in a tup’penny ha’penny paper, and if he takes no notice they write something longer, and they go on blackguarding him until he takes up the matter. Then they say to him, “Well, if you pay us Rs. 30,000 this will stop,

[ Mr. G. S. Khaparde. ]

but if you do not it will not stop". That is how these gentry make their living. And these gentry are very difficult to approach and they have friends in high quarters, and so one has to speak with very great care about it, and I speak with that care.

A question raised here today was, "What is public opinion?" I say that after hearing the speeches made here when the Clerk of the Council counts the opinions then the opinion of the majority is public opinion and no other opinion counts at all. That is how I put it. In the case of a judge, there are learned counsel and attorneys and witnesses all of whom give their opinion, but the judge considers all these together and arrives at an opinion and that is the public opinion of the court and there is no other opinion. And here each has his own public opinion, but when we have done speaking and the Clerk of the Table counts up the opinions the result he arrives at is the only public opinion, and Government is quite right to come and seek public opinion here. They sought it elsewhere and they got it, and they have also come here and they will get it; and then it will be laid before the Viceroy and he will read all this and finally whatever he decides, that is the public opinion of the whole of India. So it is a very plain affair of counting of opinions and the opinion of the majority is public opinion. It is a simple proposition.

The next point which is of greater importance from my point of view is with regard to these sections and their exceptions and their explanations which are before us here. I say it is not necessary and not wise to bring them because these gentry that we are dealing with are familiar with all the sections and their exceptions and explanations and everything else, and they can generally so manage as to avoid all these snares laid for them. These people are like eels, they escape through the smallest opening possible. It has been very difficult for anybody to contrive a law that will stop all their tricks and ways of living. In fact, it is not possible to anticipate what they will do. In the case of this press law for instance, how easily they got over it. With great difficulty and trouble it was passed and these people got over it very easily by putting in dummy editors. The clever man sits behind and a dummy is put forward, and when you go to prosecute you have to prosecute the dummy, and the dummy is defended by the best lawyers. And even if after all the dummy is convicted it only means that one seven rupee man goes away and another comes in, and so it goes on. So you see how difficult it is to deal with these gentry. So far as I can see the advance sought to be made by Government is very great. It may not be perfect. Nothing in this world is perfect. If everything was perfect we need not sit here from day to day. But there are many things which require to be attended to and to be added to and put right. And so we sit here every day. And even if there are any defects in this legislation then those that come after us here will cure them. For the present it is an attempt and an attempt very carefully made to deal with the situation, and the fight has been carried on with great determination and great courage. It does require a great deal of courage particularly from people who are rather shaky in their seats and would like to have support for the next election. These gentry are very difficult to deal with and I shall be very glad if this law is passed because it is a step forward.

\* THE HONOURABLE MR. B. J. GLANCY (Political Secretary) : Sir, I hardly think I need repeat over again what the Honourable Law Member and the Honourable Home Member have said, that as far as the responsible press is concerned there is no cause for alarm. It has again been made abundantly plain by the Honourable Home Member that there is no intention

whatsoever of stifling legitimate criticism and there need be no anxiety on that behalf.

But against the irresponsible or sensational or piratical section of the press there are two main charges as regards their dealings with Indian States which make early action necessary. The first of these main charges is, not to put too fine a point on it, that they indulge in habitual blackmail and so they disturb the neighbourly relations which ought to prevail between British India and the States. Editors of irresponsible papers naturally are far more interested in their own profits than in the cause of State subjects which they profess to espouse. They respond less readily to the cry of the State subject than to the rustling of a currency note. Honourable Members of this House will probably have received from certain interested parties a series of rather pathetic leaflets which represent that if this Bill is passed into law it will become a matter of great difficulty for the sensational press to defend the subjects of an Indian State. That suggestion might be correct if we made one trifling amendment, if we substituted the word "exploit" for the word "defend". At present exploitation goes on wholesale and I sincerely hope that if and when this Bill does become law it will be a matter of great difficulty for these papers to exploit the subjects of Indian States. In an Indian State as elsewhere, if anybody has a genuine grievance, obviously he ought to go in the first instance to the authority directly concerned, and it is certainly true that in an Indian State where personal rule prevails it is easier for the subject to get direct access to the highest authority, that is to say the ruler, than would normally be the case in British India. If the subject of an Indian State wants to appeal to the irresponsible press, he need only do so with any hope of success if there is money in the proposition. It does not follow that because these papers are willing and ready to bleed the rulers of Indian States that they are unwilling to bleed the State subjects. It seems to me that the editors and proprietors of irresponsible papers deserve no particular sympathy and no great credit, except perhaps for the ingenuity they have shown in taking part in the invention of a new industry. From time to time new industries have been invented. A century or two ago certain people invented an industry which came to be known by the name of "body snatching". It consisted in digging out bodies from their graves and selling them to the hospitals for purposes of dissection. It brought in a very handsome return, I believe, while it lasted, but it was not a very savoury or respectable occupation and nobody except those who were personally interested in it felt any great regret when it was suppressed. Now, in more recent times certain people have invented a more or less similar industry. It consists in digging out skeletons from the cupboards of Indian States and selling them to the predatory press for purposes of dissection. This also has brought in quite a handsome income while it has been allowed to continue, but it is not a very clean or commendable occupation and nobody, except those who are personally interested in this industry, need feel any great regret when it is brought to an end.

One argument that has been adduced against clause 3—the press section of this Bill—is that State administrations themselves are to blame because they encourage the blackmailing press by handing out money to them. No doubt in theory that is correct, but we will be able to appreciate the position more accurately if we try to put ourselves in the place of the Administrator of an Indian State. The Administrator may often be hard put to it if in the midst of his troubles he gets a letter from an unscrupulous editor saying,

"I have received some disquieting information about your State. I am not 'satisfied' about it, and I think I shall have to produce an article in my paper. But before I do so, you might like to give me a personal interview and in the course of that interview you may be able to 'satisfy' me".

[ Mr. B. J. Glancy. ]

Can we blame the Administrator if sometimes in his distraction he goes against his better judgment and proceeds to "satisfy" the editor in the way that he expects?

Another argument that has been brought forward is that if the administrations of States were free from blame they would have nothing to conceal and nothing to fear, and so they should not object to the attacks of blackmailing papers. That argument might suitably be engraved on the flyleaf of the Blackmailer's Bible. It provides a condonation for every instance of this most obscene and contemptible form of crime, blackmail. No one can pretend that all Indian State administrations are blameless. But how many people are there in the whole world who would like every little incident of their past careers to be flashed on to the screen with an appropriate comment? I think if I asked that question even in a nunnery, the show of hands would be exactly nil. There is an old saying that mud sticks whoever throws it. Let us therefore discourage the unscrupulous press from throwing mud either at Indian States or at anyone else.

Another argument that has been brought forward is that the existing law is sufficient in itself and that therefore this piece of legislation is superfluous. That argument has, I think, already been sufficiently dealt with by the Honourable the Home Member and the Honourable Mr. Hallett, and I do not think I need say very much about it. There are two obvious reasons why the existing Princes Protection Act has proved ineffective. The first of those reasons is that a prosecution has the effect of broadcasting and advertising the very attack which it is sought to suppress, and the second reason is, as has been explained, that proceedings are apt to take an inordinate time. I do not think that I need say anything more about this particular charge against the irresponsible press, that is to say, its tendency to blackmail, in order to show that in the name of decency it is high time that action was taken.

The second main charge against the irresponsible or sensational press in its relations with Indian States is this, that it tends to fan the flame of communal hatred throughout the country. This, in my opinion, is a far more serious charge. But it is very well known and I do not think I need waste the time of the House by saying very much about it. Everyone will have noticed that when there is trouble or the rumour of trouble in an Indian State, the sensational press at once gets to work on communal lines. Each newspaper that professes to represent one particular community proceeds to revile and abuse the rival community and proceeds to profane everything that that community holds sacred. Not only do the newspapers embarrass the Government of the particular State immediately concerned, but they spread the poison of communal ill-feeling abroad through the land; they do their best to destroy all prospects of a united India. I do not think that I need appeal in vain to anyone who calls himself a nationalist in the true sense of the word when

1 P.M.

I say that in the name of India these activities should be brought to an end.

Sir, for these reasons I submit that clause 3 should stand.

THE HONOURABLE THE PRESIDENT: The Question is:

"That clause 3 stand part of the Bill."



The Council divided :

AYES—31.

Akbar Khan, The Honourable Major Nawab Sir Mahomed.	Mehr Shah, The Honourable Nawab Sahib-zada Sir Sayad Mohamad.
Charanjit Singh, The Honourable Raja.	Menon, The Honourable Diwan Bahadur Sir K. Ramunni.
Chetti, The Honourable Diwan Bahadur G. Narayanaswami.	Mitchell, The Honourable Mr. D. G.
Choksy, The Honourable Khan Bahadur Dr. Sir Nasarvanji.	Muhammad Hussain, The Honourable Mian Ali Baksh.
Crosthwaite, The Honourable Mr. H. S.	Noon, The Honourable Nawab Malik Mohammad Hayat Khan.
Devadoss, The Honourable Sir David.	Padshah Sahib Bahadur, The Honourable Saiyed Mohamed.
Fazl-i-Husain, The Honourable Khan Bahadur Mian Sir.	Parsons, The Honourable Sir Alan.
Ghosal, The Honourable Mr. Jyotsnanath.	Ray, The Honourable Maharaja Jagadish Nath, of Dinajpur.
Glancy, The Honourable Mr. B. J.	Raza Ali, The Honourable Saiyid.
Habibullah, The Honourable Nawab Khwaja.	Russell, The Honourable Sir Guthrie.
Hafeez, The Honourable Khan Bahadur Syed Abdul.	Souter, The Honourable Mr. C. A.
Hallett, The Honourable Mr. M. G.	Spence, The Honourable Mr. G. H.
Jalan, The Honourable Rai Bahadur Radha Krishna.	Stewart, The Honourable Mr. T. A.
Kameshwar Singh of Darbhanga, The Honourable Maharajadhiraja Sir.	Suhrawardy, The Honourable Mr. Mahmood.
Khaparde, The Honourable Mr. G. S.	Ugra, The Honourable Rai Sahib Pandit Gokaran Nath.
	Varma, The Honourable Mr. Sidheshwari Prasad.

NOES—6.

Banerjee, The Honourable Mr. Jagadish Chandra.	Kalikar, The Honourable Mr. Vinayak Vithal.
Hossain Imam, The Honourable Mr.	Mehrotra, The Honourable Rai Bahadur Lala Mathura Prasad.
Jagdish Prasad, The Honourable Rai Bahadur Lala.	Ram Saran Das, The Honourable Rai Bahadur Lala.

The Motion was adopted.

The Council then adjourned for Lunch till Half Past Two of the Clock.

The Council re-assembled after Lunch at Half Past Two of the Clock, the Honourable the President in the Chair.

Clauses 4 to 7 were added to the Bill.

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, as passed by the Legislative Assembly, be passed ”.

In view of the discussion which we have had on the second reading I do not think it is necessary at this stage for me to say anything more.

THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA : Sir, I regret I cannot congratulate the Government on their bringing forward this measure at this time. The House will remember that a similar Act was put before the Legislature in 1922 for the protection of the princes. That Bill was rejected by the then Assembly and was certified by His Excellency the Governor General. Sir, Government has perhaps taken advantage of the present Assembly and thought it proper to bring in a measure in a more bitter form than before and they have carried it as desired by them in the other House. Since the last occasion, Sir, only one important change has occurred, and that is, the leading of *jathas* into some of the States from British India.

THE HONOURABLE SAIYID RAZA ALI : Also attacks on the ruling princes in the Press.

THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA : My friend says, "Also attacks on the ruling princes in the press." I think this was being done then also, and therefore the Bill was brought before the Assembly in 1922. Yesterday, when my friend the Honourable Mr. Raza Ali was speaking, he said that a change had come, and he then referred to the leading of *jathas* from British India to the Indian States. So, Sir, I think that is the only important change that has occurred which has perhaps prompted Government to bring in this Bill. Since then we find that the non-co-operation movement has been withdrawn by its originator, Mahatma Gandhi. And if those *jathas* arose out of that movement I hope there is no immediate fear on that ground now. Therefore I am of opinion that it would have been in the fitness of things if such a Bill could have been brought after the creation of the Federation, because the princes and their representatives would then have been sitting in the House and the charges of maladministration levelled against them could have been defended by them. We would also have been in a position to bring forward specific acts of maladministration in the States in this Legislature. As I pointed out yesterday, we are at present precluded from putting any question or moving a Resolution relative to the States' administration. It would therefore have been more proper to bring up this measure after the introduction of the reforms. For the next two or three years we could have gone on as we have been doing. As I have pointed out yesterday, the Government has vast powers under sections 121A and 144 of the Criminal Procedure Code. By the use of those sections Government could have checked any activities in British India which they thought to be against the administrations of the princes. Sir, we were glad to hear the Honourable Home Member, whom we are missing today, remarks yesterday that Government admitted their responsibility for maintaining good government in the Indian States. I would suggest, however, that the responsibility for maintaining good government in the States does not only mean the protection of the princes but also of their subjects. Government should see also that the rights of the people are protected and I hope the Government will do their best to see to that.

Yesterday, the Law Member, when interrupting one of the speakers on this side, said that the press will enjoy the same privileges in regard to Indian States as it does with regard to British India. I hope that this clause, over which we have fought this morning and lost, will be used in accordance with the statement made by the Law Member and that the Government will see to it that the press is not unnecessarily muzzled when it attempts to make statements of facts about the chiefs. I can only hope that the promises and statements made on behalf of Government in this House will be given effect to and will not remain as so many scraps of paper to be thrown into the wastepaper basket.

There is another important point relevant to the statement of the Home Member that he will see that the administration of the States is conducted properly and it is this. We know that 60 or 70 per cent. of the States have no popular assemblies through which their subjects can ventilate their grievances and I hope that Government will do their utmost to see that such assemblies are established in all States to enable the people to give expression to their feelings and grievances as we in British India are doing in all the Legislatures. I cannot see how the Government is going to protect the administration of the States where there are no such assemblies and government is carried on by *firman*s or edicts of the ruler.

Then I will refer to section 4 of this Bill which gives too much power to magistrates in British India. I can only hope that this power will be exercised properly and in rare cases. We know how sometimes cases are dealt with. The princes who have tons of money can spend what they like to meet their object. We have heard how some papers have been bribed in one way or another and we are only afraid that similar attempts may be made in the case of magistrates in order that a prince may achieve his object. I therefore request the Government to see that this section is exercised properly.

Under section 3 of the Bill these cases will be dealt with by magistrates instead of judicial officers.

**THE HONOURABLE SAIYID RAZA ALI:** That is not so in clause 3. That is only with regard to clauses 4 and 5, which contemplate something very different.

**THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA:** I am speaking about the press, cases with regard to which were dealt with by judicial officers and now will be dealt with by executive officers in the first instance.

Sir, with these observations I will close my remarks, and I regret I cannot extend my support to the Bill.

**THE HONOURABLE MR. VINAYAK VITHAL KALIKAR:** Sir, a suggestion was made yesterday while demanding our support to this Bill that we as good neighbours must provide some measure for the protection of our neighbours. I quite agree with that position of my Honourable friend Mr. Hallett but I have a right also and it is this that if my neighbour wants to burn his house, I must prevail upon him and see that he does not destroy it. It has been said this morning that the provisions of this Bill do not come in the way of attacks on Indian princes, but the provisions of this Bill will be applied to those attacks—malicious attacks against administrations in those Indian States. I may submit, Sir, that in the majority of cases there is a very thin line of demarcation between a ruler and his administration. There is no such thing in many of the States as a ruler independent of his administration. It is a thing we are enjoying in British India and not in the Indian States. So whatever provisions you might have made in this Bill, it is likely to come in the way of fair and legitimate criticism against the rulers and princes. Then, Sir, we have been told by several speakers and the supporters of the Bill that this Bill is intended to stop blackmailing. I am with them if it is really intended to stop blackmailing, but I am afraid that instead of stopping blackmailing, it will create more mischief and it will help the rulers of the Indian States in perpetuating one man's rule—despotic rule. I quite admit that there may be a few instances where blackmailing may be going on, but

[Mr. Vinayak Vithal Kalikar.]

at the same time I have to submit that the rulers are to some extent responsible for this blackmailing. A few years ago, if I remember aright, I read in the papers—I do not exactly remember the name of the gentleman now—in England a very vile attack, a malicious attack, was made on His Majesty the King-Emperor and His Majesty did not like to take advantage of his position as a Sovereign; he offered to vindicate his character as a private individual and his character was vindicated. I quote this example of our Gracious Majesty before the rulers of Indian States. They ought to follow this example and lay themselves before the public for fair criticism and clear their own character. If these princes had not taken to this despicable task of bribing the journalists in India, no such trouble would have arisen. I hold them responsible to a very great extent. In the Lower House, Sir, an incident was cited by a very responsible Member, Mr. N. M. Joshi, who is intimately connected with a press in Poona. He stated that in his paper there appeared some criticism against a prince and the prince in order to avoid further criticism sent him a cheque, which he returned with thanks. He cited that incident in his speech in the Assembly. So this is the way we are going on. I am afraid that if we really want to stop blackmailing, if we really desire there ought not to be misrule and maladministration in these Indian States, we must also come to the help of the subjects of the States by introducing some measure and then and then only we can be justified in lending our support to this measure. This morning my Honourable friend, the Law Member, said something about public opinion and he referred to Congress opinion and Mahatma Gandhi's opinion. I say that I do not want Government to attach any importance to the Congress opinion and to Mahatma Gandhi's opinion. The opinions that have been supplied to us are not Congress opinions, and as I said, the opinions that have been supplied to us are not of those persons who are interested in the welfare of the subjects of Indian States. They are the opinions of Government servants, whose duty it will be in future to bring this Bill into effect and the majority of them, so far as the press clause is concerned, are against it. I also submit that the opinion of the Indian national press and the opinion of Indian nationalists is also against this provision. I admit there might be some opinion in favour of it, but that opinion is restricted to a particular class which always has to support good or bad measures of the Government. So I submit that the opinions of the various classes, various communities and various people interested in this measure have to be taken into consideration; but it seems that the opinion only of a particular class has been taken into consideration in framing this Bill. Then, Sir, there are provisions in this Bill, for instance clause 5, which are quite analogous to section 144 of the Criminal Procedure Code. My friend the Honourable Rai Bahadur Mathura Prasad Mehrotra, cited instances yesterday, and during my short practice as a pleader at the Nagpur Bar, I may state for the information of this House that I have had to deal with cases where a district magistrate even banned caste dinners. I may submit also—and I am very glad to do so—that the High Court in revision quashed the orders. My point is that you are keeping that very clause, that very section of the Criminal Procedure Code, which has been misused to a very great extent by over-enthusiastic executive officers. So, Sir, except for the portions relating to *jathas* and criminal force (clause 2), I am afraid I cannot give my support to this Bill. I must take this opportunity of thanking publicly and congratulating those officers of the Government who had the courage, knowing that Government wanted to pass this Bill, to speak out openly and boldly against the Bill and give their unbiassed opinions.

\*THE HONOURABLE MR. HOSSAIN IMAM : Sir, the third reading is not a stage when we can indulge in detailed discussion of a measure. Notwithstanding, it is necessary for me to give some personal explanations. Firstly, Sir, yesterday in concluding the debate on the consideration stage the Honourable the Home Member remarked that I was the only person who had opposed the clause concerning the *jatha* movement. I wish to clear the point. My position was based on financial grounds only. I did not say that the sending of *jathas* and the civil disobedience movement is a thing which should have the support of the House or of myself. What I said and what I stick to is that, when we incur expenditure in controlling that movement we should be allowed to discuss it. That was my point. Secondly, I wish to clear the position that when I oppose this Bill in its entirety it is not so much due to the fact that I do not recognize that there are some loopholes which ought to be filled up. I know that. But my position was that these loopholes have existed for centuries. If now we are asked to close them up, we must have a *pari passu* assurance that the other place is also improving. If they are to remain in the position in which they were, and as irresponsible as they used to be, then I aver, Sir, that we should also have the right to malign them. If they improve, we are ready to co-operate and give them every facility for setting their House in order and to safeguard them on that account and for no other reason.

Then, Sir, the position of the Indian States is, in my opinion, amply safeguarded by the Penal Code. Sections 125 and 126, to which our attention was drawn by the Honourable the Law Member, of the Indian Penal Code itself does provide a means whereby the safeguards could be given to the Indian States. It says :

“ To any Asiatic power in alliance or at peace with the King ”.

Well, the major States are, I suppose, such powers. If there was any necessity it might have been defined here and specifically mentioned that Asiatic powers included Indian States, because then we could have penalized all the things which are being penalized now. They would have penalized things which according to international law our Indian princes are entitled to ask for, and to that no sensible man would have taken objection. Sir, the reason why, knowing well that clause 2 was a substitute for 121A, the reason why I drew attention to section 124 was because the quantum of punishment in section 2 and in section 124 are the same and also because of the fact that 121A is a recent addition to our Penal Code called for by political developments in India. Section 124 is one of the original sections of 1860. If there was a necessity in India for introducing section 121A, that necessity was fully substantiated when section 121A was added to the Penal Code. Nothing of the sort was done when section 2 of the Bill was included. I was a bit surprised to find the Honourable Mr. Glancy trying to justify the Indian State administrator who squared up the more reputable section of the press. We are used to hear that the end justifies the means but we never believed that such a theory would be held by the Government benches.

As regards the other sections of the Bill, we have not, as you will find, raised any debate on the other sections. We have only confined ourselves to sections 2 and 3. But there is one strange point in this Bill, Sir. Just as I said yesterday in the course of my remarks that Sir Harry Haig's reply that I must have been ignorant of the happenings in British India during the last three years if I thought that there was no conspiracy in the Indian States, from

---

\*Speech not corrected by the Honourable Member.

[Mr. Hossain Imam.]

that I drew the conclusion, Sir, that the crime which has been penalized in section 2 is the crime which used to be committed during the last three years and that crime is *jatha* and civil disobedience. I was anxiously waiting to be enlightened by either Sir Harry Haig or by the Honourable Mr. Glancy whether this was the intention of the Government. Because, Sir, it seemed to me strange that the whole legal theory has been turned round in this Bill. Section 5 penalizes the same thing as I thought section 2—from which it would appear that if a man contravenes the order of the district magistrate he is liable to six months' imprisonment only whereas if he does the same thing without contravening the district magistrate's order he is liable to seven years. The quantum of punishment is increased fourteen times when he commits the minor offence. It is rather strange to have a punishment of this sort. Therefore, Sir, we would like the Honourable Member to enlighten us as to what exactly the crime is which section 2 is intended to punish.

THE HONOURABLE SAIYID RAZA ALI (United Provinces : Nominated Non-Official) : Sir, a lot has been said about the merits and demerits of the question of public opinion. If I refer to it at all in passing it is with a view to explain partly my own position. I believe, Sir, taking things as they are in this country, public opinion is taken to mean the opinion of the school of thought to which an individual himself belongs, and the minority or microscopic minority opinion represents the opinion of the school of thought to which his adversary belongs. I believe, roughly speaking, that would be the test. In any case, that is how we base our acts in this world, and nobody being quite free from the prejudices which he has developed or cultivated in the course of his life, on the whole that would not be an unfair test. I have put it very crudely perhaps, but I think the test has been fairly expressed.

Sir, I do not think it would be claimed on behalf of the Government that the measure which has been brought forward in this Council is a perfect measure. Having regard to human shortcomings, nothing devised through human agency is perfect. I believe the rough and ready test that should be applied to a scrutiny of the provisions of the present Bill is whether on the whole, having regard to the circumstances, it is a measure which is expected to serve a useful purpose or not. If it is going to do good on the whole, I think the measure is one that should commend itself to the acceptance of the House. On the other hand, if the measure is one whose evil is likely to exceed the amount of good that it might in the future do, that certainly would be an argument in favour of the rejection of the Bill. Having regard to these, Sir, let us see, without going minutely through the provisions of the Bill, whether they are on the whole reasonable and can fairly be expected to serve the purpose for which they are meant. The Act has roughly been divided into three parts. Clauses 2 and 7 go together and are meant to be applied in serious cases where conspiracies are started to overawe by means of criminal force or the show of criminal force the administration of a State. That is the most serious part which is being enacted in the Bill. I may at once point out here that Government have taken the precaution of reserving to themselves under clause 7 the right to launch proceedings. Clause 7 reserves the power to Government to exercise this power or not. In other words, as a condition precedent to the exercise of the power under clause 2 it is discretionary with Government to launch a prosecution or not. That to me is a sufficient safeguard. If we start challenging the *bona fides* of Government I do not think there is much use discussing any proposed legislative measure. Every country, every people, has got to trust its own Government. No doubt

Government is liable to err. Governments as other human institutions, are composed of human beings and are liable to make mistakes. All the same there is no reason to suppose that the Government will not exercise due care and caution to see that the case presented to them is a proper case in which proceedings should be preferred.

The next thing is the provision against certain activities which include the activities of the press. That is enacted in clause 3. Here, the only safeguard that I can detect is that because the power that can be exercised under clause 3 is of a penal nature and not of a nature that can deprive a man of his liberty, Government have reserved to themselves the right to see whether a case has been made out in which the security should be forfeited. No judicial process is to be served, and no court of law is to try the matter. I do not think we can make a grievance of this. If we go back into the history of this question it will appear that at no stage of the case, having regard to the legislation dealing with the rights of the ruling princes, was a court of law brought into the picture. Going back to the Princes Protection Bill of 1922, we find that though it was open in certain cases to the aggrieved prince to go to a court of law, yet, if we go back to a measure that was enacted about twelve years earlier, namely, the Indian Press Act of 1910, we find that there power was reserved to the Government which was empowered to take executive action. So far as the other provisions of this Bill are concerned, they are not to have the effect of law in British India unless a special notification to that effect is made. It clearly means that if it is desired to take steps in any place which borders on British territory, if restlessness obtains and if there is a danger to the public peace, action is to be taken under clauses 4 and 5 but not till a notification to that effect has been made by Government. Having regard to all these things, Sir, my submission is that this Bill should be given a chance. It should be placed on the Statute-book and we should wait and see how the provisions of the Bill work. In fact, in a body like the present House, the tendency always is to examine too closely the provisions of the Bill with an eye to see how they are going to affect the rights of the subject. My submission shortly is that after all, our laws are not like the laws of the Persians and the Medes. They can be changed if they are shown to be defective. But it is impossible to find out what the working of a certain Act would be unless a fair chance is given to it. Expression was given at the time to the view that the placing on the Statute-book of the Princes Protection Act of 1922 would be followed by great hardship and that it would deprive the people of their liberty. Yet we have seen that during the course of ten or twelve years it has been in force, not more than three or four prosecutions have taken place with the result stated by the Honourable Mr. Hallett yesterday.

I may say that I personally attach greater importance to clause 3 of the present Bill than to all the other provisions of the Bill taken together. I gave expression to my views on the subject yesterday. Having regard to the condition in which the subjects of the Indian Princes are placed, I emphasized the need for care and caution. But having done that and having invited the attention of the Government of India to that important point, I must at once point out that unless a stop is placed to the activities of a certain section of the press, which has been termed the irresponsible press, grave consequences are likely to arise. It has been pointed out by the Treasury benches that a measure of this character is necessary not only in the interests of the Indian States but also in the interests of the people of British India. That is a matter to which I earnestly invite the attention of this House. Sir, there is an Indian State which is not far from the place to which I belong. Now, to show the possibilities or potentialities of danger on this point, I may state that only a

[Saiyid Raza Ali.]

few months ago it was advertized that just after the Friday prayers in the Juma Mosque certain resolutions would be passed in connection with measures that had been introduced by a certain neighbouring ruler. The proposed resolutions were not in fact at all complimentary to the ruler and his administration was maliciously attacked. Those responsible for this programme were a party of Mus:ulmans. But another party of Mussulmans, who honestly believed that the measures adopted in the State redounded to the credit of the ruler and promoted the well-being and interest of the subjects of the State, also issued a counter proclamation saying that prayers for the long life and prosperity of the ruler would be offered in the mosque after prayers and if unfounded criticism was made of the actions of the ruler in the mosque the matter would be discussed with a view to refuting the baseless accusations. That, Sir, would have led to very serious trouble but for the timely action taken by the Imam of the Juma Mosque and but for his ruling the district authorities would have had to interfere. His ruling was that a mosque being the house of God could not be used by any party whether friendly or hostile to the State for the purpose of criticizing or approving measures adopted by that State. It could only be used for the purposes of worship. So this is the kind of thing which is very likely to happen if no action is taken to prevent a section of the press from indulging in very serious attacks on the princes, misrepresenting their actions and bringing unfounded charges recklessly and maliciously against them. All this has been done increasingly in late years.

It was asked why a measure of this character was not propounded in 1922 and why it is only now that Government has awakened to the seriousness of the question. I do not really know what the position of the Government is, but so far as I can see the answer is that things which are happening today did not happen in the year 1922. It may be that that is the explanation. It may also be that unemployment is increasing day by day. There are so many universities turning out numbers of graduates every year and those young men can find no employment. Well, it is by no means an uncommon spectacle to see young men starting a paper and beginning to take an interest in some particular Indian State. That is a spectacle I have seen for myself. I believe that unemployment is partly responsible for the sort of career that some of these young men choose ; having nothing better to do, they start a press, bring out a newspaper and devote their attention to some particular Indian State which they imagine can be made as a source of income to them. But even assuming that Government did not do their duty in the year 1922, is that any reason why this House should not do its duty in the year 1934 ?

**THE HONOURABLE MR. HOSSAIN IMAM :** Are the States better or worse than they were in 1922 ?

**THE HONOURABLE SAIYID RAZA ALI :** That is a question which everybody can judge for himself. I think the query had better be addressed to the Treasury benches. On the whole, so far as I am concerned, I believe and hope that the state of affairs is improving, it may be very slowly, day by day. But having regard to the facts which I have set out, I believe that the Government have surely done the right thing in bringing forward a measure of this character.

There is only one more remark I have to make and it is this. Yesterday while my Honourable friend Mr. Hossain Imam was discoursing on the question of concurrent jurisdiction given to the Local Government and the Governor



General in Council, I enquired as to what would happen in the case of the States in Rajputana. I am afraid my point was wholly missed by my Honourable friend. The Honourable Law Member rose to explain the point and I kept silent. I do not know whether my silence was discreet or otherwise. But having regard to Rajputana the point is this. Take the case of an unfortunate State which is the recipient of attentions by the editor of a newspaper conducted at Ajmer. In the scheme of my learned friend, who emphasized that that duty should be performed by the Local Government and not by the Governor General in Council, action against that paper, namely, forfeiture of security or the press, as the case may be would have to be taken by the Chief Commissioner who, let my friend remember, is also the Agent to the Governor General for Rajputana. It may be that this dual capacity will not exist after some time but today the fact is that the Chief Commissioner of Ajmer-Merwara is also the Agent to the Governor General for Rajputana States. I believe my learned friend did not realize the importance of the question. What will happen is this. The papers are put up and the Agent to the Governor General goes through those papers. If he is satisfied that the case is good, as Chief Commissioner he passes an order that the security or the press itself be forfeited. Is that the object of my learned friend? I am sure it is not. That is the reason why I wanted to invite his attention to the important fact that so far as the right of the subject is concerned it is much better that the power should be exercised by the Governor General in Council than in certain cases by Political Officers. In a case which I—

**THE HONOURABLE MR. HOSSAIN IMAM:** I did not contemplate Rajputana. What I said was about the major provinces and not about minor administrations under the Government of India.

**THE HONOURABLE SAIYID RAZA ALI:** I am not concerned with that. I thought the point was of some importance and that I should explain. That on the whole is the position. Holding the views that I do, in spite of the fact that I am not quite free from doubt as to whether the provisions of clause 3 are wholly satisfactory, but having faith in the vigilance, the admirable vigilance, of the Political Department in protecting the rights of the subjects of the States, I see no reason why this House should not give its acceptance to this Bill.

**THE HONOURABLE SAIYED MOHAMED PADSHAH SAHIB BAHADUR (Madras : Muhammadan):** Sir, unlike my Honourable friend Mr. Mehrotra, I hold that the legislation which we are now considering is one which is necessitated by the circumstances in which we find ourselves. I feel that it is necessary in view of the conditions that have developed in the country recently and that the Government have not launched this measure even a day too soon. Sir, Honourable Members are aware of the situation that developed recently in British India in connection with agitation regarding some Indian States. Can we, in spite of that experience, even now persist in maintaining that the necessity for this legislation has not arisen? Even the Deputy Leader of the Progressive Party, the Honourable Mr. Hossain Imam, was forced to admit that there were some loopholes in the law and that there was a need to close those holes; only he objected to those holes being now closed and being closed without a guarantee from the princes being given to the effect that they would do their part of the duty.

**THE HONOURABLE MR. HOSSAIN IMAM:** I am afraid you are allowing them a long rope to hang themselves with.

**THE HONOURABLE SAIYED MOHAMED PADSHAH SAHIB BAHADUR:**

Whatever it might be, my own feeling is that even though I agree with him in thinking that side by side with the duty which the British Government is trying to perform in the interests of the princes it is also necessary that it should also see to it that the interests of the subjects are also equally safeguarded. I only differ in this, that unlike Mr. Hossain Imam, I do not feel that we should abstain from doing our part of the duty until the other people have already performed theirs. I feel that we should try and discharge our part of the obligation in order that we might persuade the other party to perform their part of the obligation. As was observed yesterday, and very rightly too, by my Honourable friend Nawab Hayat Khan Noon, the suzerain power has a dual duty to perform. It is equally under the necessity of affording protection to the subjects in the States from misrule and misgovernment and this counterpart of the duty involves the well being, peace and happiness of millions of human beings who are ruled over by these princes. If I refer to this aspect of the duty, I do not so do with a view to suggest that there has been any neglect of duty in this respect. On the contrary, Sir, I appreciate fully the earnestness with which the Political Department has been trying to protect and safeguard the interests of the subjects in the States; but I stress this part of the duty of the Government of India with a view to show that the more these princes are entrenched in their position, the greater becomes the necessity of watching and seeing that the interests of the subjects in those States are not jeopardized. Sir, as the Honourable Mr. Hallett observed yesterday, Indian India and British India are one, divided, if at all, only by artificial barriers. There is not even a natural boundary, nor even racial difference. People in British India have relations and friends living in Indian States, so that the citizens of these States are not only the neighbours of British Indian citizens but they are in fact the flesh of their flesh and the bone of their bones. If therefore the people in these States are misgoverned, if they are subjected to any harsh or unjust treatment, we cannot expect British Indian citizens to look on with unconcern. If therefore the princes are anxious to secure effective protection if they are anxious to maintain and encourage friendly relations between themselves and British India, the best course for them to adopt would be to treat their own people properly. If they only keep their own subjects happy and contented, they can always feel assured in relying upon the co-operation and willing help of British India. Even though I would not demand any *quid pro quo* from the princes for what we have done today in order to protect their interests, I would make an appeal to them. Sir, on the floor of this House, and through you, Sir, I would earnestly appeal to the Indian princes always to remember that British India and Indian India are one and that in the readiness with which their representatives in London welcomed the idea of Federation, when it was proposed at the first Round Table Conference, they have fully recognized the fact of the unity, that having so nobly and with such patriotic spirit consented to throw in their lot with the rest of India, it behoves them as the descendants of their illustrious forefathers whose valiant and noble deeds constitute the brightest of chapters in the ancient history of India, it behoves them to play an equally distinguished part in the making of the present and future history of India; and this they can do not by insisting on their treaty or other rights, but by frankly acknowledging and readily and generously conceding the rights of their subjects in whose well-being and prosperity lies their real strength. I appeal to them to keep their subjects happy and contented and thus promote good feeling between themselves and British India. Finally, I appeal to them to prepare themselves for the great part they have

to play in the federated India of the future, so that they might be able to dispel and demolish the suspicions entertained in some quarters that the association of the Princely Order will be a spoke in the wheel of progress. I appeal to them to give the lie direct to this suspicion and do what all they can to help the forces of progress in the country.

**THE HONOURABLE SIR DAVID DEVADOSS :** Sir, it is rather startling to be told that an act is punishable with seven years' rigorous imprisonment but if the act is done after it is prohibited it is punishable with only six months. I think my Honourable friend is under a misapprehension as regards this. Section 2 refers to a conspiracy to overawe by means of criminal force or by a show of criminal force the administration of the State. Conspiracy means the working together of more than one person. One person can not conspire to do anything. He can attempt to do a thing but conspiracy means more than one person to do a thing. Section 4 refers to a different act altogether. Whenever

" a district magistrate, etc., is of opinion that within his jurisdiction attempts are being made to promote assemblies of persons for the purpose of proceeding from British India into the territory of a State in India and that the entry of persons into the said territory or their presence there is likely to cause obstruction "

That is quite a different thing. Conspiring against an Indian State is a very serious offence. Sending a few people is quite a minor thing. Also clause 5 refers to acts which a magistrate considers in his discretion are likely to prevent or tend to prevent obstruction to the administration of a State in India. Doing a particular thing is a different thing altogether from a conspiracy which is a more serious offence. Therefore, Sir, clause 6 which provides only imprisonment of six months is not a thing which is opposed to section 2. I thought I would correct this misapprehension, otherwise it would appear very startling that if you do an act you are punishable for seven years but if you do it after a magistrate orders you not to do it, you are punishable for six months only.

**THE HONOURABLE MR. M. G. HALLETT (Home Secretary) :** Sir, I do not think it is necessary for me to detain the House much longer. I admire the persistency with which the Opposition have pressed their views but it is evident from the results of the division we have had that they have not been successful in persuading many other Members of this House to the same views as to the objections to clause 3. I regret that they have not been converted to our view by the speeches which have been made not only on the Treasury bench but also elsewhere, by the general considerations which the Honourable the Home Member put forward by the exposition of the law given by the Honourable the Law Member and the very practical points put forward this morning by my friend the Political Secretary. As these three gentlemen have spoken before me there is little left for me to say for all the arguments put by the opposite side have been fully met.

There is, however, one point that was raised by the Honourable Rai Bahadur Lala Mathura Prasad Mehrotra in his speech on this reading and that was that this was an inopportune time for putting forward this Bill. His argument was that we might have waited till Federation is an accomplished fact, he also referred to the fact that civil disobedience is showing indications of being abandoned, and he also made some reference to the fact that an Assembly in 1922 had rejected a Bill for the protection of the princes whereas the present Legislature have shown themselves, to put it from my point of view, more reasonable. Sir, Federation is still far off. The contingency which this Bill is designed to meet is one which is always ready to hand. The evil is always present; the danger exists now and it is for that reason that we should have had

[Mr. M. G. Hallett.]

to bring this Bill in, whether or not there was any talk of Federation. Whether there is any possibility of Federation or not, we are bound to take this action to protect the princes. The Honourable Member says there has only been one important case. That may be true but there have been many cases in which threats of similar action have occurred. And if I am not giving away official secrets, I may refer to the fact that on more than one occasion we have had ready to hand Ordinances that might have to be issued at any moment to curb that particular form of agitation known as *jatha bandi*. Then again, he referred to non-co-operation. Sir, it has never been contended on our part that these disturbances in the States are the direct results of the civil disobedience movement. That has never been our point. They may arise, possibly indirectly from the same source, but the disturbances that have occurred in the States have not been directly connected with that movement and therefore the fact that there are indications that that movement may be abandoned has nothing whatever to do with our present proposals.

Those, Sir, I think are the main points which he raised and I think that the other points have been sufficiently answered in the speeches of Honourable Members who have spoken for the Bill or by official speakers.

The Bill, Sir, I admit, is not a perfect one but it will, I trust, do much to improve conditions, or rather to prevent the occurrence of conditions which disturb the tranquillity of the States and thereby disturb the tranquillity of India. (Applause.)

THE HONOURABLE THE PRESIDENT : The Question is :

“ That the Bill to protect the administrations of States in India which are under the suzerainty of His Majesty from activities which tend to subvert, or to excite disaffection towards, or to obstruct such administrations, as passed by the Legislative Assembly, be passed. ”

The Motion was adopted.

---

#### STATEMENT OF BUSINESS.

THE HONOURABLE KHAN BAHADUR MIAN SIR FAZL-I-HUSAIN (Leader of the House) : Sir, the Textile Protection Bill has been laid on the table today. All parts of the House, with the exception of the Progressive Party, were anxious to proceed with the discussion of the measure tomorrow, but the Progressive Party want to have the usual notice. Government have no wish to ask that the period of notice be curtailed. The matter is one of pure convenience of the House and, in view of the objection taken by the Progressive Party, I suggest that the Bill be taken up in the normal course on Friday, the 20th April. I also understand that some Members do not desire to sit on any of the Muharram holidays, namely, Monday, Tuesday and Wednesday, next week. The result will be that the Council will be left with several Bills to pass on and after Thursday, the 26th April.

---

The Council then adjourned till Eleven of the Clock on Friday, the 20th April 1934.