Friday, 18th February, 1944

COUNCIL OF STATE DEBATES

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COUNCIL OF STATE

Friday, 18th February, 1944

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

QUESTIONS AND ANSWERS.

UNITED NATIONS RELIEF AND REHABILITATION ADMINISTRATION.

29. THE HONOURABLE RAJA YUVERAJ DUTTA SINGH: (*a*) Is it a fact that the United Nations Relief and Rehabilitation Administration has accepted Government's recommendation that the rehabilitation of Indian evacuees from Burma and Malaya should be a part of the UNRRA activities in the Far East? If so, will Government disclose their plan if they have any in this connection, and its main details?

(*b*) Is it a fact that a substantial number among the half a million of evacuees are at present receiving relief from the Central Government? If so, what is the number receiving relief, and what are their nationalities?

THE HONOURABLE MR. N. R. PILLAI: (*a*) Certain resolutions and recommendations in regard to the repatriation of displaced persons have been adopted by the Council of the UNRRA and by the Sub-Committee on Displaced Persons. Relevant extracts from the proceedings of these Bodies are laid on the table. With regard to the Government of India's own plans for the repatriation of displaced Indian nationals, the matter is engaging the attention of the Government of India, and so far no concrete proposals in this regard have been formulated.

(*b*) The answer to the first part is in the affirmative. As regards the second part, accurate figures are not available, but it is estimated that about a lakh of evacuees are in receipt of assistance from Government. Among them are Indians, Anglo-Indians, Burmans, Anglo-Burmans, European British subjects, British subjects of Far Eastern origin, Balkans, Maltese, Poles and Chinese.

THE HONOURABLE MR. HOSSAIN IMAM: Has the Government's attention been drawn to Mr. Butler's statement in the Commons yesterday that India is not entitled to UNRRA relief?

THE HONOURABLE THE PRESIDENT: How does that question arise?

THE HONOURABLE MR. HOSSAIN IMAM: It arises from part (*a*).

THE HONOURABLE THE PRESIDENT: As a supplementary it does not arise. You can give notice of that question.

Extract from the Proceedings of the First Session of the Council of the United Nations Relief and Rehabilitation Administration.

A Resolution relating to policies with respect to displaced persons.

RESOLVED.

1. That the Council recommends that member governments and the Director General exchange information on all phases of the problem, including such matters as the numbers and places of temporary residence of their nationals in other countries, and of the presence of the nationals of other countries, or stateless persons, within their territories;

2. That the Council recommends that member governments consult with and give full aid to the Director General in order that he may, in concert with them, plan, co-ordinate-administer or arrange for the administration of orderly and effective measures for the return to their homes of prisoners, exiles and other displaced persons;

3. That the Council recommends that member governments consult with the Director General for the purpose of carrying out measures with respect to the repatriation or return of displaced persons; and that the classes of persons to be repatriated be those referred to in paragraphs 5 and 6 of the report of Sub-Committee 4 of Committee IV;

4. That the question of the assistance to be given by the Administration in the return to their homes of displaced persons of enemy or *ex*-enemy nationality who have been intruded into homes from which nationals of the United Nations have been expelled should be considered as a separate issue to be dealt with in accordance with the provisions of paragraphs 11 and 12 of the report of Sub-Committee 4 of Committee IV;

5 That steps be taken to ensure the closest co-operation with the Committee on Health, as well as with the national health Authorities of the various countries concerned, with a view to preventing and controlling any epidemics which may be expected to arise in connexion with the repatriation of large groups of displaced persons;

6. That the Director General take steps to ensure the closest co-operation with such agencies as the International Red Cross and the Intergovernmental Committee on Refugees and any other appropriate bodies of suitable standing whose assistance may be of value, with a view to invoking their collaboration in the work of the repatriation of displaced persons;

7. That the Director General should establish the earliest possible contact with the military authorities of the United Nations with a view to concerting plans for dealing in a uniform and closely co-ordinated manner with any large groups of displaced persons which may be found in any liberated or occupied territory on the entry of the forces of the United Nations into that territory.

Extract from the Report of Sub-Committee 4 of Committee IV of the Council of the United Nations Relief and Rehabilitation Administration.

5. The Sub-Committee has reached the conclusion :—

(*a*) that UNRRA should in particular regard itself as responsible for assisting in the repatriation to their country of origin of those nationals of the United Nations who have been obliged to leave their homes by reason of the war and are found in liberated or conquered territory;

(*b*) that UNRRA should also assist those nationals of the United Nations who have been displaced within their own (liberated) countries to return to their homes in those countries, if requested to do so by the member government concerned;

(*c*) that UNRRA should also assist in the repatriation of those nationals of the United Nations in other countries who are exiles as a result of the war, and whose return to their homes in liberated territory is regarded as a matter of urgency;

(*d*) that UNRRA should also assist those nationals of the United Nations and those stateless persons who have been driven as a result of the war from their places of settled residence in countries of which they are not nationals, to return to those places;

(*e*) that UNRRA should also assist in the repatriation of any other categories of persons which can be shown to fall within the proper scope of UNRRA's activities in this respect.

6. On the other hand it was decided by the Sub-Committee that UNRRA sould not have any responsibility for the repatriation of prisoners of war who have served in the armies of the United Nations unless requested by the member government conberned to undertake such responsibility in respect of any particular group. It was felt by certain members of the Sub-Committee that, while in the case of prisoners of war from the armies of certain of the United Nations no problem would arise, in other cases the fact that the prisoners had originally been prisoners of war is likely to have been to a large extent obscured by subsequent acts of the enemy authorities in illegally demobilising them, interning them as civilians, employing them in labour camps, deporting them to other territories or otherwise ignoring their military status. The Sub-Committee felt that in cases where this has occurred on a large scale the government concerned may well wish to invoke the assistance of UNRRA with a view to securing the early repatriation not only of such prisoners but also of such of the prisoners of war from its army as have been allowed to retain their military character. The fact that the Preamble of the Agreement specifically refers to the return of prisoners as one of the possible activities of UNRRA would seem not to exclude such prisoners from its scope.

ASSISTANCE GIVEN BY MILITARY UNITS IN THE FAMINE AREAS OF BENGAL.

30. THE HONOURABLE RAJA YUVERAJ DUTTA SINGH: Will Government make a statement giving the main details of the kind of assistance given by the army to the civil authorities in Bengal in dealing with the famine situation, and the disease following it?

THE HONOURABLE MR. B. R. SEN: The military units which are operating in Bengal, assist the civil administration to convey relief supplies to 30 main distributing centres in the civil districts of Midnapore, Hooghly, 24-Parganas, Howrah, Pabna, Bakarganj, Khulna, Dacca, Mymensingh, Faridpur, Tippera, Noakhali and Chittagong. Military units also assist the District Magistrates in the distribution of the supplies in the interior of the districts. Military medical and hygiene units are operating throughout the affected area.

Up to the 28th January, military units had handled 1,330,000 maunds of foodgrains, and medical units had treated 320,645 cases, given 322,654 cholera inoculations and 163,628 vaccinations.

THE HONOURABLE RAI BAHADUR SRI NARAIN MAHTHA: This question asks for details of the kind of assistance. May we know what are the stocks at the disposal of Government which would be available for distribution in Bengal?

THE HONOURABLE MR. B. R. SEN: I must ask for notice of that question, Sir.

MANUFACTURE OF MOTOR CARS AND TRUCKS.

31. THE HONOURABLE RAJA YUVERAJ DUTTA SINGH: (a) Will Government state whether there is any scheme for the manufacture of motor cars and trucks in India in the near future; and whether they have received any application in this connection? What assistance do Government propose to give to such Indian enterprise?

THE HONOURABLE MR. M. S. A. HYDARI: Schemes for the establishment of an automobile industry in India which have hitherto been submitted to Government have had to be rejected for reasons connected with the prosecution of the war. No post-war scheme for the establishment of such an industry has yet been submitted to Government. If any such scheme is put before them, Government will consider it along with the general plans which are to be made for the post-war development of industry in India.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: May I ask the Honourable Member to explain what he meant by saying that the schemes placed before Government hitherto for the manufacture of motor cars had been rejected for reasons connected with the prosecution of the war?

THE HONOURABLE MR. M. S. A. HYDARI: I mean what I have said.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: Does the Honourable Member mean to say that during the war motor cars are not needed?

(No Answer.)

TERMINATION OF THE CONTRACTS OF THE M. AND S. M. R. AND S. I. R.

32. THE HONOURABLE RAJA YUVERAJ DUTTA SINGH: Will Government state when they propose to terminate the contract of the Madras and Southern Mahratta Railway Company, and of any other Railway Company in India; and what amount of money have Government to pay to each of such companies for taking over?

THE HONOURABLE SIR LEONARD WILSON: The contracts of the M. and S. M. R. and S. I. R. Companies will be terminated on the 31st March, 1944. The amount which has been agreed upon for payment to the M. and S. M. R. and S. I. R. Companies is £5,275,000 (or Rs. 703 1/3 lakhs) and £1,112,500 (or Rs. 148 1/3 lakhs) respectively. Negotiations for the premature termination of the B. N. R. Company's contract are still proceeding.

REPATRIATION OF INDIAN PRISONERS OF WAR.

33. THE HONOURABLE RAJA YUVERAJ DUTTA SINGH: Is it a fact that the first contingent of Indian prisoners from Germany arrived in India recently and their repatriation was arranged by the International Red Cross? What is the number of such prisoners?

THE HONOURABLE SIR FIROZ KHAN NOON: An exchange of prisoners of war with Germany took place towards the end of 1943. 95 Indians, including 15 Indian merchant seamen, were repatriated and arrived in Mideast on the 3rd November, 1943. Fourteen of them have since arrived in India. The remainder are undergoing treatment in hospitals in Mideast prior to embarkation for India.

The Swiss Government acted as intermediary in the negotiations for this and the International Red Cross assisted in the care of the sick during transit and in the transport arrangements for the exchange.

POST-WAR MONETARY PLANS.

34. THE HONOURABLE RAJA YUVERAJ DUTTA SINGH: (*a*) Are Government aware that the United States Treasury Department has sent invitation to about 44 nations to attend an International Monetary Conference to consider post-war reconstruction and trade; and to consider tentative treasury proposals for a 8,000,000,000 dollar world bank for reconstruction and development?

(*b*) Has India been invited to this Conference; and who will represent India? What are the specific proposals, if any, in this connection?

(*c*) What steps have Government taken or propose to take to ensure that the interests of India are not adversely affected by any decision arrived at by this or any subsequent Conference?

THE HONOURABLE MR. C. E. JONES: (*a*) No. So far as Government have been able to ascertain, the series of Press reports to this effect which recently emanated from Washington were entirely unauthorised.

(*b*) Does not arise.

(*c*) Government have under consideration the various post-war monetary plans which have been published and have invited public opinion thereon. The subject was recently referred to the General Policy Committee of the Reconstruction Committee of the Viceroy's Executive Council for discussion and a similar opportunity will in due course be afforded to the Legislature. Thereafter Government's views will be formulated and India will be represented at the International Conference whenever that may be convened.

THE HONOURABLE MR. HOSSAIN IMAM: Is the Government aware that representatives of Soviet Russia are on their way to Washington to talk on this matter?

THE HONOURABLE MR. C. E. JONES: No, Sir.

UNITED NATIONS RELIEF AND REHABILITATION ADMINISTRATION.

35. THE HONOURABLE RAJA YUVERAJ DUTTA SINGH: Is it a fact that India has been asked to pay 35 millions "for the relief of Europe and Asia"? If so, what are the main features of the scheme and have Government accepted the obligation on behalf of India?

THE HONOURABLE MR. N. R. PILLAI: The attention of the Honourable Member is invited to the replies given by me to questions Nos. 96 and 105 on the 19th and 20th November, 1943, respectively.

INDIA'S RECIPROCAL AID TO THE U. S. A.

36. THE HONOURABLE RAJA YUVERAJ DUTTA SINGH: Has the attention of Government been drawn to the following statements in the thirteenth Lend-Lease report by President Roosevelt to the Congress on the 6th January, 1944:—

(*a*) "The offensive against Japan is being speeded by our Lend-Lease shipments to India, China, Australia and New Zealand"? Will Government make a statement relating to the shipments to India referred to above and the financial, territorial or other obligations, if any, involved in the operation?

(*b*) "In addition to supplies and services for our armed forces abroad the Governments of the United Kingdom, New Zealand and India have agreed to provide as reverse Lend-Lease and without payment by us commodities and foodstuffs previously purchased within their territories by United States Government agents"? Will Government state in more precise terms the implications involved in the above and the approximate value of commodities and foodstuffs purchased in India by the United States Government agents up to date, which will be charged to Indian revenues?

THE HONOURABLE MR. C. E. JONES: The subject will be dealt with by the Honourable the Finance Member in his Budget Speech.

PAYMENT OF COMPENSATION FOR REQUISITIONED SHIPS.

37. THE HONOURABLE RAJA YUVERAJ DUTTA SINGH: (*a*) Is it a fact that one of the tasks of Mr. L. T. Gholap who has been appointed Controller of Indian

shipping will be " to work out compensation for ships requisitioned for war work which has been pending for over four years since the declaration of war in 1939 "?

(*b*) Will Government state the number of ships and shipping companies and their nationalities whose ships have been requisitioned for war work, and the approximate amount of compensation, which has been assigned to be paid to each of such companies ?

THE HONOURABLE MR. N. R. PILLAI : (*a*) The statement is substantially correct.

(*b*) The information asked for in the first portion cannot be disclosed for security reasons. As regards the second portion, the total amount of compensation and that to be paid to each company will depend on a number of uncertain factors and Government are not at present in a position to furnish any estimates in this regard.

DEGREES AND DIPLOMAS ISSUED BY AMERICAN UNIVERSITIES IN INDIA.

38. THE HONOURABLE RAJA YUVERAJ DUTTA SINGH : (*a*) Will Government make a statement relating to the value and validity of degrees and diplomas issued through agencies in India by the International University of Delaware (America), the Chartered University of Huron (America), the National University of Colorado, and the Charitable University of Delaware (America) ?

(*b*) Have Government made enquiries into the status and validity of the institutions noted above ?

THE HONOURABLE SIR JOGENDRA SINGH : A copy of the Press Communiqué issued by the Government of India on the 1st December, 1943 on the subject, together with a copy of the stipulation executed by the Chartered University of Huron (America) referred to therein, is placed on the table of the House.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Has the Honourable Member answered part (*b*) of the question ?

THE HONOURABLE SIR JOGENDRA SINGH : Yes, Sir.

Press Communiqué, dated the 1st December, 1943.

The Government of India receive frequent enquiries as to the value and validity of certain degrees and diplomas purporting to be issued through agencies in India by the International University of Delaware (America), the Chartered University of Huron (America), the National University of Colorado, and the Charitable University of Delaware (America).

Inquiries are being made in the U. S. A. regarding the standing of these institutions. Information has so far been received to the effect that the National University of Colorado is not listed in the official directory of Colleges, Universities, and professional schools published by the U. S. Office of Education, nor does it appear in any list of recognised institutions with which that office is acquainted.

With regard to the " Chartered University of Huron (America) also known as the " Chartered University of America ", the " National University Incorporated " and perhaps other names, the Government of India have been informed that the Federal Trade Commission, Washington, has negotiated a stipulation with this organization to cease and desist from :—

(*a*) the use of the words " University ", " Medical Council " or " Board of Examinations " and such other words which may tend to create the impression that it is an institution for the promotion of learning in the U. S. A. : and

(*b*) representing through the issue of diplomas, degrees, or certificates or other documents that the business of the institution is that of conducting an accredited Educational Institution and that they are recognised or accepted by any reputable College or University.

Complete copies of the stipulation are obtainable on application to the Government of India in the Department of Education, Health and Lands and if since the 9th March 1943, this institution has violated any of the provisions contained therein evidence of the fact should be brought to the notice of the Government of India for such further action as may be appropriate.

Investigation is still in progress with regard to the " International University of Delaware (America) ". It appears that there is a record of incorporation in the state of Delaware of an " International University Corporation of America." It has been ascertained that activities of the International University Corporation of America are being directed from India.

With regard to the legal standing of such Institutions it appears that in a few States in the U. S. A. legal provisions for chartering educational institutions do not preclude correspondence schools from granting degrees, and that the liberal chartering laws of some States permit the existence of correspondence schools whose practices virtually amount to the sale of diplomas and degrees. Nevertheless, degrees granted for work done wholly by correspondence are seldom if ever recognised by accredited Colleges or Universities or by Examining Boards of the different professions in the several States.

The Government of India wish to make it clear that they do not recognise the degrees and diplomas and other certificates or titles granted by the organizations mentioned above for any purpose whatsoever. In view of the fact that large numbers of people in India are likely to be interested in obtaining qualifications from the U. S. A., that will be generally recognised, Government feel it their duty to give the public the above information.

Certain so-called educational concerns are registered in India under the Registration of Societies Act, 1860 (XXI of 1860) and thereby it appears they tend to create the impression that they are authorized to confer educational and professional degrees or diplomas which will be generally recognised. It is therefore stated for the information of the public that the mere fact that an institution is registered in India does not imply any guarantee on the part of the Government that such concerns are so authorised.

FEDERAL TRADE COMMISSION.
WASHINGTON.

STIPULATION AS TO FACTS AND AGREEMENT TO CEASE AND DESIST. — STIPULATION NO. 3619

Chartered University of America, Medical Council; and Board of Examinations and Management of Huron, South Dakota, a South Dakota corporation. W. A. Johns, Julia W. Johns and Isiah O. Hagen constitute the Board of Directors of said corporation and their place of business is at the same address as that of the aforesaid corporation. The said corporation and the said W. A. Johns, Julia W. Johns and Isiah O. Hagen, individually and as directors and officers of said corporation engaged in the sale and distribution in interestate commerce and in commerce between the State of South Dakota and the foreign nation of India of so-called diplomas which purport evidence the conferring of scholastic degrees, causing such diplomas, when sold, to be shipped from their places of business in the State of South Dakota to purchasers in a foreign nation or country. Said corporation and individuals, in competition with educational institutions engaged in sale and distribution of courses of instructions in commerce and in the awarding of diplomas, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Chartered University of America; Medical Council; and Board of Examinations and Management of Huron, South Dakota, and W. A. Johns, Julia W. Johns and Isiah O. Hagen and each of them agreed forthwith to cease and desist from;

(*a*) The use of the words "University", "Medical Council" or "Board of Examinations" as part of or in connection with the corporate or trade name under which they carry on their business, and from the use of such words or any other word or words of like meaning, either alone or in connection with any other word or words, in any manner the effect of which tends or may tend to convey the belief or impression that they are maintaining, operating or conducting a university, a medical council, a board of examinations or an institution for the promotion of learning in the United States of America;

(*b*) Representing, through the issuance of so-called diplomas, degrees or other documents, which purport to have been issued by a duly qualified educational institution of higher learning authorized to confer academic or scientific rank, that their business is that of a university or an institution of learning.

(*c*) Representing, in any manner, either directly or inferentially, that their business is that of conducting an accredited educational institution or that they issue diplomas, degrees or any similar certificates or documents that are recognized or accepted by any reputable college or university;

(*d*) The use of the initials or symbols "M. A." or LL.D." in connection with the name of W. A. Johns or the use of the initials or symbols "M. A." or Ph. D." in connection with the name of J. W. Johns, that is, Julia W. Johns, and from representing by the use of any initials, symbols or words denoting academic or scholastic degrees that the aforesaid individuals or any of them have received or have been accorded any degree or degrees which have not been bestowed upon them by an accredited college or institution.

Chartered University of America; Medical Council and Board of Examinations and Management of Huron, South Dakota, and W. A. Johns, Julia W. Johns, and Isiah O. Hagen, or any one of them, also agreed that should they ever resume or indulge in any of the aforesaid methods, acts or practices which they have herein agreed to discontinue, or in the event the Commission should issue its complaint and institute formal proceedings against the respondents as provided herein, this stipulation as to the facts and agreement to cease and desist, if relevant, may be received in such proceedings as evidence of the prior use by the respondent of the methods, acts or practices herein referred to.

IMPORTS OF BICYCLES AND OTHER CONSUMER GOODS.

39. THE HONOURABLE RAJA YUVERAJ DUTTA SINGH: (*a*) Will Government state the reason for the increased import of bicycles and other consumer goods into India; and the reasons for not mobilising the available industrial resources within India? (*b*) Do Government now propose to extend their support to industries in India by making possible the import of further plant and machinery and of materials and stores for increased output in India, instead of arranging for increased imports of finished products from abroad?

THE HONOURABLE MR. N. R. PILLAI: (*a*) and (*b*) Increased import of consumers' goods including bicycles is designed to assist in making good to the extent possible the serious deficiency in the supply of such goods in the country. The question of mobilising available industrial resources and assisting indigenous industry by increased imports of plant and machinery is under the active consideration of Government. With regard to other forms of assistance to indigenous industry in ensuring the full employment of available productive capacity, the attention of the Honourable Member is invited to the answer given on the 16th February, 1944 to question No. 3.

THE HONOURABLE MR. G. S. MOTILAL: How long has this question been under the consideration of Government?

THE HONOURABLE MR. N. R. PILLAI: Which question, Sir?

THE HONOURABLE MR. G. S. MOTILAL: About the import of machinery.

THE HONOURABLE MR. N. R. PILLAI: It has been under consideration for some time.

THE HONOURABLE MR. G. S. MOTILAL: Can you specify the time; about six months, a year, two years.

THE HONOURABLE MR. N. R. PILLAI: It is certainly not six months—a much shorter period.

BASIC PRICES OF FOODGRAINS IN BENGAL.

40. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: Will Government state the basic prices at which foodgrains are to be supplied by Government to the people of Bengal and what concessions are Government making in these respects to the landless and unemployed people?

THE HONOURABLE MR. B. R. SEN: A statement is placed on the table. Gratuitous relief is given to people in distress.

Statement showing the basic prices of foodgrains in Bengal.

Prices per maund.

Foodgrains.	Districts.		Rationed Area.
	Surplus.	Deficit.	
Rice	old stock Rs. 11/8 for all districts		Rs. 15 (wholesale).
	new stock Rs. 13/8	Rs. 14/4	Annas 0/6/6 per seer (retail).
	old stock Rs. 6/4 for all districts		No distinction between old and new stock.
Paddy—			
	new stock Rs. 8	Rs. 8/10	..
Other Foodgrains—			*Annas.*
Wheat	Rs. 10/8 all districts	*wholesale rates in districts.*	
Atta	Rs. 11/8 all districts		Atta 5 per seer.
Flour	Rs. 14 all districts.		Flour 6 per seer.
Millet	Rs. 5/4 all districts		Suji 6 per seer.
			(these apply only to rationed areas).

TRADERS THROWN OUT OF EMPLOYMENT AS A RESULT OF GOVERNMENT PROCUREMENT OPERATIONS IN BENGAL.

41. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: Will Government state how many traders have been thrown out of employment in Bengal, on account of the creation by Government of their own agency for the purchase and supply of foodgrains in Bengal?

THE HONOURABLE MR. B. R. SEN: The Government of Bengal report that they are not aware of any traders having been thrown out of employment as a result of Government procurement operations.

IMPORT OF CONSUMER GOODS.

42. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: Will Government state what goods, if any, and in what quantity have been imported

from outside India to supply the consumption needs of Indian agriculturists and general mass of the population and whether such goods were not available from Indian manufacturers ?

THE HONOURABLE MR. N. R. PILLAI : A statement showing the main consumer goods (other than foodgrains) imported into India during the calendar year 1943 is laid on the table of the House. I regret that it would not be in the public interest to state what quantity of each of these goods was imported in that period.

2. It is true that some of the goods are produced in India, but in present circumstances they are not being produced in sufficient quantities to meet the essential needs of the civil population.

Statement showing the main items of consumer goods (other than foodgrains) actually imported during the period January—December 1943.

Books.
Clothing and wearing apparel.
Cutlery including razor blades.
Cycles and cycle parts.
Electric bulbs and lamps.
Electric fans.
Radio apparatus and parts.
Tinned provisions.
Glass and glassware.
Metal lamps.
Agricultural implements.
Other implements and tools.
Other miscellaneous hardware.
Liquors.
Medical stores.
Packing and wrapping paper.
Printing paper.
Tissue paper.
Writing paper.
Miscellaneous paper.
Photographic apparatus.
Stationery.
Toilet requisites.
Cotton thread.
Other cotton manufactures.
Haberdashery.
Wool yarn and knitting wool.
Woollen manufactures.
Other miscellaneous civilian requirements.

DEARTH OF X-RAY PLATES.

43. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : Will Government state whether their attention has been drawn to the dearth of X-ray plates for detecting diseases existing in India and what steps have they taken to fill up this want ?

THE HONOURABLE SIR JOGENDRA SINGH : The reply to the first part of the question is in the affirmative. The authorities in the United Kingdom have been requested to assist the firms which export X-ray films from that country to India in obtaining shipping space.

SAFEGUARDING OF INDIAN INTERESTS IN BURMA.

44. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : Will Government state what arrangements for safeguarding the interests of Indians in Burma are being made after Burma is reconquered by Indian troops ?

THE HONOURABLE MR. A. V. PAI : As I stated in reply to the Honourable Raja Yuveraj Dutta Singh's question No. 16 on the 16th February, 1944, the matter is engaging the attention of the Government of India, and so far no concrete proposals in this regard have been formulated.

DISCRIMINATION AGAINST SHIPS ON THE INDIAN REGISTER.

45. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : Will Government state whether it is a fact that ships under the Indian register suffer from any disabilities or discriminations to which ships under the British register are not subject, so far as the coastal trade of India is concerned?

THE HONOURABLE MR. N. R. PILLAI : The attention of the Honourable Member is invited to the reply given to his question No. 101 on the 19th November, 1943.

SALE OF UNSTAMPED CLOTH.

46. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : Will Government state whether any representation has been received from Sherpur town (Mymensingh) regarding the sale of unstamped cloth ? If so, what has been done about it?

THE HONOURABLE MR. M. S. A. HYDARI : A telegram, dated 27th December, 1943 was received from the Secretary of the Sherpur Mahajan Sabha asking for an extension of the time-limit of 31st December, 1943 for disposal of cotton cloth manufactured before 1st August 1943. A reply was sent informing the Secretary of the Sabha that his request could not be acceded to.

TERMS OF REFERENCE TO THE COMMITTEE APPOINTED TO INQUIRE INTO THE DAMODAR FLOODS.

47. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: Will Government state whether they appointed any committee to enquire about the Damodar flood, if so, with what object and result ?

THE HONOURABLE MR. H. C. PRIOR : Yes. A copy of the resolution containing the constitution and terms of reference to the Committee is available in the Library of the Central Legislature. The Committee recommended the execution of certain works and the carrying out of certain surveys, so as to ensure adequate protection against breaches occurring in future.

DATE OF GOVERNMENT ORDERS RELATING TO APPOINTMENT OF MUSLIMS.

48. THE HONOURABLE MR. ABDOOL RAZAK HAJEE ABDOOL SUTTAR: Will Government state the date of Government Orders relating to the fixation of number of Muslim appointments when it was issued at first, and whether Government orders for larger employment of Mussalmans were forwarded to the offices in the Department of Customs, and Port Commissioners of Bengal, Bombay, Madras and Karachi ?

THE HONOURABLE MR. C. E. JONES : 4th July, 1934 ; yes.

IMPORTS OF WHEAT INTO CALCUTTA.

49. THE HONOURABLE MR. HOSSAIN IMAM : Will Government state the amount of wheat imported each month from July, 1943 to January, 1944, the cost per maund at port of each consignment and the price at which the Government of Bengal gave it to millers and also the price of atta and flour which millers were permitted to charge ?

THE HONOURABLE MR. B. R. SEN : No wheat was imported into Calcutta from abroad during the months July to September, 1943. In October, 12,520 tons of wheat and 8,520 tons of flour were imported. In November, 19,560 tons of wheat was imported and in December, 31,450 tons. The price charged to the Bengal Government for this imported wheat was Rs. 7-5-0 per maund bagged ex-Warehouse and for wheat products Rs. 8-4-0 per maund. As regards the prices charged by the Bengal Government, from the 20th of September, 1943 to the 1st of January, 1944 the price was Rs. 12-12-0 per maund of wheat delivered to the mills and from 1st January, onwards the price has been reduced to Rs. 10-7-0 per maund. The mills were permitted to charge Rs. 14 a maund for atta and As. 19 a maund for flour from the 20th September to the end of December, but these rates have been reduced to Rs. 11-8-0 a maund for atta and Rs. 14 for flour from the 1st of January, 1944.

NUMBER OF SHIPS SUNK WITH WHEAT.

50. THE HONOURABLE MR. HOSSAIN IMAM : Will Government state the number of ships loaded with wheat for India, which were sunk and the amount of payment made by the Government of India as price of wheat or as war risk insurance?

THE HONOURABLE MR. B. R. SEN : It is not in the public interest to give the information asked for.

FINAL FORECAST OF AREA AND YIELD OF RICE, ETC.

51. THE HONOURABLE MR. HOSSAIN IMAM : Will Government state the final forecast of area and production of rice in each province for the last three years and the first forecast of wheat and other rabi crops ?

THE HONOURABLE SIR JOGENDRA SINGH : A statement is on tlaid he table of the House.

Statement showing final forecast of area and yield of rice and first forecast of area under wheat and rabi *oilseeds in different provinces and States of India.*

Rice (Final forecast).

Province or State.	Area (000 acres).			Yield (000 tons).		
	1940-41.	1941-42.	1942-43.	1940-41.	1941-42.	1942-43.
Bengal (*a*)	20,770	23,843	23,142	6,043	9,821	6,916
Madras	10,744	10,212	10,394	5,150	4,955	4,575
Bihar (*a*)	9,211	8,869	9,275	2,134	2,747	3,252
C. P. & Berar (*b*)	7,823	7,627	7,617	1,485	1,228	2,378
U. P. (*c*)	7,358	6,592	7,094	1,823	1,579	1,855
Assam (*a*)	5,422	4,959	5,083	1,764	1,573	1,622
Orissa (*a*)	4,957	4,985	5,055	1,339	1,379	1,247
Bombay (*d*)	2,421	2,428	2,628	981	812	1,155
Sind (*e*)	1,426	1,386	1,322	429	445	324
Punjab	951	892	1,097	301	298	384
Coorg	87	88	88	63	60	60
Hyderabad	925	763	1,095	363	203	473
Mysore	765	753	754	229	233	231
Baroda	165	149	241	39	20	52
Bhopal (C. I.)	34	33	34	7	3	6
Total	73,059	73,579	74,919	22,150	25,351	24,533

(*a*) Including autumn, winter and summer rice.
(*b*) Including Eastern Agency States.
(*c*) Including autumn, winter and summer rice and also figures for the Rampur State.
(*d*) Including autumn and spring rice and also Indian States.
(*e*) Including Khairpur State.
Final forecast for 1943-44 is not yet available.

Wheat (First forecast).

Province or State.	Area (000 acres).			
	1940-41.	1941-42.	1942-43.	1943-44.
Punjab (*a*)	10,490	10,972	11,815	11,077
U. P. (*b*)	7,906	7,466	8,188	7,747
C. P. & Berar (*c*)	3,349	2,987	2,742	2,565
Bombay (*a*)	1,910	1,850	1,588	1,815
Sind (*d*)	1,252	1,298	1,378	1,584
Bihar	1,097	1,076	1,240	1,199
N. W. F. P.	1,057	1,068	1,130	960
Bengal	170	170	175	179
Delhi	16	13	22	41
Ajmer-Merwara	9	13	18	21
Orissa	4	4	4	7
Central India	2,188	1,946	1,985	1,977
Gwalior	1,505	1,303	1,445	1,328
Rajputana	1,074	1,083	1,281	1,395
Hyderabad	716	687	626	403
Baroda	65	68	70	60
Mysore	3	3	2	3
Total	32,811	32,007	33,709	32,361

(*a*) Including Punjab States.
(*b*) Including Rampur State.
(*c*) Including Eastern Agency States.
(*d*) Including Khairpur State.

Linseed (First forecast).

Province or State.	Area (000 acres).			
	1940-41.	1941-42.	1942-43.	1943-44.
C. P. & Berar (*a*)	1,269	1,160	1,160	1,219
U. P. (Pure Crop)	275	244	164	159
Bihar	540	544	548	557
Bengal	156	159	158	162
Bombay (*b*)	103	92	47	63
Punjab	31	33	33	34
Orissa	8	9	5	6
Hyderabad	278	341	354	50
Kotah (Rajputana)	80	60	80	78
Bhopal (C. I.)	62	65	41	42
Total	2,802	2,707	2,590	2,370

(*a*) Inclnding Eastern Agency States.

(*b*) Including Indian States.

Rapeseed and mustard (first forecast).

Province or State.	Area (000 acres).			
	1940-41.	1941-42.	1942-43.	1943-44.
U. P. (Pure Crop)	287	244	287	186
Punjab	760	891	1,002	835
Bengal	743	736	877	803
Bihar	496	494	430	492
Assam	477	475	467	363
Sindh (*a*)	164	166	220	222
N. W. F. P.	68	78	80	65
Orissa	26	26	26	27
Bombay (*b*)	12	9	7	10
Delhi	2	1	1	4
Alwar (Rajputana)	47	30	36	24
Baroda	4	5	6	5
Hyderabad	4	4	4	2
Total	3,090	3,159	3,443	3,038

(*a*) Including Khairpur State.

(*b*) Including Bombay States.

PRICES OF RICE AND WHEAT.

52. THE HONOURABLE MR. HOSSAIN IMAM: Will Government state the price of rice and wheat at the end of September, and December, 1943 in Delhi and other Provincial capital cities of India?

THE HONOURABLE MR. B. R. SEN: A statement is placed on the table.

Statement showing wholesale prices of Rice and Wheat in Delhi and other Provincial capitals of India.

(In Rupees per maund.)

Name of city.	Rice.		Wheat.	
	end of September 1943.	end of December 1943.	end of September 1943.	end of December 1943.
Delhi	21 0 0	19 0 0	11 10 0	11 4 0
Bombay	11 8 0	9 2 6	13 1 0	11 8 0
Calcutta	20 0 0	16 4 0 to 17 8 0 (retail)	12 12 0	11 8 0
Cuttack	11 8 0	10 8 0	14 3 0	14 11 0
Karachi	9 8 0 (retail)	9 8 0 (retail)	7 11 0	7 11 0
Lucknow	15 12 0	N. A.	14 8 9	12 5 0
Amritsar (Lahore not quoted)	18 4 0	14 8 0	10 14 0 (Lahore)	10 10 0 (Lahore price).
Madras	8 15 0	9 8 0	14 4 6	13 8 10 (retail)
Nagpur	16 8 6	10 13 3	14 1 0	13 9 3
Patna	17 8 0	11 4 0	17 8 0	13 4 0 to 14 0 0
Kohat (Peshawar not quoted).	20 0 0	20 0 0	10 13 9 (Peshawar)	11 6 10 (Peshawar price).
Shillong	26 5 0 (retail).	16 0 0 to 20 0 0 16 0 0 (Gauhati).	Not quoted.	

N.A. = Not available.

NUMBER OF WAGONS LOADED WITH FOODGRAINS.

53. THE HONOURABLE MR. HOSSAIN IMAM: Will Government state the numbers of wagons loaded with foodgrains in the last six months of 1942 and 1943?

THE HONOURABLE SIR LEONARD WILSON: The number of Wagons loaded with foodgrains (grains and pulses) on the broad and metre gauges of Class I Railways in the last six months of 1942 and 1943 is 268, 768 and 312,796, respectively. Figures of loadings on the Bikaner and Mysore State Railways were not readily available and are not included.

REPORT OF INQUIRY INTO WHEAT PRODUCTS IN BENGAL.

54. THE HONOURABLE MR. HOSSAIN IMAM: Will Government lay on the table the Report of enquiry into Bengal wheat products?

THE HONOURABLE MR. B. R. SEN: No, Sir.

THE HONOURABLE MR. HOSSAIN IMAM: Has the report been submitted?

THE HONOURABLE MR. B. R. SEN: Yes, Sir.

THE HONOURABLE MR. HOSSAIN IMAM: Why is the report not being published, Sir?

THE HONOURABLE MR. B. R. SEN: The report is under examination by the Government of India.

THE HONOURABLE MR. HOSSAIN IMAM: When do Government propose to publish it?

THE HONOURABLE MR. B. R. SEN: We cannot say anything at this stage.

OPERATION OF AIR LINES BY RAILWAYS.

55. THE HONOURABLE RAJA YUVERAJ DUTTA SINGH: Will Government state whether there is a proposal that Railways in India may operate air lines,

and road transport as a part of the reconstruction plan ? If so, will Government indicate the main features of the plan ?

THE HONOURABLE SIR LEONARD WILSON : Government have not yet considered any proposal that Railways should operate air lines. The Railway Board are considering the operation of road transport as part of the reconstruction plan, but Government have come to no decision in the matter.

THE HONOURABLE SIR SHANTIDAS ASKURAN : Will air lines in future be controlled by Indians ? Is that to be the policy of Government ?

(No reply.)

SIMULTANEOUS PUBLICATION OF THE MAGAZINE *Time* IN INDIA AND THE U. S. A.

56. THE HONOURABLE RAJA YUVERAJ DUTTA SINGH : Are Government aware that a representative of the *Times* Magazine of the United States, which is one of the most popular American Magazines, along with the representatives of the *Life* and *Fortune* has arrived in, or is shortly paying a visit to India, in connection with the arrangement for simultaneous publication of the magazine at New York, Chicago and New Delhi ? What facilities, if any, have Government offered to the magazine ?

THE HONOURABLE SIR MAHOMED USMAN : Representatives of the United States magazine group *Time*, *Life* and *Fortune* have been in India since November, 1941 in the capacity of War Correspondents, but Government are not aware of any impending visit from a business representative for arranging simultaneous publication of *Time* magazine in India and in the United States and no facilities have been offered to *Time* magazine in this connection.

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 a copy of the Bill to consolidate and amend the law relating to central duties of excise and to salt, which was passed by the Legislative Assembly at its meeting held on the 16th February, 1944.

RESOLUTION *RE* FUTURE CONSTITUTION OF INDIA ON FEDERAL PRINCIPLES.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY (East Bengal : Non-Muhammadan) : Sir, I beg to move :

"That this Council recommends to the Governor General in Council to take steps for the framing of a scheme for the future Constitution of India on Federal principles making provision for the functional representation in the Legislatures of agricultural, commercial, industrial and intellectual interests with equal representation for capital and labour and for the representation of such racial and religious minorities as desire it."

I am thankful to you, Sir, and the Honourable Mr. Lal in whose hands you left the matter for decision for getting my resolution admitted after several unsuccessful attempts, although it had been admitted several times before in this and the other House. But I must confess that Mr. Lal has so much shortened the resolution submitted by me as to make it almost vague and indefinite.

THE HONOURABLE THE PRESIDENT : Order, order. The responsibility rested with me.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : He has, however, kindly given me the assurance that I can during discussion elaborate the various points involved in this resolution and I crave your indulgence for allowing me to do so also. I feel particularly encouraged in my hope as I remember that years ago, although as a nominated member of this House you voted against a similar Resolution of mine you told me that it was your personal opinion that my Resolution was a good and thoughtful one. I also appeal to the members of this House to give me their usual patient hearing, and helpful discussion upon a matter so much comprehensive in nature and of vital importance to the country. I also appeal to the Government members particularly those that are Indian not to make it a party question but to express their individual opinions so as to enable the House to reach proper conclusions to be placed before the country for being adopted.

The British Government have repeatedly stated that they acknowledge the right of self determination for India and would after the termination of the present war grant India whatever constitution her people wanted. Now that the war is likely to come to an end soon, it is time for us to agree amongst ourselves and to come to a decision as to what our future constitution should be. This is all the

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more necessary to prevent the British people, if they are so minded, which I hope they are not, from resiling from their present promise after the termination of the war in their favour, as they did after the last war.

The task of framing a constitution has been very arduous almost for all countries, *e.g.*, the United States, Canada, Australia and South Africa, and it is all the more difficult with us on account of the existence of an alien bureaucratic people in power trying to set the too many already existing classes in this vast country against one another. Another difficulty standing in our way is the existing deadlock in the country created by the incarceration of the Congress leaders who control the majority of public opinion in the country. They are said to have threatened those in authority with open non-violent opposition when the Cripps' offer was suddenly withdrawn but they left the actual adoption of that programme in the hands of Mahatma Gandhi whom they authorised to carry on further negotiations for coming to some settlement. The Congress leaders were lodged in jail before Mahatma Gandhi could make any further attempt and violent opposition followed, for which the Congress leaders were unjustly made responsible without giving them any chance to meet such charges. Not so was the case with the Irish people, for they had actually and openly declared and began their hostility with the British. So was the case with the Dutch Boers, yet the British people made terms with them and General Smuts is their prize boy now. If they are sincere with India, they should set the Congress leaders free and come to terms with them. If, however, a vain sense of prestige does not allow the British authority to do so, the absence of the Congress leaders should not, though much regretted, prevent others who are still free from hammering out a constitution for India. And I hope that any constitution that may be acceptable by the people of India will receive the whole-hearted support of the Congress leaders. For the furtherance of such an attempt I propose humbly to place before the public the following scheme for a constitution for India. I also appeal to this House as the upper one of the Central Legislature to give a lead to the country in the matter of framing our future constitution.

The adoption of federal principles involves the creation of different units before they can federate together and consequently provinces should be made as much compact as possible and redistributed on ethological and linguistic basis, giving to the people of the localities concerned the right of self determination and cases of disputes should be decided by the Central Government or some impartial Tribunal.

I submit that there should be a fully and absolutely autonomous federal constitution for the whole of India in which the spheres of activity of the Central and Provincial Governments should as at present be clearly defined and made independent of each other with all residuary powers vested in the Central Government. In India we already have a strong Central Government and I don't think we should reverse the hand of the clock and turn back to a weak centre incapable of defending the country and raising her material standard of life, functions for which the resources of the provinces would be hardly sufficient. The last constitution framed by the British Government in South Africa has vested residuary power in the centre and even in countries where it is not so, the tendency has been to transfer more power to the centre, as for instance in Australia and the United States.

The Muslim League has started the Pakistan movement, but it has not yet been fully described. Sir Sikander Hayat Khan spoke of a Hindu federation and a Muslim federation and then perhaps of a Himu federation for certain purposes. Mr. Jinnah has set up a two-nation theory based on difference of religion and claims half the seats in the Executive Council but curiously claims a majority, if the Congress does not join. He forgets that if difference in religion is made the criterion, India has not only two, but many nations, residing here, and if the Hindus set up their Pantheon of Gods as claimants in the field, not to speak of the Sikhs, Parsis, Jains and other various sub-sects and the depressed classes, there will be no end to the number of nations all claiming equal number of seats. Mr. Jinnah wants one-fourth of the country, that perhaps he has got, with full provincial autonomy, but in the centre he wants half the power on the ground that he does not want to be

outvoted by the Hindu majority. If he does not believe in the good sense of the majority party so far as the centre is concerned, how will he resist such claim if they are raised by the Sikhs and other minority communities in his Pakistan provinces? The Muslim League is trying to pacify them in the Punjab by giving two seats to the Hindus and two to the Sikhs reserving to themselves four. The Hindus and the Sikhs can each claim four according to his logic. And what will be the position of the Muslims in the Punjab if such a claim was made?

I do not know what Pakistan means. If it is an abbreviation of the names of Punjab, Afganistan and Kashmir I do not know how far the Hindu state of Kashmir and the sturdy Pathans of Afghanistan will agree to enter and be absorbed within the lean Pakistan of Mr. Jinnah, and what will happen to the Hindu majority under the Nizam. We do not also know what following the Pakistan movement has among the Muslims of India. The Jamait-ul-Islam and the Khaksars are not with it. The *Praja* Party is also not with it. Sindh and the North-Western Frontier Provinces were not with it. In Bengal and the Punjab Muslim leaders acting in conjunction with other communities were also lukewarm until adventitious circumstances bolstered the Muslim League into power in these provinces. The Muslims in the minority of Muslim provinces stand to lose by the hostile attitude adopted by the Pakistanists towards the Hindus and the matter needs clearing up by all Muslim representatives of the country sitting together with the Hindus in the Constituent Assembly once for all. If they want really to part with the Hindus it will be time for the Hindus to consider what attitude they should take. To my mind, however, the idea of dividing India is unthinkable. India, in spite of her vastness, has, on account of her natural boundaries, vast plains, river systems and ancient civilisation been one economic whole and united politically and socially during all times of prosperity including even Muhammadan rule. Although disruption has taken place from time to time no part of it has ever been separated from it permanently so as to form part of countries beyond its frontiers. The temperament and habits of the people outside are alien and altogether different. The idea of a Pakistan in the above sense is thus physically and economically unsound. The people of the Frontier province have not taken to it kindly, suffering from constant ravages across the frontier. Nor will the conservative Hindus and the Sikhs, like the Americans during their civil war, tolerate such a partition. They will perhaps feel fortified in their attitude by the decision of the League of Nations in the following words :—

> "To concede to minorities either of language or religion or to any fraction of the population, the right of withdrawing from the community to which they belong, because it is their wish or their good pleasure, would be to destroy order and stability within states, and to inaugurate anarchy in international life. It would be to uphold a theory incompatible with the very idea of state as a territorial and political unity". (Mairs, *Protection of Minorities*, page 40.)

Yet the British people say that they would not grant self-government to India unless and until the Muhammadans are pacified even at the cost of territorial and political unity of the state. Dealing with procedure of securing minority rights the League of Nations has further laid down that petitions must not be in the form of a request for severance of political relations between the minority in question and the state of which it forms a part. (*Ibid.*, page 69.) It means the weakening of India as a whole and bringing upon her internal trouble and disruption and dissension. The rivers that Major Coupland suggests should form the boundaries of different provinces may turn into rivers of blood oozing out of the bleeding heart of Mother India. It will also weaken the Muhammadans themselves, for standing alone, they will not be economically strong enough to carry on their Government and defence, particularly with a strong minority of other communities in hostile opposition, unless they further reduce their strength by excluding the tracts inhabited by these communities. I therefore earnestly appeal to the Muhammadans to give up the idea of separation. The grant of provincial autonomy has served to establish Muhammadan prestige and power strongly in several provinces which it will be well nigh impossible for the Central Government to flout and ignore and if the Central Government is constituted on the principle of proportional representation and the Upper House of the Central Legislature is composed of representatives from the Provincial legislature as suggested by me, it will ensure to the Muhammadans seats in the Central Cabinet in exact proportion to their party strength in the legislature

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and thus assure a proper safeguard for their interests in the day to day administration of the Government.

I now come to the allocation of the spheres of activities between in the centre and the provinces.

The levying and regulation of taxes on all-India matters such as import and export trade, railways, posts, telegraphs, and other means of communications, major ports, industries which serve more than one province, taxes on commercial transactions, corporation and super-taxes and such matters as famine relief, mass education, sanitation and public health, irrigation and river system which are of such vast extent and involve the conflicting interests of various provinces should be the concern of the Central Government and all other taxes including personal income-tax should belong to the provinces and the provinces should make a further definite proportional contribution towards the expenses of the Central Government fixed every five years by the Central Government striking an average on the basis of the previous five year's income, area and population of each province. This will bring the British Indian provinces in a line with the Indian States which pay tributes to the Central Government.

I now propose to deal with the well recognised functions of civilised government, *viz.*, the Executive, the Legislative and the Judicial, which are more or less independent of one another in all democratic countries, though ultimately under the control of the voice of the people as represented through the Legislature or expressed through a referendum for the prevention of any deadlock.

I take executive Government first.

Considering the vastness of the country, the inexperience of our people in democratic forms of government and the existence of various interests, classes and communities in it, the head of the executive Government should be a popular leader independent of the party in majority in the Central Legislature. I therefore suggest that he should, like the United States President, be elected by an independent constituency composed of all the members of all the provincial and central legislatures and he should hold office for, say, four years. The President of the United States has an executive entirely under his control, and independent of the legislature. This position in a country like India, in these days of dictatorships, is open to the danger of lapsing into dictatorship, I therefore suggest that he should act merely as the president of the executive cabinet chosen by the legislature, but he should have a casting vote and not merely the negative power of veto over legislative measures exercisable only once and the power to dissolve the legislature at his discretion for six months, but should also have the positive power to enact any law lasting only for six months or to do any act to maintain order and tranquillity in the country and to safeguard the interests of the minority communities from being violated by the majority community. Like the President of the United States, he will be an independent person, but not with absolute independence from the elected legislature or its cabinet in his executive functions, but controlling it to a great extent and having larger powers over it. The power of declaring war and peace should however be vested in the whole cabinet subject to ratification by the Central legislature.

The heads of the executive government in the provinces in British India should be similarly elected by the members of the provincial legislature, district boards and municipalities in the province also for a period of four years with similar powers as the central head and Indian Chiefs should be the hereditary heads of government of their respective states with similar powers as those of the provincial heads of government. The position of the Indian Chiefs, in spite of their much flourished treaty rights, are quite precarious now. They have ceded their absolute sovereignty when they admitted the British as their suzerain and are made to do what the British Government dictates. Recently legislation is being rushed through the British Parliament setting at naught their treaty rights. They have no power to choose their successors or even their ministers. The British Parliament has also ignored their existence when they stated in the Preamble to the Government of India Act that they will give up their power of control over India only so far and to the extent it is vested in the hands of the people of India. I therefore appeal to them to join the Federation and broadbase their rule upon the willing consent of their people.

By doing so and putting themselves in a position of similarity with the Governors of provinces under my scheme their condition will be somewhat better than that of the British sovereign even. All questions of heredity and mere personal rights relating to them may be left to be dealt with by a body of Indian Chiefs selected by them acting in conjunction with nominees of the legislature of the state concerned. In order to secure the confidence of the minority communities, the heads of governments at the Centre and the Provinces and the Presidents of the Legislatures may for sometime to come be required to secure a minimum number, say 20 per cent., of the votes of the minority communities in their respective constituencies and the excess votes secured by the different candidates from the minority communities may be given weightage in inversely proportional ratio to that of the majority community.

The next question to be considered is how to form the Cabinet which is to carry on the executive government of the country.

There are three main systems prevalent in western countries, *viz.*, the British Party, the Swiss Council and the United States Presidential form of Government. In the United States the executive is independent of the legislature and responsible only to the President. Untrained as we are much, in the practice of democracy, having so long been under the absolute control of autocratic power, the Presidential form of Government is rather a risky one to adopt, particularly in the surrounding atmosphere of dictatorships. We have therefore to choose between the British and the Swiss systems. The British is a Party system. Its defects have been summarized by Bryce as follows :—

"Party divides not only the legislature, but the nation into hostile camps. It substitutes passion and bitterness for a common patriotism, prejudices men's minds, makes each side suspect the proposals of the other, prevents the fair consideration of each issue upon its merits. Another perversion is the extension of national party issues to local election with which as a rule they have nothing to do. A further dereliction from principle is found in countries, where posts in the public services are reserved for persons who belong to the dominant party. Lastly, party spirit is accused of debasing the moral standards because it judges every question from the standpoint of party interests, the sentiment of party solidarity superseding the duty which the citizen owes to the state".

These evils have been justified by him only on the ground that they evoke a healthy rivalry between the parties and are inevitable in the absence of a suitably better system in the condition prevailing in England where hitherto there had been only two rival parties in existence. The party system has been showing signs of weakness at the advent of a third, *viz.*, the Labour party in the field and had to be given up and a coalition form of Government had to be adopted during the critical times of the last and the present war, and the British party system could not be adopted in other European countries because of the existence of many parties there. The adoption of the British party system is thus not suitable for India where numerous political parties are sure to be formed on communal and other grounds and is already not being liked by the minorities. Speaking of the Swiss system Bryce observes :—

"It has no partisan character. It stands outside the party, is not chosen to do party work. It is elected by the Federal Council for three years, not more than one councillor can be chosen from one canton. To each member an administration department is allotted for which he is primarily responsible but the Council meets constantly as a sort of cabinet for the discussion of all important business, all decisions emanate from it as a whole, as does the elaborate report which it annually presents to the legislature, and it speaks as a whole to foreign powers. A peculiar feature distinguishing the Swiss executive from any other, is that though the Council acts as one body, differences in opinion are permitted and allowed to be made known. Legally the servant of the legislature, it exerts in practice almost as much authority as do English and more than do some French cabinets, so that it may be said to lead as well as to follow. When the assembly over-rides the cabinet it makes no difference to the continuance in office of the Council, nor to the confidence it receives, such is the power of usage and tradition in a practical people, where public opinion expects every one to subordinate his own feelings to the public good. The Council has no power over the majority, for it cannot, like the British cabinet, threaten a dissolution. In its constitutional position and working the Federal Council has been deemed one of the conspicuous successes of the Swiss system, for it secures three great advantages. It provides a body which is able not only to influence and advise the ruling assembly, without lessening its responsibility to the citizens, but which, because it is non-partisan, can mediate, should need arise, between contending parties, adjusting difficulties and arranging compromises in a spirit of conciliation. It enables proved administrative talent to be kept in the service of the nation irrespective of the personal opinion of the councillors upon particular issues which may for the moment divide the parties. Men opposed to the main principles on which the assembly desires the government to

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be conducted could not indeed profitably administer in accordance with those principles, for a total want of sympathy with the laws passed would affect in applying those laws, but where differences are not fundamental or do not touch the department a particular minister deals with, why lose your best servant because he does not agree with you on matters outside the scope of his work" ? (*Bryce*, Vol. 1, page 393.)

I have therefore suggested that the executive government of the centre and the provinces should be vested in cabinets elected by their respective legislatures from amongst themselves on the principle of proportional representation by single transferable votes with the executive head as its President having a casting vote and the cabinets should be jointly responsible for the administration of the government. This will ensure the representation of all interests in the country in the cabinet and give them a chance and opportunity to act jointly. Should any member of the cabinet however fail to act jointly and therefore resign, his place having to be filled by a bye-election, in which the whole House has to vote, some one more amenable to joint action will be selected in his place. It is also possibly on these grounds, that the committee system has been adopted in Ceylon. In spite of the adoption of a system like mine, parties are bound to arise in political life but as my system reserves seats in the legislatures to various economic interests in society as suggested later on, and asks their representative in the cabinet to act conjointly, it will bring about the formation of parties so as to include and enlist the sympathy and support of all such interests and thereby secure their harmonious co-operation. If inspite of the experience of the success of the Swiss Cabinet our cabinets elected on the principle of proportional representation from different parties prove inefficient and discordant it will be inevitably due to the disunity of the people which nothing but unity can cure, but its effects will be minimised to a large extent by the influence exerted on it by its president who will be elected on a wider franchise securing as much support as possible from all communities and have wider powers than its mere figure head.

I now come to the question of the composition of the Legislatures. I suggest that—

(*a*) The Central Legislature should be composed of two houses with equal powers and sitting together, in case of difference of opinion, and the provincial legislatures should be composed on a uni-cameral basis, all with a life of five years. The upper house of the Central Legislature should be elected by the provincial legislatures in proportion to the population of the provinces. The raising of the Upper House to an equal footing with the lower and basing it on provincial representation will make it more powerful to safeguard the interests of the provinces and prevent it from being a mere replica of the lower house as has happened in many western countries.

(*b*) The lower house of the central legislature and the provincial legislatures should be composed on an economic basis (uniform in the case of all the provinces) giving representation to agricultural, commercial, industrial and intellectual interests in proportion to their contributions to the coffers of the state by way of direct taxations or to their population in the country; and equal representation should be given to capital and labour interests in each of the above four classes——

THE HONOURABLE THE PRESIDENT: Will you please bring your remarks to a close. You have already exceeded your time.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: I submit, Sir, that as the Resolution is a comprehensive one I would crave your indulgence for a little time.

THE HONOURABLE THE PRESIDENT: How long will you take ?

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: About fifteen minutes.

THE HONOURABLE THE PRESIDENT: You will be setting a very bad example. Will you please read only important portions from your speech ?

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY——treating those who pay income-tax or land revenue or a definite amount of cess as capitalists and others who do not do so as labour.

(*c*) Communal representation in proportion to actual voting strength on a joint electorate basis should be granted to different religious communities should

any of them, so desire, in each of the above four economic classes. That the principle of mere territorial representation adopted in the west is not without its defect and does not effect the representation of all interests in the country, has been admitted by many western thinkers. Marriot in his *Mechanism of Modern States* admits :—

"It was contended and anticipated that the adoption on a scale almost universal of the principle of single member constituencies would among other advantages secure adequate representation to the minorities. This anticipation was not fulfilled. On the contrary the new system has tended to the exaggeration of majorities".

In the United States Congress about one-half of the members are lawyers. (*Bryce*, Vol. 1, page 56.) In the French Chamber of Deputies—

"the largest element consists of professional men. There are not many to speak for agriculture and even few had worked with their hands before they entered the chamber, the chamber consists chiefly of the same upper strata of the middle classes as does the United States Congress or the Parliament of Canada". (*Ibid.*, page 278.)

So has also been the case in India where we are mostly lawyers. The rule of the people thus only means the rule by a particular section and minorities are forced to go to the wall. To remedy this, various methods, styled as self-made constituencies, limited voting, cumulative voting, proportional representation and alternate vote have been suggested in Europe and proportional representation has been adopted in many countries there. But examination has shewn that the result of all these plans has not gone far enough in effecting the representation of all minorities and interests that are found to exist in the country or provide for their re-election through a bye-election. They at best serve to bring in one or more minority groups strong enough to fight an election in constituencies which have to be made much bigger to afford plurality of seats. With the advance of civilisation and consequent diversity in the pursuits of life, the conflict of interest between different sections of society has assumed a very great economic importance.

"The dividing line", says (*Bryce*, Vol. 1, page 141) "between parties tend to be economic. The result has been to accentuate class sentiment, making a sharper division than previously existed between the richer and more conservative elements in every country and that which is poorer".

THE HONOURABLE THE PRESIDENT : I have already allowed you extra ten minutes. After all, all that you have read is more of academic interest at present. Will you now close your remarks ?

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY :

"Functions thrust upon governments are becoming more numerous and complex, so that greater and greater special knowledge and skill are required to discharge them".

I shall now deal with how to apportion the seats amongst the different classes. It may be done either on population basis or on the basis of their importance in the body politic judged by their contribution to the coffers of the State.

THE HONOURABLE THE PRESIDENT : There are two important Resolutions. Will you kindly resume your seat ?

THE HONOURABLE MR. HOSSAIN IMAM : It can be taken as read, Sir.

THE HONOURABLE THE PRESIDENT : You have already had nearly 45 minutes. I cannot allow you more time.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : I now come to the communal question.

THE HONOURABLE THE PRESIDENT : No. Order, order. I will take the remaining portion of your speech as read.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : I will deal with only one other subject.

THE HONOURABLE THE PRESIDENT : What subject is that ?

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : Judiciary.

THE HONOURABLE THE PRESIDENT : That is not a very small subject. Order, order. I will take your speech as read.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : "Functions thrust upon governments are becoming more numerous and complex, so that greater and greater special knowledge and skill are required to discharge them". (*Ibid.*, page 452.)

"Alike in France, in America, and in England the constitutional machinery that exists for investigating, preparing and enacting legislation upon industrial and economic topics has failed to give satisfaction". (*Ibid.*, page 520.)

Several countries in Europe in remodelling their constitutions have made provision for the creation of economic bodies in an advisory committee and a board of trade has been set up in England with similar powers. Germany has further provided for the constitution of a National Economic Council which "is endowed with

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sufficient political power to place it on a parity with the Reichsrat in matters of legislation". (*New Governments of Central Europe*, by Malcolm Graham, page 76.) I also venture to submit that so long as the constitution of the state does not recognise economic interests by affording sufficient representation to them in the legislature, to speak in the words of Bryce again (Vol. II, page 432).—

"A nation is sure to lag behind its competitors and power will pass from it to those competing nations whose better planned institutions are more practically efficient".

England has also during the war been contemplating to create an industrial parliament. Considering the present international situation and the fact that we have been put back for centuries by foreign rule from attaining full economic development it is imperatively necessary for us to co-ordinate and bring to a focus all the economic interests in the country for harmonious co-operation so as rapidly to attain our economic development. I have therefore suggested that our legislatures should be constituted upon an economic basis, giving representation, as much as possible, directly to all classes of interests in the country. The report of the Nehru Committee also lays stress on this principle saying (page 49) :—

"We are certain that as soon as India is free and can face her problems unhampered by alien authority and intervention, the minds of her people will turn to the vital problems of the day.... the result will be that parties would be formed in the country and in the legislature on entirely other grounds chiefly economical".

Capital and Labour are international in their interests. Already the spirit of internationalism has been advancing and getting a footing in Europe through the help of their activities, while patriotism, the representation of territorial interests and jealousies are trying to hold back the unification of Europe and bringing upon her war and conflagrations. If Europe is to rise out of this cesspool, it must be through the internationalisation of her economic interests far more quickly and readily than through her political institutions. Attempts are already being made to set up such international economic organisations to rehabilitate the devastated nations of Europe. H. G. Wells also observes :—

"The primary objective for those who desire a world order is the replacement of patriotic obsessions by the idea of cosmopolitan duty. We need to replace the locality framed mentalities of the past and present by function framed world wide mentalities". (*Anatomy of Frustrations, 1936*, page 128.)

Similarly for India too, to rise as a nation out of narrow communalism and provincialism, her people, to whatever community they belong, must be brought together, by these economic interests being organised and focussed in the state, and nothing is better calculated to do so than giving the constitution an economic basis. This principle has been followed to some extent in the constitutions of Italy and Soviet Russia and the Atlantic Charter has recognised this doctrine lately. The principle had also been recognised in India, although with a different object, since a long time.

"There has hitherto been a weighty consensus of opinion that in a country like India no principle of representation other than by interests is practically possible. Lord Dufferin held this view in 1886 and in 1892 Lord Lansdowne's Government wrote that the representation of such a community upon such a scale as the act permits can only be secured by providing that each important class shall have the opportunity of making its voice known in council by the mouth of some member specially acquainted with them." (*Montagu-Chelmsford Report*, page 111.)

Lord Chelmsford and Mr. Montagu were however opposed to this principle, and I will deal with their objections later on, but they also had to yield and adopted it in a most tardy and half hearted manner, by reserving some special seats for the landlords and members of some Chambers of Commerces and nominating a few labour members here and there. The principle of economic representation has also to some extent been adopted in the proposed reforms by the Nizam and Rampur States and is so likely to be more acceptable to the Muslims.

I shall now deal with how to apportion the seats amongst the different classes. It may be done either on population basis or on the basis of their importance in the body politic judged by their contribution to the coffers of the state. I prefer the latter basis following the observations of Lord Bryce that votes should not merely be counted but weighed (*Ibid.*, page 171, Vol. I). Persons possessing certain property or

educational qualifications were sought to be given more votes some time in England also, but instead of openly doing so, they have been successfully attaining it in factious rivalry through their greater power of organisation and resources. To prevent this factious rivalry and ensure harmonious co-operation I have proposed that the seats allotted to different interests and the capitalistic and labour sections thereof should be fixed and their elections should be held separately. I may here quote J. A. Spender (*Public Life*, Vol. 2, p. 27) saying while discussing the cause of the failure of the Liberal and Labour short lived coalition ministry in England, that

"Parties cannot combine for parliamentary purposes, if they are in hostile relationship in the constituencies".

Relying on the division for fiscal purposes, of the people, into agricultural and non-agricultural I have adopted the two main forms of direct taxation of income-tax on the one hand and land revenue and cesses on the other as the basis of my classification, as other taxes being more or less in direct one does not know upon whom its incidence falls. Comparing the total amount of land revenue and cesses with that of income-tax realised in India and the provinces, we can therefore easily ascertain how much representation to give to agriculture and how much to non-agriculture. Similarly the total income-tax realised may be further sub-divided into those derived from industry, commerce, and professions, civil and military and salaries for personal services and representation given to these interests in exact proportion, the labour section in each class composed of those who do not pay any taxes whatever, but do the manual labour, getting half the seats allotted to each. Labour is fast rising in importance and power in the organisation of society in this mechanised world and ought in my opinion, to be placed on equal footing with intellect, power of organisation, resourcefulness and other factors in the body politic. A quarrel between them is like one between the belly and other organs of the body recited in old Roman history. It will destroy the body politic. Power to produce is not enough, we also require the powers of intellect, and resourcefulness and the power to organise and distribute. It is in the harmonious co-ordination of all these activities that our well-being depends. Extra wealth either in its direct shape or indirectly in the shape of higher amenities of life, like fat, should after proper circulation and assimilation, be allowed to accumulate somewhere so long as individual energy and enterprise is allowed to function. But it should be held as Mahatma Gandhi says, in genuine Brahminical spirit, in trust for the entire body, for times of need to draw upon. During the debates on the last reforms in India, Mr. Macdonald also expressed the hope that India might devise a scheme which would harmonise the eternal differences created between man and man by nature instead of perhaps vainly trying, as in the west, to abolish it by factious and forcible suppression. The number of seats allotted to different interests should be changed after each census according to their improved condition and contribution to the coffers of the state. This will not only be in natural consistency with human instincts, but serve to prevent wrangling and unholy attempts to overreach one another during elections and bitterness of feeling arising in consequence.

The above four classifications are I hope, comprehensive enough to include all the adult people of India except the unemployed. They and those who have more than one vocation should be given the right to choose some particular vocation for being enrolled as voters. I shall now deal with some objections that have been and may be raised against this scheme. Lord Chelmsford and Mr. Montagu oppose it on two grounds, (1) its being opposed to the teachings of history, (2) its tendency to perpetuate class division and acerbity. These arguments, though well-intentioned, are to my mind fallacious. Long before political democratic development took place, Guild systems prevailed in every civilised country and the history of democratic development is a history of a fight against autocracy in which democracy attained partial success quite recently. When fighting against autocracy democracy had naturally to be against the State arranging its members in any way which encourage them to think of themselves primarily as citizens of a smaller unit than the state. Divisions in the camp by the minorities had necessarily to be suppressed and the adoption of single member territorial constituencies as admitted by Mill, Lord Acton, Bryce and Marriot, had to a large extent served the purpose of such suppression. If you justify it and continue it even when democracy is established

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or is going to be peacefully established in a country, you may as well justify the establishment of dictatorship for that too is and has been necessary at some stage of democratic development in Europe as Cromwell, Napoleon, Hitler, Stalin and others will testify. During a fight political and military it is no doubt that only certain sections take an active part, but after the war is won other sections who had been preoccupied in helping them indirectly and with resources naturally come in to take their share in the administration and people's minds everywhere are now turning to get it. Mill says :—

"It is an essential part of democracy that minorities should be represented. No real democracy, nothing but a false show of democracy is possible without it".

Lord Acton lays down :—

"The most certain test by which we can judge whether a nation is really free is the amount of security enjoyed by the minorities. It is bad to be oppressed by a minority, but it is worse to be oppressed by a majority".

Sir James Mackintosh also observes :—

"The best security which human wisdom can devise, seem to be the distribution of political authority among different individuals and bodies with separate interest and separate characters corresponding to the variety of classes of which civil society is composed, each interested to guard their own order from oppression by the rest, each also interested to prevent any of the others from seizing, an exclusive and therefore despotic power; and all having a common interest to co-operate in carrying on the ordinary and necessary administration of the government".

I hope this disposes of the second objection also. Actual facts as appearing from the following observations of Bryce relating to the introduction of proportional representation in Switzerland justify my contention :—

"Its opponents observed that it would encourage minorities to put forward as candidates, not the men, and specially the moderate men whom general opinion will recognise as the best, but the keenest partisan who had worked hard for the parties" (vol. 1, page 381), "yet when that system was adopted in the Federal government, there was among thoughtful men more cheerfulness and faith in the good sense and good temper of the people and in the patriotism which gave unity to them". (page 497).

This is perhaps due to the fact, as Burke has aptly put that representatives do not consider themselves to be the mere mouthpiece of their electors, but coming in contact with the representatives of other interests round off their angularities and consider themselves to be the representatives of the nation as a whole. The system of proportional representation has now further been extended to Germany, Austria, Denmark, Holland, Belgium, Sweden, New South Wales, Tasmania and other countries. Its rejection in England has been criticised by Marriot by saying :—

"Any electoral method which seems likely to emphasise the tendency to the formation of groups to endanger the two party system, will be regarded always with misgiving if not positive hostility by those who accept the English type of democracy as sacro-sanct". (Vol. 1, page 502.)

Another objection that strikes me, may be raised, is that it is undemocratic in these days to give to classes which are limited in number equal representation with that of the vast mass of population ranged on the other side. This numerical disparity may be reduced by shifting the dividing line as much as possible between capital and labour. To those who support the second chamber with a limited franchise I may however say in reply when you advocate it either with equal or less extensive power, you indirectly admit that classes represented in that chamber will have an equal or potent voice along with the masses represented in the other house in shaping the destiny of the nation. So long as the economic organisation of society remains on individualistic basis and intelligence and power of resourceful organisation plays an important part, some such special concession to the classes is, I submit, in practice necessary. Even now under the cloak of democracy, it is the upper classes who are holding sway in most democratic countries and nowhere except by violent suppression in Russia now being gradually relented has Labour been able to attain equal position with Capital as proposed in this scheme. Guild and Fascist societies have also accepted this principle and in settling disputes between capital and labour the principle of equal representation of the two classes is adopted. As a matter of fact there can be hardly any solution of any dispute or any fair and square compromise between two contending parties unless they are put on a footing of equal strength. Mr. Jinnah also admits the soundness of this principle but wants to apply it wrongly when he wants equal representation ignoring the just dues of others. Should labour however feel themselves strong enough to cope with

capital in open competition, I have no objection to remove the reservation of half the seats to capital and to labour.

I have suggested the unicameral type of legislature for the provinces following the tendency of most modern constitutions. Norway has converted her second chamber into a mere committee of the lower house. England has not yet been able to solve the problem of her second chamber and has reduced its power to a mere two years' suspensive veto with no control over financial matters. In France, the upper house has greater powers theoretically but never exercises it and came into existence by the majority of one vote only. Most authors speak in derogatory tone about its constitution and functioning as an independent body able to check and prevent hasty legislation by the other body or to give a lead to it. Walter Bagehot (*English Constitution*, p. 107) says :—

" With a perfect lower house it is certain that an upper house would be scarcely of any value and whatever is unnecessary in government is pernicious. Human life makes so much complexity necessary that an artificial addition is sure to do harm. You cannot tell where the needless bit of machinery will catch and clog the hundred needful wheels, but the chances are conclusive that it will impede them somewhere".

The Nehru Committee had also suggested the unicameral type for the provinces. Moreover as the legislature under the present scheme has an economic basis in which equal number of seats are allotted to capital and labour sections of the various economic interests in the country, it will do away with the necessity of a second chamber, having the effect of rolling the two chambers into one and serve the purpose of preventing hasty legislation. Restrictions have also been put on hasty legislation in most countries by putting checks, providing dilatory procedures and vesting the head of the executive with powers of veto and dissolution and placing these provisions beyond the reach of ordinary legislation by including them in the constitutional instrument which the legislature cannot easily alter ; and I have suggested that the constitution should not be capable of being altered except by a joint session of all the legislatures Central and Provincial in India by a majority of two-thirds of all its members. In the United States, Canada, Australia, South Africa and other countries which were formed by the federation of different states a Bi-cameral form of legislature had to be adopted, not because it was thought to be by itself necessary, but to safeguard the zealously guarded interests of the different states which had been in keen conflict with one another before the federation. I have therefore suggested the constitution of a second chamber for the centre and following the German system based it on election by the provincial legislatures according to the principle of proportional representation so as to allow facility of representation to all parties in fair proportion therefrom. This, I venture to submit, will make the second chamber a real representative of the provinces strong and able to cope with the other house with which it has equal powers.

I now come to the communal question. Politically speaking, there is not, can there be any conflict of interest between the various religious communities existing in India. Apart from personal laws, the laws that affect the relationship between landlords and tenants affect them irrespective of the religion they profess. So also is the case between capital and labour or the producer and the consumer and all communities can and do it together to discuss them. My honourable friend Mr. Hossain Imam a doughty champion of the Muslim League has already, I am told, condescended to sit with some of us in an agricultural party that has been recently formed in this house and we are freely co-operating with one another in all economic questions. I have therefore brought these interests to the forefront, as I submit they ought to be in political life, and tried to give them the representation that is due, according to their importance in the country. The question of the community to which any of these particular classes belong can only arise indirectly, and where it does arise, the representation of that class will serve to ensure the representation of that community without introducing communal principle with all its acerbity. Fortunately or unfortunately for us, I should rather say fortunately, various systems of religious and cultural civilisation with their tradition of past glory, have existed side by side in India without being crushed out of existence, as in other countries in the west by the dominant one ; and no one who is a well wisher of India can deny that their continued existence side by side and further development will make contributions to the store of human wisdom and felicity. In the spirit of harmoniously safeguarding the growth of such cultures and not in view of the

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temporary and passing communal differences adventitiously stirred in the country now, I think it necessary to provide communal representation on a joint electoral basis among the intellectual classes. But in view of present conditions, I have provided for communal representation on a joint electoral basis among the various economic interests in the country, if any of them so desire. The provision of safeguards for religious and civic rights of the people, as stated later on, will I hope, be sufficient to secure minority interests and the provision for the inclusion of their representatives in the cabinet will assure them of the fulfilment of these provisions and their proper administration. I may here refer to the demands put forth by the Congress of national minorities which are :—

(1) Complete economic equality.

(2) Fair representation in the administration of the state.

(3) Electoral system which shall secure the representation of minorities in proportion to their number. (*Mair's Protection of minorities*, p. 231).

No claim has been made by them for weightage for the minorities, far less for weightage in provinces where they are even in a majority, as is the case in certain localities in India. I have accordingly suggested that the minorities should get seats in proportion to their actual voting strength, as is the case also in South Africa. I have also suggested the adoption of joint electorate as the interests of different communities do not come into clash in the various economic fields.

I now come to the third function of the state, *viz.*, the judiciary. It is a well recognised principle of civilised government that the judiciary should be separated from and made independent of the executive and the legislature. In England although the judges hold office at the pleasure of the King, the tradition that all men should be tried by his peers and that the Rule of Law is to prevail, make the judges independent. In America, to make the judges independent, they are chosen by popular election, but this has led to corruption and partisanship. We have, since long been crying for separation of the judiciary from the executive, as it is a standing blot on the British administration in India which even the Congress Government in Madras and other provincial Governments have not yet been able to efface. I have therefore suggested that the judiciary should be separated from the executive and placed under the control of the High Courts, the subordinate judiciary being appointed and controlled by them, and the position of the judges being made independent by making them removable only after an impeachment by the Privy Council.

I also suggest the establishment of a Privy Council as the supreme appellate court for India, as recently adumbrated by the Chief Justice of India composed of a fixed number of judges holding office for 7 years, selected in order to make them independent, by the judges of the different High Courts and members of the different High Court Bars, instead of the lay people as in the United States, so as to keep them in touch with public opinion also. In order to prevent their position from being absolute and autocratic and with a view to retain the final authority in the hands of the people I suggest some important officers, such as the judges of the Privy Council, and High Courts, members of the Public Service Commissions and the Auditor Generals should be removable only on a resolution of the Central Legislature to that effect being passed by a two-thirds majority following the analogy of judges being made removable in England on the joint address of both the houses of parliament.

In order to secure stability of the public services I suggest that the subordinate executive officers should be selected by Public Service Commissions as now, except in certain cases of personal confidence and not by party leaders to prevent jobbery widely prevalent in many countries and the officers should be made removable only on their recommendation though their promotion and transfer should remain in the hands of their executive heads.

Much stress has been laid in modern constitutions upon the laying down the fundamental rights of the people, specially when there are many conflicting interests in the country, but they should, as in England, which is the oldest democratic country, be most fundamental and general in character. I therefore suggest

that a declaration of the right of the people to freedom of person, property, association, speech, and representation, except on conviction after trial according to law, to equal status in the eye of law for all and to equal chances for and opportunities in State and quasi state employments subject to a temporary, minimum qualification test keeping in view and trying to level up the existing social and religious differences in the country and this declaration should be made inviolable in the constitution except during war.

On account of the existence in the country of various religious communities with personal laws of their own, I think further provision should be made that all measures which are likely to affect the religion or personal laws of any community, should be enacted into law only if they are passed by two-thirds majority of the members of that particular community, and that the decision as to whether any measure is of such a kind, should remain in the hands of the President of the legislature concerned, who may also be elected by the same method as the heads of the executive so as to secure the confidence of the minority communities.

With a view to ensure efficiency and economy and to give the provinces some control over the defence of the country, I suggest that the defence of the country in all arms should be vested in the Central Government and a national Militia should be organised and maintained by the provinces but it should be officered and trained by the Central Government at the cost of the respective provinces and made capable of being employed by the Central Government whenever necessary, the Central Government bearing the cost of such employment. All military services should also be liable to kindred civil employment during peace times instead of remaining idle. They have been done during the recent famine.

Constitutional law ought to be placed on a higher footing than ordinary laws and made secure against hasty change by providing that they can be altered in future in a joint session of all the legislative bodies in India by a majority of two-thirds of all their members only.

The British Government want to have their last say on the question the ground of their existing commitments, *viz.* :—

A. The British vested interests in the country.
B. Their responsibility for the minorities.
C. Safeguarding the Indian States.
D. The rights of the British civil servants.
E. The defence of India.

A. The present Government of India Act is full of irksome provisions for safeguarding British vested interests, which I am happy to learn, they do not insist upon now. They will, subject to the principle of reciprocity, be able to take the benefit of the provisions of this constitution under private International Law. Politically, however, their position becomes somewhat different. This point was forcefully brought out some time before, though from a different angle of vision, by Sir James Watson, when he said that the British Army officers at present serving in India are commissioned officers of the King of England and cannot be expected to serve India when she attains Dominion Status and become a separate political entity. As that is so, how can Englishmen acquire political rights in India so long as they remain politically the nationals of England ? That is also their position in the self-governing dominions, where they cannot as of right claim any political status, but must satisfy conditions laid down by the dominions. I think, subject to such conditions, as may be laid down here, there can be no objection to granting them political rights in India, if they so like, provided that the acquisition of similar rights on a reciprocal basis is granted to the people of India, not only in England but throughout the Empire if the empire is to subsist, subject however to the right of every country, to regulate its immigration and emigration until all countries are thrown open to all to live in. British capital and enterprise having so long enjoyed favourable treatment through Government auspices over Indian, will have an initial start over them and the state should therefore have powers to regulate and curb cut throat and unfair competition. It is also not unfair and improper for India, if she thinks it necessary, to ask for the temporary use of British officers in their

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army and navy so long and until she has them of her own. Justice demands this help from Great Britain which other rising nations have received, specially because, it is she, who has brought about this situation, not only to the detriment of India, but to the detriment of the defence of her empire.

B. As regards the minorities, the framing and acceptance of the constitution by them will discharge all British responsibilities.

C. The British responsibility towards the Indian States, as I have already described, has hitherto been the most autocratic and irresponsible and the sooner it is shaken off the better. I don't know how far the opposition of the States to reform is due to genuine fear of democratic reforms and how far it is a got-up affair by interested parties opposed to granting any reforms to India.

D. As regards the British civil servants in India, I think the matter should be left in the hands of India, if she is to be the real master of her destiny without being controlled by rules imposed by any outsider, and regulated on the well recognised principles guiding the conduct of a benevolent master dealing with his diligent and faithful servant. An interference with this principle has led to much friction between Ireland and England to the discomfiture of the latter.

E. I have also dealt with the question of the defence of India. It has been very much lightened by the strengthening of the Indian army, but sinister attempts are still being made by British imperialists to retain footholds in India under the garb of international defence about which we ought to be very careful.

THE HONOURABLE SIR MAHOMED USMAN (Leader of the House): Sir, I shall be very brief in my reply to the Honourable the Mover of this Resolution. I do not want to enter into the merits of this Resolution. The policy of His Majesty's Government is to leave to Indians themselves the framing of the future constitution of India. There have been many official statements urging that Indians should at once take in hand a serious study of the basis on which that constitution should be framed. If the Honourable Mr. Kumarsankar Ray Chaudhury would convince our countrymen that his scheme is best suited for the conditions of India and could thereby evolve an agreed basis on which the future constitution of India could be framed nobody will be better pleased than myself. Government will, therefore, leave the discussion of the merits of the Resolution to the non-official Members of the House and official Members will remain neutral should there be a division.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: I appeal to you also to express your individual opinion.

THE HONOURABLE SIR MAHOMED USMAN: My individual opinion is that the way in which you have spoken of the Muslim League and the Mussalmans is not going to bring on an agreed solution.

THE HONOURABLE RAI BAHADUR SRI NARAIN MAHTHA (Bihar: Non-Muhammadan): Mr. President, I just want to say two words on this Resolution. I had no intention of doing so, but as I have listened with extreme but sad interest to the purposeless speech made by the Honourable Mr. Kumarsankar Ray Chaudhury, I feel I might occupy the time of the House for a minute. It appears to me that the constitutional settlement of India is absolutely beyond our ken, or the possibility of any consideration at present. The Viceroy told the Muslim League yesterday that they cannot alter geography and in effect, what he told the rest of us was that we need not worry about our history—he shall write it for us. That is where we stand. He said that he will tolerate no negotiations, no deputations, no consultations——

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THE HONOURABLE THE PRESIDENT: He also stated that the two communities should settle the whole question.

THE HONOURABLE RAI BAHADUR SRI NARAIN MAHTHA: Yes, he referred to the two important political parties in India. One is invisible; it is lying behind prison bars. The two are not allowed to meet. How can an agreement be brought about? After I had heard the speech of the Honourable Mover delivered in the vein of a constitutional research student I was instinctively reminded of some lines which I found in a portion of some biblical literature, which I may quote here:

"There was a young boy who said you are damn.
And I now know what I am :
I am a being that moves,
Along predestined grooves,
In short not a Bus but a Tram."

Our destiny is not in our hands. That is the position which faces us everywhere in India today.

THE HONOURABLE MR. HOSSAIN IMAM (Bihar and Orissa : Muhammadan) : Mr. President, as has been remarked, this is an academic discussion. It is divorced from facts and the realities of the situation. Yesterday we listened patiently to an address from the ALL-MIGHTY in India.

THE HONOURABLE SIR DAVID DEVADOSS (Nominated Non-Official) : Do not use that expression.

THE HONOURABLE SIR MAHOMED USMAN : I would advise the Honourable Members in speaking of the Viceroy, to speak with respect.

THE HONOURABLE MR. HOSSAIN IMAM : I cannot find a word of greater respect than the one which I have used.

Mr. President, he has the destinies of India in his hands. People were expecting much from him. We had thought that after the lapse of so many months he would give us something tangible. But what do we find now ? Kicks for the Congress, and slaps for the Muslim League ; knocks for the legislators, and pats for the Executive Council !

The Resolution which my Honourable friend Mr. Ray Chaudhury has moved is of a similar nature. It gives kicks to everybody, and brings forward a scheme which—(*Interruption*)—that is my good fortune ; I have not yet learnt about it except the little that I heard from him—a scheme which was a new growth in the already tangled jungle in which we live. We are not yet in a position to settle the communal question, and he brings forward many other interests which will clash with each other—labour *versus* capital, industries *versus* agriculture, lawyers *versus* non-lawyers, and so on and so forth. The little consolation which he held forth for the minorities that they would have better representation has also been exposed by himself when he referred to the matter of representation in the Cabinet. I will just take one point of his as an illustration how unreal was the gift which he made to the minorities. He says that the Cabinet will consist, not of the nominees of the Governor or of the Prime Minister, but of elected members—elected under the system of proportional representation. On the face of it, there could be nothing fairer. But if the representative of the minorities differs from the other members of the Cabinet and does not accept joint responsibility, he has to resign. The moment he resigns, the whole House elects afresh. Therefore, the representative of the minorities who went there went there only for the pleasure of being counted as a member of the Cabinet for a day. The next day he will be turned out, and the moment he is turned out, there is no dearth of quislings either from among the Hindus or from among the Mussalmans, and you can get them in abundance. A quisling will be elected. In the case of Sind or the Punjab, a Hindu quisling will be found, and in the case of a province where Muslims are in a minority, a Muslim quisling will be forthcoming. That does not give any security. If you really want to have communal harmony, you must eradicate the root evil where it exists. Try and find out what are the causes which lead to communal trouble. Get at the root causes of this trouble. If you are going to have communal amity, it is not by constitutional safeguards. It will come as the result of a change of heart, of a desire to give up the dominating idea. The Honourable Member has himself referred to the fact that in the Punjab there is a Ministry which proposes to have equal representation to the Muslims and non-Muslims. Now, that is one example. (*Interruption.*) Have you any example of equal seats for Muslims and Hindus in any of the Hindu majority provinces ?

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : That is another point.

THE HONOURABLE MR. HOSSAIN IMAM : When I examine the problem from this point of view, you cannot come up to the standard. How then does it lie in your mouth to talk of communal amity and composition of communal differences ?

[Mr. Hossain Imam.]

Pakistan is the only cure for India's troubles, and no matter who opposes it, it will come. People say that England and Scotland can be joined together. But they forget that after the first Great War it was the British and the French who were responsible for carving out the Austro-Hungarian Empire into four parts. There was no question then of geographical unity. What about Holland and Belgium ? Are they not geographically one ? And yet, has their separate existence been a cause of friction, of fighting between the two nations, a danger to the safety and tranquillity of Europe ? Look at Norway and Sweden. Are they not geographically one ? Yet they are two independent countries which have not been at each other's throats. Look at the Iberian Peninsula—Spain and Portugal. They are geographically one, and yet all along they have lived as two separate nations.

THE HONOURABLE SIR DAVID DEVADOSS : That is not historically correct.

THE HONOURABLE MR. HOSSAIN IMAM : As long as they were under subjugation, they were one, but with their independence they have been separated. Yes ; I say India will remain one, but always under subjugation. India as a separate and independent unit will only exist if the Hindus agree to Pakistan and let us have what little we want. In Pakistan Hindus will be strong—they will be above 40 per cent. And yet they cannot envisage that possibility. But look at us. We shall be 10 per cent. in Hindustan. We are prepared to face it. We love our freedom too much to stand in the way of the liberty of the majority of the people. But my countrymen have not that love of liberty which would make them accept even a partial minority—because a 40 per cent. minority cannot be ignored, whereas a 10 per cent. minority can be, and has always been, ignored.

I say that it ill lies in the mouth of my Hindu friends to question the ethics of Pakistan. My Honourable friend the Mover said that he did not know what Pakistan is. I am really sorry for him if he has not been able to understand it after four years. It is a pure and simple proposition—the right of self-determination for us in the areas where we are in the majority. We do not say that anything should be done now ; we only want to have the right of self-determination. We only want the right of self-determination, a right for which this war is said to be fought. You give other nations the right of self-determination. Why refuse it to the Muslim nation where they form a majority ? There is no ethical or constitutional reason to oppose this demand. There is no real reason to oppose it except the idea that after the British, the other nation should be the dominating factor in Indian life. It is to replace one Imperialism by another Imperialism. We know the fate of Imperialism. Imperialism will clash and fall and people will come into their own ; if not today, at least tomorrow there will be a bright future for India,—a separate independent Hindustan and a separate independent Pakistan.

THE HONOURABLE MR. A. Z. M. REZAI KARIM (East Bengal : Muhammadan) : Mr. President, after what the Honourable the Leader of the House had said, I felt there was a complete reply to what my Honourable friend who proposed the Resolution said. If it was the purpose of the Honourable Member to give an academic treatise for political economists to think over a constitution, not of India alone but of all countries in the world, his speech was one of those books which could have been read with some amount of academic interest. But if it was meant to be a practical proposition for the solution of the political troubles of India, I am afraid, Sir, it has got to be frankly stated and admitted that it is far from the thoughts of anybody at this juncture to suppose that this can ever be a solution of India's political demand. If my Honourable friend's Resolution was to be merely read without his speech, it was probably more innocent and more colourless, and one which could have been looked into. But the speech has made it so harmful that one cannot accept it without some amount of pangs of conscience. He knows, and knows full well, that the solution of the troubles of India today cannot be by any surreptitious method of getting through any legislation or recommendation through one of the Houses of the Legislature in an innocent manner. It is absurd for my Honourable friend to think that he will get through our throat a Resolution which he knows has got more implications than it really shows on the face of it. I, therefore, frankly admit that any one with any political sense in himself will not think of contributing to the Resolution in the form in which it has been supported by the speech of my Honourable friend. My Honourable friend, I think, is one of those idealists who have given

a lot of time to this subject. He must have written pages and pages on the constitution of India. If it is to be considered later on in framing the franchise of this country, that is quite a different matter. But if it is to be a political settlement of this country, I am one of those who strongly oppose this Resolution for what it is worth.

THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY: Sir, I did not speak on the communal aspect of the question—

THE HONOURABLE THE PRESIDENT: You spoke enough on the communal question.

THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY: I did not, Sir—

THE HONOURABLE THE PRESIDENT: You did. You made very strong remarks on that. Well, as you know, and as I have already told you, we have two other Resolutions on the Agenda and this is purely an academic question just now. Will it be of any use if I tell you that the best and proper course for you would be to withdraw your Resolution at this juncture? What you have said will, of course, be borne in mind by the Council.

THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY: I have laid the Resolution before the House either to accept or reject. It will be for the House to decide what course it will take.

THE HONOURABLE THE PRESIDENT: Very well, if that is your wish. Do you wish to say anything more?

THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY: I wanted to say something about the communal question. I did not want to raise any communal bogey. What I wanted to say was that economic questions are questions which are in the sphere of political life. My Honourable friend Mr. Hossain Imam, who is one of the doughty champions of the League, has joined an Agricultural Party which has been formed in this House. So, what I wanted to say was that if economic questions are prominent, they should form the basis of the constitution, where we can all meet together on a common platform and look after our interests. As regards religious and communal matters, I leave them for decision to the President and the communities concerned with a vote of two-thirds majority. I could not go into all these questions which formed part of my speech. I submit that I had not the intention to raise any communal bogey. All that I wanted was that we should find some platform where we can all meet together and discuss questions which affect us all equally. Economic basis was the platform where we could meet. As I have already said, my Honourable friend Mr. Hossain Imam has condescended to form an Agricultural Party in the House and join that Party with us. That is in the interests of the agricultural community. That is why I based my constitutional position on the economic foundation and I wanted that we should all act together and serve our common interests.

THE HONOURABLE THE PRESIDENT: Resolution moved:—

"This Council recommends to the Governor General in Council to take steps for the framing of a scheme for the future constitution of India on federal principles making provision for the functional representation in the Legislatures of agricultural, commercial, industrial and intellectual interests with equal representation for capital and labour and for the representation of such racial and religious minorities as desire it."

Question put and Motion negatived.

RESOLUTION *RE* AMENDMENT OF THE DEFENCE OF INDIA RULES.

THE HONOURABLE THE PRESIDENT: Leader of the House, before we proceed with the next Resolution I wish to bring to your notice certain facts. You will remember that this Resolution of the Honourable Pandit Kunzru was moved at the fag end of the last session and Sir Reginald Maxwell, who replied to the Resolution, pointed out that within a short time—within a month or so—the Government would be framing new rules, and then I requested him if he would agree to postpone the debate and he readily agreed to my suggestion and the debate was accordingly adjourned. Since then, revised rules have been issued.

(At this stage, the Honourable Sir Reginald Maxwell entered the Chamber.)

[Mr. President.]

I am glad that Sir Reginald Maxwell has come. I was pointing out that this Resolution was discussed at the fag end of the last session, and you, Sir Reginald, replied to the debate, when I interrupted you because you had said in your speech that Government proposed to revise the Defence of India Rules very shortly—you had said it would be in a month or two—and then I asked you if you would agree to adjourn the debate till the next session and you readily agreed. Since then, fresh rules have been published. So, now I am asking you as well as the Leader of the House whether under the circumstances, it would not be right and proper to allow all Honourable Members who want to speak on the revised rules to speak on this occasion. It would be unfair for me to deprive them of the opportunity of speaking on these rules.

THE HONOURABLE SIR REGINALD MAXWELL (Home Member): That is what I understood. You asked whether it would be convenient to adjourn the debate on this Resolution until the next session as you said there were many Honourable Members wishing to speak on this Resolution, and I readily agreed to that, because I understood that a fresh situation might arise. The debate on the Resolution had only just commenced; the Honourable mover had spoken and I had replied and the Honourable Sir David Devadoss had asked one question and the debate had not proceeded beyond that point. Therefore, I quite understood that the debate would proceed today.

THE HONOURABLE THE PRESIDENT (to the Honourable Pandit Kunzru): Do you wish to make your remarks at this stage?

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU (United Provinces Northern: Non-Muhammadan): We are not resuming the adjourned debate. The House was prorogued. I had to give notice therefore of the Resolution again and consequently the whole matter is to be considered afresh.

THE HONOURABLE THE PRESIDENT: If you propose to speak again, I have no objection.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: I have to state the case again. We do not require any permission of the executive in order to make any observations we like at this stage—neither I nor any other member of this House.

THE HONOURABLE THE PRESIDENT: I take a different view. Courtesy demanded that I should request the executive in this matter.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: Whatever the view of the executive might be, I and every member of the House have every right to express our opinions on this subject.

THE HONOURABLE THE PRSIDENT: You are getting every right to speak.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: What I submit is that even if the Home Member had said that he did not think that it was desirable that other members should express their views, his view would have been inadmissible. Every member would, notwithstanding any opinion that he might have expressed, have been at perfect liberty to take part in the debate.

THE HONOURABLE THE PRESIDENT: He has readily agreed.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: He has agreed, but I am referring to the principle underlying the matter.

THE HONOURABLE MR. HOSSAIN IMAM: I might mention, Sir, that we had to get the consent of the executive in one respect, although I am at one with the Honourable Pandit Kunzru that we should not surrender our liberty. But in this case, Sir, we are discussing a matter within six months of the last discussion. Under the rules it is barred. It is by the courtesy of the executive that we are discussing it.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: If the executive showed any courtesy it was shown when the Resolution was placed on the agenda. We do not require any permission of the executive now to express our views on any aspect of the question.

THE HONOURABLE THE PRESIDENT: Will you please proceed with your remarks now on the Resolution?

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: Mr. President, I beg to move :—

" This Council recommends to the Governor-General in Council to take steps to amend the Defence of India Rules in order to provide (*a*) that all persons detained at present under the Defence of India Rules be informed immediately, and those detained hereafter be informed within a fortnight of their arrest of the grounds on which an order of detention has been made against them and furnished with such particulars as may be required to enable them to meet the charges against them, (*b*) that they be freely allowed to meet their legal advisers and such other persons as they may require to consult to present their case and (*c*) that the charges together with the evidence in support of them and the explanations submitted by the detenus be placed in each province or administration before a judge or a committee of judges of the Provincial High Court, or the nearest High Court, who may be asked to submit a report to the Government concerned on each case referred to him or them:"

Mr. President, had I felt that I was free to give notice of a new Resolution on the subject, I would not have moved the Resolution today in the form in which it was moved last November. The circumstances that have arisen since it was first moved required that the language of the Resolution should be changed, but I was afraid lest any change of such a character in the Resolution should make the Resolution inadmissible and so prevent us from raising the discussion that we wanted. The Ordinance, Ordinance No. III of 1944, which relates to part (*a*) of my Resolution required that the first part should be altered, but for the reason that I have stated I was unable to change my previous Resolution by a word or a comma. This Resolution unfortunately therefore comes before the House in the form in which it was discussed in November last.

As the House will remember, Sir, I pointed out during the last discussion the procedure that was followed in England in order to allow detenus to know the charges which could be brought against them and to give them an opportunity of presenting their case to an advisory committee appointed by the Home Secretary. I am sure that it is not necessary for me to draw the attention of the House to the provisions of Regulation 18B of the United Kingdom which relates to these matters. I may, however, say that this Regulation lays down that one or more advisory committees shall be appointed by the Secretary of State (that is, the Home Secretary) to consider such representations as may be made to it by any person who thought that any order that had been passed against him was unjust. The Regulation expressly recognises that every detenu has the right to make representations concerning his incarceration and that he should be informed that he has such a right. It also lays down that the Chairman of the advisory committee who will be nominated by the Home Secretary should inform every detenu of the grounds on which an order had been made against him and to furnish him with such particulars as in the opinion of the Chairman would be sufficient to enable him to defend himself. I also suggested, Sir, that the Government should, in reviewing the cases of the detenus, seek the help of the judiciary and I pointed out that the request that I was making was in accord with the procedure that had been followed in Bengal more than once in examining the cases of political prisoners and detenus. My Honourable friend the Home Member, who spoke on behalf of Government, informed us that the question of letting every detenu know the grounds on which he had been arrested was under the consideration of the Government. But he objected to any committee of a judicial or *quasi*-judicial character being appointed to examine the cases of the detenus, even though, as I had stated, such committees would be only advisory. He saw no reasons why even *quasi*-judicial committees, even though they might be entitled only to make recommendations to the executive, should be appointed. His view was that the matter being one which was entirely within the discretion of the executive it was for the executive to review the cases of the detenus and arrive at such decisions as seemed proper to it.

Since then, Sir, the situation has been changed by the promulgation of Ordinance No. III of 1944. I think it will conduce to a proper understanding of the subject if I place before the House the salient features of this Ordinance. The main sections of this Ordinance are sections 3, 7 and 10. Section 3 states the reasons for which a person may be detained or for which any restrictive orders may be passed against him and the manner in which he shall be dealt with. This section reproduces the provisions of section 16 of the Defence of India Act and rule 26 of the Defence of India Rules. So far as I know, Sir, although this new Ordinance has been passed

[Pandit H. N. Kunzru.]

rule 26 has not been abrogated. At any rate, I am not aware of any notification rescinding rule 26 of the Defence of India Rules. I should, therefore, like to ask Government why, when they have promulgated a self-contained Ordinance dealing with the arrest of persons and their detention, without trial they have thought proper at the same time to retain rule 26 ? Sir as I have already stated, rule 3 reproduces the provisions of section 16 of the Defence of India Act and rule 26 of the Defence of India Rules. Rule 7 lays down that as soon as an order has been made against a person that he be detained he should be informed as far as it is possible to do so without disclosing facts which it would be against the public interest to disclose, the grounds on which the order had been made against him, and such other particulars as were in the opinion of the authority detaining him sufficient to enable him to make if he wished a representation against the order.

Now, it will be clear from this, Sir, that the Ordinance applies only to persons who have been detained. Section 3, however, does not apply only to persons who are in detention. It enables Government to direct a person to remain in a certain area or to report his movements to the police or to withdraw himself from a particular area or place. Now, persons falling under these categories will not be allowed to controvert the grounds on which they have been detained. They will be given no opportunity whatsoever of knowing the grounds on which restrictive orders have been passed against them. The British Regulation 18B to which I have already referred is of a much wider character. Sub-section (*2*) of this Regulation states that—

"A person may be either detained or such restrictions might be imposed on him in respect of his employment or business, in respect of the place of his residence, and in respect of his association or communication with other persons as appeared proper to the Home Secretary".

Sub-section (*3*) of this Regulation says that :—

"For the purposes of this Regulation there shall be one or more advisory committees consisting of persons appointed by the Secretary of State".

I am not going to deal with the opportunity given to detenus to place their case before advisory committees because I have already referred to that matter, but it will thus be seen that, although Government had Regulation 18B before them, they did not make Ordinance III as wide as the operation of Regulation 18B is. They have restricted the Ordinance only to persons who are detained. Section 7 applies only to persons detained under clause (*b*) of sub-section (*1*) of section 3, and clause (*b*) relates only to persons against whom an order of detention has been passed. Now, I should like to ask, Sir, why, when the Government of India had the whole Regulation 18B before them, they did not follow the lead given by His Majesty's Government and enable all those persons whose liberty had in any way been controlled by the executive to rebut the charges which Government thought could be brought against them. It is a great pity, Sir, that section 7 of Ordinance III of 1944 is limited only to the case of the detenus and does not afford other persons who are affected by restrictive orders an opportunity to place their defence before the authorities though, after what has happened in Lahore, we cannot be certain that the executive would in every case even send forward representations made to the higher authorities.

Again, Sir, section 10 of the Ordinance, to which I have already referred, says that—

"No order made under this Ordinance, and no order having effect by virtue of section 6 as if it had been made under this Ordinance, shall be called in question in any Court, and no Court shall have power to make any order under section 491 of the Code of Criminal Procedure, 1898, in respect of any order made under or having effect under this Ordinance, or in respect of any person the subject of such an order".

Obviously this section completely ousts the jurisdiction of the High Court. In other words, it places persons detained under this Ordinance, in respect of seeking redress from the law courts, in the same position as those detained under Bengal Regulation III of 1818. I shall deal with this question a little later ; but it is a serious matter that an Ordinance which has ostensively been promulgated to confer a right on the detenus to know the grounds on which they have been detained and to make

representations to the authorities takes away the power of High Courts in a very important matter. The Ordinance, therefore, cannot be welcomed. Section 10 places us in the position in which things stood in England before Regulation 18B was framed. The Government of India, while apparently making a concession to the detenus, have adopted a policy which the House of Commons protested against some years ago and compelled the executive to alter. I shall, however, deal with this point more fully a little later.

Sir, I should first like to deal with section 7. My Resolution had, as I said, to be confined only to the cases of persons who are under detention; I could not alter the Resolution for fear that it might not be admitted. But Government owe us an explanation for not assimilating the procedure in this country to that in force in England. If Government are prepared to let detenus know the reasons for which they have been detained, is there any reason why they should not be prepared to inform persons whose movements are restricted of the grounds on which such action has been considered necessary in their case? I lay stress on this because my inquiries have enabled me to know recently that it is more or less the rule at present, when persons are released, for the releasing authorities to pass restrictive orders against them. There have been cases in which persons have been asked to live in their own villages. They might not have visited their villages for years. They may have been engaged for years in various occupations in towns far from their villages. Yet they are asked to reside in their own villages. This is not merely a serious hardship on people who are used to the amenities of life in towns, but it deprives them of the means of earning their livelihood. Such restriction, therefore, is a matter of great public concern. It is a matter in connection with which we have a right to ask Government to follow a more enlightened policy than they have so far done. Yet, in spite of these hard cases which must have been known to Government, they have not yet considered it advisable to allow persons who are not kept in detention to know the grounds on which their freedom of movement or action has been restricted.

In this connection I should like to refer to the character of the examining authority. As I have already informed the House, I asked, in November last, that the Government should appoint a judicial or *quasi*-judicial committee to review the cases of the detenus so that the public might feel that even persons detained without being tried in a court of law had been given a fair opportunity of defending themselves before persons who are in a position to weigh facts. Now, my Honourable friend the Home Member objected to it on grounds which I have already briefly placed before the House. When it was pointed out to him that in England in all probability the procedure was analogous to that which I had suggested, he said he was not aware of it, but that in any case as the last word lay with the executive, he saw no reason why judicial opinion should be taken at any stage of the proceedings. Now, Sir, in England, too, the question of releasing detenus or of modifying restrictive orders passed against them is entirely within the competence of the executive. The judiciary has no right to intervene in this matter. Yet, because the country is a free country, the British Government have been careful to adopt a procedure which would enable Parliament and the public to feel that executive discretion was being properly exercised. The Home Secretary was asked in the House of Commons on the 10th April, and 22nd April, 1941, regarding the membership of the Advisory Committee appointed under Regulation 18B of the Defence General Regulations, 1939. The Under Secretary, who replied on behalf of the Home Secretary, placed a complete list of the members of these Committees before the House and it appears from the names of these members that the Chairman of the Committee was Sir Norman Birkett who is a judge now and who was well known as an eminent and highly experienced lawyer on the criminal side, and apart from him, there are two eminent lawyers in the Committee. It appears thus that although the detention of a person is a matter which rests entirely with the executive, the Advisory Committee that has been appointed has an important legal element and that an eminent lawyer presides over it. In this connection, Sir, I would draw the attention of the House to a question put to the Home Secretary on the 22nd November, 1940. He was asked whether he could consider revising the procedure of the Tribunal dealing with persons detained under the Defence of the Realm Regulation 18B so as

to bring the procedure more into conformity with ordinary British legal procedure. The Under Secretary who replied said in the course of his reply :—

" The question of the procedure of this Committee was carefully considered at the time when Defence Regulation 18B was framed....It would not be practicable that the procedure should be the same as that followed in a criminal trial, but my Right Honourable friend is satisfied that the experienced lawyers who preside over the Divisions of this Committee take the utmost care to ensure that the person detained shall have the fullest opportunity of presenting his case and that his examination by the Committee shall be conducted with scrupulous fairness ".

Sir, it is thus quite clear from there plies given by Government in the House of Commons in April, and November, 1941, that notwithstanding the fact that it is completely within the power of the executive to accept or reject any recommendation made by an Advisory Committee, the Committee as a whole and its various Divisions are presided over by eminent lawyers so that persons who are in a position to examine evidence and to judge its value properly should be in a position to advise Government whether the information on which it acted could be reasonably relied on or not. My Honourable friend the Home Member, in dealing with this matter last November, said that the question was not one of a judicial character at all. He could not, therefore, see any reason why a Judge of a High Court or any judicial authority should be allowed to have a say in the matter. The questions that arose were of an executive nature and should, therefore, be decided by the executive alone. My reply to him is that he should not merely read Regulation 18B but should inform himself carefully of the procedure followed in practice in the United Kingdom, where the people can have more confidence in the executive than here. In view of the procedure that exists in England, there is no reason whatsoever why Government should not accept the suggestion made in my Resolution and invite a Judge or Judges of a High Court to examine the cases of the detenus.

I said in November last that the procedure suggested by me had actually been followed in Bengal in the past. I repeat that statement today. I understand that such Advisory Committees have been appointed repeatedly in Bengal. I was told that an Advisory Committee, presided over by a High Court Judge or with which the judiciary was associated in some way was appointed as recently as 1941. If the Bengal Government could see no objection to the procedure which I have recommended, I do not see why the Government of India should fight shy of it. If the records of the detenus are placed before the Judges of a High Court or before Committees presided over by experienced lawyers, as is the case in England, no practical difficulty can arise. My Honourable friend the Home Member said in November last that when the Government of India asked the Provincial Governments some time ago to appoint Committees to review the cases of detenus, great difficulty was experienced in finding suitable men and in securing continuity of work. It is hard forme to believe, Sir, that in a province, three or four competent persons could not be found to review the cases of the detenus. I admit that persons appointed to an Advisory Committee of the kind that I have suggested should be men possessing high qualifications. But, even so, I cannot admit that if the Government were serious in the matter, small committees consisting of men with experience of judicial affairs could not be found. I think, Sir, that the difficulty referred to by the Honourable the Home Member is more imaginary than real. In any case, Sir, let the Central Government take the lead themselves by appointing a committee consisting, say, of the Chief Justice of India or a Federal Judge and a member of the executive, to review the cases of the detenus under their control. I have no doubt whatsoever that such a committee will work properly and that the Local Governments will soon find that they too can appoint suitable committees to review the cases of the detenus within their jurisdictions.

1 P. M. Now, Sir, I shall refer to section 10 of Ordinance No. III which completely ousts the jurisdiction of the High Court under section 491 of the Code of Criminal Procedure. We all understand that the procedure which the executive wanted to follow in August last was of an exceptional character. Nevertheless, in order that the public might feel that the exceptional powers were not being improperly exercised, it was desirable that in cases where illegality or illtreat-

ment could be proved, some judicial authority should be in a position to grant the necessary relief. The High Courts have been in a position so far to take cognizance of cases of this kind. The number of such cases has not been large. It cannot therefore be said that the existing procedure led to any practical inconvenience. Only those cases came before the High Courts or the Federal Court in which some important point of law was involved. Apart from this, Sir, there was a case, that of Mr. Jai Prakash Narain, in which a *habeas corpus* application was made on the ground that the petitioner had reasonable grounds to fear that Mr. Jai Prakash Narain was being ill-treated in jail. We know, Sir, what happened to the lawyer who presented the petition in that case. He was arrested by the police and it seems from the fact stated before the Lahore High Court by Mr. Munshi that the police asked him whether he was the lawyer who had presented the *habeas corpus* petition on behalf of Mr. Jai Prakash Narain. Obviously it seems that the object of the arrest was to terrorise the Bar and to prevent it from taking up cases which the executive did not want to be placed before the judiciary. The provincial authorities adopted an extraordinary procedure in that case. Mr. Jai Prakash Narain was detained under the Defence of India Regulations. But after the *habeas corpus* petition had been presented his detention was changed from one under the Defence Regulations to that under Bengal Regulation III of 1818, so that the High Court might have no power to interfere. The only point in that case was that there was fear that Mr. Jai Prakash Narain was being physically ill-treated. One would have thought that the executive would go out of its way to convince the High Court that there were no facts to show that Mr. Jai Prakash Narain had been dealt with in the manner complained of. It would have been to its advantage to do so. Yet instead of doing so, it adopted a procedure in order to prevent scrutiny by the High Court which has led the public to believe that Mr. Jai Prakash Narain was really being treated in a grossly oppressive manner. Sir, the effect of the arrest of the counsel who appeared for Mr. Jai Prakash Narain and whose name is Mr. Pardivala was that the lawyer who was associated with him in the case and who was to ask the authorities of the Punjab Government at the instance of the Chief Justice of the Punjab for an interview with Mr. Jai Prakash Narain did not write to the Government. He stated before the Punjab High Court the other day that the arrest of Mr. Pardivala made him and the whole of the Bar "funky". Sir, I have gone into the details of this case because it has an important bearing on section 10 of the Ordinance which we are discussing. It seems to me from what has happened in this particular case that the executive has in some cases used its power in a very objectionable and oppressive manner. It is necessary therefore that the power of the High Court to intervene in such cases should be retained. Yet, Ordinance No. III, which apparently confers a new right on the detenus, takes away from them that judicial protection which they could till recently receive in certain eventualities. Sir, I may in this connection refer to another case which has been decided recently by the Punjab High Court. In this case the *habeas corpus* petitions which were to be presented to the Lahore High Court and forwarded to the executive were not placed before the High Court. The Chief Justice took strong exception to the conduct of the executive in this matter. The explanation offered by the executive was that it was thought at first that *habeas corpus* petitions did not lie to the High Court and that later when it was realised that they did, the Government withheld them pending the decision of another case by a Bench of this Court. Sir, can executive highhandedness go further? The Chief Justice of the Punjab High Court has rendered a great public service by giving a stern warning to the Punjab Government that such things would not be tolerated in future by the High Court. He has given the executive to understand that it is not for the Punjab Government but for the High Court to decide whether any petition which any man desired to place before it came within its jurisdiction or not and what was the time for its proper consideration.

Sir, the examples that I have given show how necessary it is to retain the jurisdiction which the High Court possesses under section 491. Let me repeat, Sir, that the number of cases that come before the High Courts or the Federal Court is almost negligible in comparison with the number of detenus. Apart from this, Sir, the two cases that I have cited show that even at the present time when the

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High Courts can in some cases intervene, the executive has arrogated to itself an authority which it does not legally possess. It has acted in a manner amounting to contempt of court. I hope that the warning given by the Punjab High Court will be heeded by the Punjab Government in future, but we can never be certain of the conduct of the executive. We know for instance that, in Bihar a District Magistrate has refused to release a detenu even though his release was ordered by the Bihar High Court.

Sir, for the reasons that I have stated I cannot regard Ordinance No. III as a satisfactory disposal of the points contained in my Resolution. I hold, Sir, that it should be seriously amended before it can serve what we have in view. Elementary justice requires that the procedure recommended by me, which is analogous to that followed in England, should be followed in this country too. My Honourable friend said in November last that we had no reason to distrust the discretion of the executive because the number of the detenus, which was about 15,000 when it was at its peak had been reduced to about 7,500 when he addressed us. I understand from a reply given by him in the Assembly the other day that it is now between 5,000 and 6,000.

THE HONOURABLE SIR REGINALD MAXWELL: It is about 5,000 now.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: If this is so, Sir, there is no reason why the executive, which is prepared to release a large number of detenus, which thinks that the time is opportune for relaxing the undue severity with which it acted some time ago, should not appoint a judicial or *quasi*-judicial Tribunal, a Tribunal consisting either entirely of judicial officers, lawyers and executive officers, to consider the cases of the detenus.

Sir, the matter is a very serious one. It concerns the liberties of the people. Even though, Sir, we have been told that the members of the Congress Working Committee will not be released unless they are prepared to withdraw the Resolution passed in August, 1942 and are prepared to co-operate with Government, yet there are a large number of persons whose cases have still to be examined and I submit that at the present time there is no reason whatsoever for following a procedure which is not merely inconsistent with that which has been accepted by the British Government in England but also creates well-founded suspicion in the minds of the Indian public against the methods followed by the authorities in this country. I hope for these reasons, Sir, that the House will support my Motion. (*Applause.*)

THE HONOURABLE THE PRESIDENT: I will not read the Resolution again as it has been read several times. The Council will now adjourn till 3 P.M. as I understand that today being Friday some of the Muslim members will not be able to come earlier. The debate will be resumed at 3 P.M.

The Council then adjourned for Lunch till Three of the Clock.

The Council reassembled after Lunch at Three of the Clock, the Honourable the President in the Chair.

THE HONOURABLE SIR N. GOPALASWAMI AYYANGAR (Madras: Non-Muhammadan): Mr. President, I rise to support the Resolution moved by my Honourable friend Pandit Kunzru. When this Resoluion was debated last in this House in November, in the course of that debate you, Sir, put two questions to the Honourble the Home Member—if I may say so, two significant questions. The first was in connection with the formation of advisory committees, and his contention was that it was difficult to find adequate personnel for such committees. You, Sir, asked him the question: "Can you not get non-officials with legal experience to be on such advisory committees?" The Honourable the Home Member replied that they might find such people, but there were difficulties, and that, after all, legal experience was not the only thing that was required. As a matter of fact, the committees that were and are constituted in England for the purpose of looking into the merits of the objections put in by detainees consist both of lawyers and other people. We have in this country quite a number of retired judicial officers including High Court Judges, scattered all over the country. There are again in the legal profession men with high qualifications and character fit to be appointed Judges of the High

Court. There is no dearth of legal talent in this country, in any province for that matter.

The Honourable the Home Member also put forward another objection that on these committees it would be necessary to place men with other than legal qualifications—men, for instance, who knew the facts of cases of the kind. He referred to Chief Secretaries, Home Secretaries and men in the Central and Provincial Secretariats. I do not know, Sir, if that is the sort of people whom you should put on these committees. If knowledge of facts were required, we should have to travel out of central offices and go out to the districts to find people with knowledge. But I can understand the position that on committees of this sort we should have also people with some administrative experience. We have such men in the country. For instance, in a province like Madras, it ought not to be impossible to constitute a very strong, independent and impartial committee, say, with Sir David Devadoss as Chairman, Sir A.P. Patro, with administrative experience as a Minister for two terms, and if I may add, a man like Mr. C. Rajagopalachari, as to the strength and efficiency of whose administration of law and order in that province Professor Coupland has borne such ample testimony. I dare say, Sir, that committees of the same qualifications and calibre could be constituted in other provinces as well.

The second question that you asked of the Honourable the Home Member was your remark: "There would be no difficulty, I presume, in putting the law in India under the Defence of India Act on the same principle as in England." Here again, the Honourable the Mome Member said that he was agreeable in principle, but he thought in practice there would be great objections. I did not understand him to have concluded the matter on that occasion, but Ordinance III of 1944 which has since been issued has dropped out the idea of these advisory committees altogether. The remark which you made has a much wider application than to the formation of these advisory committees, and before I conclude I hope to have persuaded the House that not only has the law in this country not been brought into line with the law in England on this subject, but that the law in this country has been taken backwards to a time when the law in England was very heavily objected to in the House of Commons and the Government of the day had to hold conferences with leaders of parties and come to agreed re-drafts of Regulation 18B.

So far as these advisory committees go, and the work that has been done by them in England, the Honourable Pandit Kunzru has already referred to the personnel of some of these committees. I have a list of people on these committees at a later time than he referred to, but I would not weary the House by reading out those names. The main fact is that over the entire committee presides Sir Norman Birkett, who is now, I believe, a Judge of the High Court. There are panels and sub-committees of this committee over each of which a lawyer presides—a K.C. for preference. As regards the work of these committees, the present Home Secretary in England has borne very significant and ample testimony. He has acknowledged the assistance he has throughout received from these committees, and he says :—

"I would like to pay my tribute to the work of the Advisory Committee. I have read every one of these hundreds of reports over the months that I have been at the Home Office. I have read them with very great care, as it is my duty to do. I have looked into the proceedings and procedure of the Advisory Committee, and I have been very much impressed by, and am very proud of, the fairness and the scrupulously judicial spirit in which the Committee do their work."

That shows how the executive in England are solicitous of doing all that they can for reducing to the minimum the encroachments on personal liberty. Then he goes on to say :—

"They do not cross-examine the detained person, they hear him ; and I assure the House that not only do they hear him, not only do they not act as prosecutor against him. Rather they act as counsel in his defence by helping him to bring out the full strength of the case he has. Frequently I have come across such phrases as 'Are you sure that there is nothing else you would like to tell the Committee ?' or, finally, 'Would you like the Committee to adjourn so that you can think about it and in case you think about something else, come back ?'"

That is the spirit in which the advisory committees are treated by the executive in England. It is a great pity, Sir, that the idea of constituting such Advisory Committees in this country has not been adopted by the Government. The principle and

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policy of the whole thing are clear. Ordinance No. III of 1944, like Regulation 18-B in England, vests drastic powers for encroachment on personal liberty in the hands of the Executive and it is only natural that powers of this magnitude should lend themselves to abuse. That these powers have been abused in this country in individual cases nobody can deny. That even the best of persons might give way to some temptation in the matter of over-exercising powers which he possesses is only natural. In fact, the present Home Secretary repudiated the idea suggested by certain Members of Parliament in England that he might be alright but his successor might misuse those powers. He said :—

" I am not going to use the argument usually put forward as a matter of courtesy that we do not believe the present Minister would be wicked but we are afraid that his successors might be. I believe that any Minister is capable of being wicked when he has a body of regulations like this to administer ".

And then, Sir, these Advisory Committees and the right to resort to them and prefer objections to them against orders of detention passed by the Executive—they are a safeguard against abuse of power. In this connection, Sir, I would like to read to you two questions addressed to the Prime Minister of England, Mr. Churchill, and the answers given by him in the House of Commons. He was asked first on what grounds he had satisfied himself that the powers granted under Regulation 18B to the Home Secretary have not been abused having regard to the fact that the detentions under this Regulation are under the sole discretion of the Secretary of State for the Home Department who is not bound to disclose his reasons for any such detention. Mr. Chruchill answered :—

" This matter has been fully debated in the House of Commons on three occasions and having regard to the provision made by the Regulation—mark these words, Sir,—for the hearing of representations by Advisory Committees, to facilities to persons detained to communicate with Members of Parliament, I have no doubt that if these powers have been abused, it would not have escaped the notice of Parliament or of His Majesty's Government".

During the same sitting, on the same day, in answer to another question as to whether he would make provision giving British subjects the right of appeal against decisions of the Home Secretary for the time being under Regulation 18B, the Prime Minister replied :—

" The existing Regulation already provides *safeguards* in the provisions giving the right to detainees to make representations to the Advisory Committee but the final decision in these cases must rest with the Secretary of State who is responsible to Parliament for the administration of the Regulation ".

That, Sir, is the policy underlying the whole thing. The Honourable the mover of this Resolution and myself are agreed that the final decision must rest in a matter of this kind in the hands of the executive. But it is necessary that whoever represents the executive must apply a fair, impartial and judicial mind to the material which is placed before him, and in applying such a mind to cases, it must be of immense advantage to the Executive to have the assistance and advise of a body of men constituted in the manner we have proposed.

The great difficulty in regard to this matter is that Ordinance No. III of 1944 has lost sight altogether of recent developments in the law on this subject in England. I believe, Sir, that the Defence of India Ordinance of 1939, followed by the Defence of India Act and the Defence of India Rules framed under the Ordinance and Act, were modelled probably on the Defence (Emergency Powers) Act of England and the Defence (General) Regulations which were originally framed under the Act. They vested in the Executive powers similar to those which rule 26 of our Defence of India Rules vests in them. That raised a big uproar in the House of Commons and after a very full debate, Sir Samuel Hoare had to intervene and suggest that it was necessary that agreement of all the parties should be obtained for the Regulations that are framed. For this purpose he proposed a Conference, and this Conference met and an agreed Defence Regulation 18B was substituted for the previous Regulation 18B and enacted.

Now, Sir, there is one point which I should like to draw the attention of the House to. In England, all Defence Regulations which are made by Orders-in-Council have, under a section of the Defence (Emergency Powers) Act to be laid on the table of the House of Commons and if within 28 days the House of Commons takes objection to any of them or suggests the annulment or modification of any of those Regulations, that has to be given effect to. Here we in the Legislature pass the Defence

of India Act. The Defence of India Rules were and are framed entirely by the executive. They are not placed before the Legislature. So, the legislature has no opportunity of criticising what all is provided in these Defence of India Rules. It so happened that rule 26 was enacted in that way. I am sure that if that had come before the House, Members like the Honourable Pandit Kunzru would certainly not have allowed a rule of that sort to go in. He certainly would have had our attention drawn to what had been done in England and that rule would have been brought into line with the present regulation 18B. It did not happen—

THE HONOURABLE THE PRESIDENT: Are they not published in the Gazette of India?

THE HONOURABLE SIR N. GOPALASWAMI AYYANGAR: They are, Sir; after they are made. But nobody has any opportunity of questioning them except by carrying a Resolution addressed to the Governor General in Council to modify any particular rule they may have made. Rule 26 was made in this way. Certain persons were detained and some of them took the matter to Court and the Federal Court finally held that rule 26 went beyond the powers which section 2 (2) (*x*) of the Defence of India Act had conferred on the Governor General in Council. In that decision, Sir Maurice Gwyer, I think made a suggestion as to how the Executive might get out of the difficulty. As a result, they enacted Ordinance No. XIV of 1943. Section 2 of that Ordinance amended section 2 (2) (*x*) of the Defence of India Act. Section 3 validated all action that had been taken under rule 26. The validity of this Ordinance was again questioned and the matter came up before the Federal Court. The argument before the Federal Court was that section 2 of this Ordinance was beyond the Ordinance-making powers of the Governor General. But the Federal Court steered clear of the obligation to give a decision on this constitutional and legal point. They said that section 3 of this Ordinance was sufficient to validate what had been done. That was sufficient for the purpose of deciding the particular cases before them. They left the validity of section 2 of this Ordinance in the air. Now, I suppose this judgment of the Federal Court put the executive on inquiry. There was the possibility that the validity of section 2 of this Ordinance might be brought up again before the Federal Court. As all executives must be prepared for such a contingency, they set about finding out how best this could be avoided, and the result—I am only guessing, I speak subject to correction—and the result is Ordinance No. III of 1944. Now this has dropped out the language of section 2 (2) (*x*) altogether as it originally was. It has retained only that portion of 2 (2) (*x*) as amended by section 2 of Ordinance XIV of 1943 which said that restrictive orders could be passed if the authority concerned were satisfied that such orders were necessary for public safety, etc. So that in this Ordinance there is nothing like any previous evidence or other material which they have to take into account for the purpose of arriving at any satisfaction as to whether these restrictive orders are necessary. I do not wish to elaborate this point very much further, but in order to clinch matters I would draw the attention of the House to the very different provisions of Regulation 18B in England. Sub-section (*1*) of this Regulation contains three clauses in each of which language of this kind occurs :—

" If the Secretary of State has reasonable cause to believe any person to be of hostile origin or associations, or to have been recently concerned in acts prejudicial*** *and that by reason thereof* it is necessary to exercise control over him ".

In the next clause there is the same language :—

" If the Secretary of State has reasonable cause to believe any person to have been or to be a member of**any such organisation *** *and that it is necessary* to exercise control over him ".

The third clause is of a similar character. So that the satisfaction that the Secretary of State has to arrive at as regards the necessity for placing restrictions on a particular person has to be founded on facts which have been taken to his notice. What however do we find in Ordinance No. III? If we take section 3 it says :—

" The Central Government or the Provincial Government, if satisfied with respect to any particular person that with a view to preventing him from acting in any manner ".

not because he had acted or even been reasonably suspected, as our Defence of India Act says, of acting or being about to act in a prejudicial manner. It simply says that if Government are satisfied that, for the purpose of preventing him from doing certain things it is necessary so to do, they can make an order. Now that really explains another point which the Honourable Pandit Kunzru referred to. In

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dealing with section 7 of this Ordinance, he very rightly drew attention to the fact that representations could be made only against orders of detention, not against other kinds of restrictive orders. That is so. But what is the case under Regulation 18B? No restrictive order of any kind could be passed under Regulation 18B unless there had been previously an order of detention. I read to you the preambles of the three sub-clauses of clause (*1*). The operative portion of it says :—

" He may make an order against that person directing that he be detained ".

Sub-section (*2*) of this Regulation then says :—

" At any time *after* an order has been made against any person under this Regulation, the Secretary of State may direct that the operation of the order be suspended subject to such conditions—

(*a*) prohibiting or restricting****

(*b*) imposing**

(*c*) prohibiting****" *et cetera.*

So that the foundation of the jurisdiction for passing any other restrictive order is an order of detention, which has first got to be suspended. If, as Pandit Kunzru pointed out a man had been ordered to be detained and he was realeased unconditionally, there is no jurisdiction in England to pass a restrictive order against him. Take, for instance, the case of Mrs. Sarojini Naidu. She was released unconditionally. Now, I suppose the ban that has been placed upon her activities is under one or other of these various clauses in section 3 of Ordinance No. III of 1944. A thing like that would be impossible under Regulation 18B in England. This leads to the inference that section 3—the most important of the sections of this Ordinance—is based not upon any effort to bring the law in this country into line with the law in England. but it really goes back to the law in England which the present Regulation 18B superseded, and most of it is a copy of rule 26 of our Defence of India Rules which the Federal Court held to be *ultra vires* of the rule-making power. I would suggest, Sir, to the Government that they should overhaul these orders, and as you suggested, Sir, they should try and bring the law in this country into line with the law in England. I could mention one or two matters in this connection by way of illustration. Clause (*f*) of section 3 of this Ordinance says :—

" imposing upon him such restrictions as may be specified in the order in respect of his employment or business, in respect of his association or communication with other persons, and in respect of his activities in relation to the *dissemination of news or propagation of opinions.* "

These last words were, I believe, in the original Regulation 18B in England. A tremendous opposition was raised against the continuance of those words and at the Conference of party leaders I spoke of the Government gave way and dropped out those words referring to dissemination of news or propagation of views. You do not find them in the present Regulation 18B. Well, Sir, our Ordinance No. III of 1944 really, therefore, goes very much futher in the direction of an encroachment on personal liberty than what Regulation 18B does in England, than even what our Defence of India Act and the rules framed thereunder were intended to do. I have given you, Sir, the history of the Defence of India Act and Regulation 18B. The powers conferred by section 3 of Ordinance III of 1944 are thus very much wider. Now, if under Regulation 18B, as it stands in England today, Prime Minister Churchill has conceded the position that safeguards are necessary—and one of those safeguards is the setting up of these Advisory Committees—for the purpose of preventing an abuse of these extraordinary powers, I say, Sir, such safeguards are very much more necessary in this country with a law which goes very much further in the restriction of personal liberty than the law in England, and I would appeal to the Government to reconsider the position they have taken up and agree to the constitution of the Advisory Committees which the Honourable Pandit Kunzru has recommended. It does not matter how you constitute them, provided you have at the head of each an officer with legal or judicial qualifications and provided you find for the rest of the personnel men of character and standing in the different parts of the country. It was mentioned that we had to deal with something like 15,000 detainees in this country and that it is not an easy matter to find personnel for all the Committees that may be required. We have got to remember, Sir, that we have eleven provinces. 15,000 detainees would not mean more than 1,500 people in each province. In England, I must say, the Home Secretary, Mr. Herbert Morrison, deals individually with every case and he is very sensitive about that. He has dealt with

every case and I believe the original number in England was somewhere about 1,500 and 2,000 If it is possible in England, Sir, to constitute a number of Committees to deal with these cases it ought not to be impossible to do so even in this country.

Now, Sir, I would like to say something as regards the question of the communication of charges and grounds of belief. That is done, Sir, under section 7. There also there is a departure from the English law. Under Regulation 18B a detainee has got two rights : one of making a representation to the Home Secretary ; the other of making an objection to the Advisory Committee. The Home Secretary when he passes an order of detention communicates to the detainee the Regulation or rule under which the detention has been ordered and thereupon it is open to the detainee to make a representation; and then either the Home Secretary refers the representation to the Advisory Committee, or if he dismisses it, the detainee—and in the word "detainee" I include also persons against whom restrictive orders have been passed after a detention order has been suspended—the detainee has the right to put in a petition to the Advisory Committee, and the Chairman of the Advisory Committee is the person who has got to formulate the grounds for the action taken against the particular person and also to determine the particulars which should be communicated to him for the purpose of enabling him to make his defence. That makes a very great difference. Then I must mention, Sir, that during these parliamentary debates I find both Sir John Anderson, as Home Secretary, and Mr. Herbert Morrison, as Home Secretary, have frequently reiterated the fact that every bit of material on which they arrive at their conclusion is sent to these Advisory Committees. There is no material that is withheld from these Advisory Committees. When that is done, Sir, it is much fairer to the person whose personal liberty is restricted that he should have the grounds of the action against him stated to him by the Chairman of this Advisory Committee rather than by the authority which passes the order ; and if the very wide discretion in section 7 for withholding information is exploited by officers to whom powers might be delegated under this Ordinance it is quite possible that the person under detention will hardly get any material on which he can make any representation.

Now, Sir, there is mention of legal assistance in Pandit Kunzru's Resolution. Legal assistance is necessary for preparing a case. I find that the practice in England is not to allow lawyers to appear before these Advisory Committees but it is certainly the practice that the detainee himself is given a hearing, as the extract which I read to you would have shown ; lawyers are allowed access to detainees in their places of detention. I believe the Honourable the Home Member during the last debate said that there was no objection to that but he also added that the interviews between the lawyer and his client had to take place in the presence of prison officials. That has been taken exception to in England but I believe the practice in England to-day is that those interviews have to take place in the presence of the prison officials. There was a bad case where a certain lady, a detainee, had to prepare a case—one Mrs. Nicholson, I think—and she met her lawyer in jail and gave him certain names of witnesses whom he might name in the representation to be made on her own behalf. She wrote them down on a piece of paper and handed it over to the lawyer. The prison official snatched it from the lawyer and said he must have a look at it but the lady took it back and tore it up for she said she did not want the prison official to look at it. The authorities in England have not given way on that matter It would be fair however if the Government could trust the *bona fides* of the lawyer. He belongs to a great profession and I do not see why he should not be put on obligation not to use the occasion for any purpose other than that of ascertaining facts and giving legal advice. If that is done, I do not see why there should not be a more private talk between client and lawyer. But that is a minor point.

Before I conclude, I wish only to refer to one very important consideration which I think as the Upper House of the Indian Legislature we must take cognizance of. It is this. The Indian Legislature passes the Defence of India Act. Rules are framed under it. Courts declare a particular rule to be *ultra vires*. Then action under that invalid rule is validated by an Ordinance. Now Sir, under section 72 in the Ninth Schedule to the Government of India Act, 1935, it is perfectly clear to my mind that of the two legislative authorities in this country, namely, the Indian Legislature and the Governor General. It is impossible to contend that the Governor

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General's Ordinance-making power is on the same level or footing as the legislative powers of the Indian Legislature. I need only refer to two or three points in that very section: the Ordinance-making power could be exercised only in times of emergency; secondly, as the section originally stood, the Ordinance could endure only for six months; now, of course, under a Parliamentary enactment that time limit has been taken away; and thirdly, an Ordinance is specifically stated to be capable of being controlled or superseded by an Act of the Indian Legislature. There is no provision in the Government of India Act which says that an Act of the Indian Legislature could be controlled or superseded by a Governor General's Ordinance. That, I believe, was one of the things which troubled the minds of the Honourable Judges of the Federal Court, and they left the matter in the air. But I am appealing to the Government to look at it from the standpoint of constitutional propriety apart from the legality of it. When a Court declares a particular thing to be *ultra vires* because it did not conform to the provisions of an Act of the Indian Legislature, if the emergency is so great that it should be set right by an ordinance, that ordinance, I think, must be specifically stated to be of temporary duration, and at the next opportunity on which the Legislature meets the whole matter must be placed before it.

Now, Sir, in this particular case, rule 26 was declared invalid, and an Ordinance tried to make it valid. The validity of that Ordinance was questioned, and now we have another Ordinance, Ordinance No. XIV of 1943 was, I think, issued in April, 1943. The Houses met twice afterwards during the year, but heard nothing about it. The decision of the Federal Court on the validity of that Ordinance was, I believe, towards the end of August or the beginning of September. The Houses met in November. If it was the intention of Government to get their action validated beyond doubt, they had the opportunity to bring a Bill before the Legislature in November, failing which they ought to have brought it during the current session. Instead of that, they issued this Ordinance only about three weeks ago. I am appealing to the Government not to give room for legitimate criticism on a matter of this kind. When it concerns the question of personal liberty, it becomes all the more necessary that they should conform to constitutional proprieties.

There is a good deal more that can be said, but I will not occupy the time of the House any more. I would strongly urge upon the Honourable the Home Member to retrace his steps with regard to the decision not to constitute advisory committees, and to agree now, before this debate is over, to the constitution of those committees. I would also ask him to get this Ordinance III of 1944 vetted properly and brought into line with the law in England.

THE HONOURABLE MR. V. V. KALIKAR (Central Provinces: General): Sir, I heartily support the Resolution moved by my Honourable friend Pandit Kunzru. The Resolution contains three demands, and the Honourable the mover has framed the Resolution in such a way that any Government, whether responsible or irresponsible to the Legislature, should have accepted it if they wanted to look at the Resolution in a judicial frame of mind. My Honourable friend Pandit Kunzru wants that the detainees should be given an opportunity of knowing the charges. Secondly, he wants that legal advice should be available to the detainees. And thirdly, he wants that advisory committees of High Court Judges should be constituted and those committees should submit their reports to the Governments concerned who have put those persons in prison. These are very modest requests, and I do not understand why the executive do not want to accept this Resolution, unless they want not only to use the wide powers that have been given to them arbitrarily but to connive at the abuse of power which has been going on in the country after the passing of the Defence of India Rules and the various Ordinances.

We know, Sir, that after the Defence of India Rules were passed and their execution was delegated to the Provincial Governments, many cases have cropped up where in the administration of these rules there has been gross abuse of power. The matter came up before various High Courts under section 491 of the Criminal Procedure Code. Various High Courts in India have decided that the wide powers that have been given to the executive have been abused. Now, my point is this. A reference was made by the Honourable Sir Gopalaswami Ayyangar to what you,

Sir, stated last time. Where is the difficulty in framing rules and bringing the law in India on the same lines as in England ? Nobody says that the executive should not be armed with wide powers in times of emergency. My Honourable friend the Home Member reminded my Honourable friend Pandit Kunzru that the war is still going on and that the Japanese are on the borders of India. We all know that, and we do not say that the executive should not be armed with powers. But there ought to be some safeguard, and that safeguard must be in the form of a review by the High Courts, which have upheld up till now the liberties of the subjects which have been affected by the administration of these wide powers. I do not want to cite the remarks of an eminent Judge of the Allahabad High Court where he says that under the rules the High Courts have become paralysed and powerless. But I want to bring to the notice of the Government of India the remarks of a great Executive officer in England—I mean Mr. Herbert Morrison, British Minister for Home Security. We are told here that the judiciary cannot come to conclusions on some facts about the future conduct of a detenu. We have been told that the judiciary are incapable of doing that, and that they can only judge on facts placed before them and apply the law according to their own interpretation. Therefore, they say, there ought to be no interposition of the judiciary in these matters. But, Mr. Herbert Morrison says :—

" If I were to allow myself in the exercise of the drastic power of detention without trial entrusted to me by Parliament as an exceptional war-time measure to depart from a judicial frame of mind and be influenced—not by considerations of public safety—but by personal dislike or political opposition I should no doubt be able to give entire satisfaction to many of my present critics, but I should be abusing the powers afforded by Regulation 18-B, and betraying the trust reposed in me by Parliament that those powers would be exercised in a judicial spirit and solely for the purpose of national security ".

Sir, these are the words of a Secretary of State in England, not of a High Court Judge in India. These are the words uttered by a high Executive officer, who knows that powers ought to be exercised in such a way that they in no way curtail the personal liberties of subjects while national security is not also endangered. Here, in India, we have seen cases where the power has been grossly abused. Let us see the difference between the position obtaining in India and in England under these emergency powers. In England, there is the Advisory Committee. In England, there is the Parliament. In England, there is the Press to ventilate the grievances and if the grievances are not remedied, the Parliament has got every right to remedy the grievances. Here, the Central Legislature is quite powerless in the matter. The Press is gagged and we have no Advisory Committee. All orders of detention are passed, not just like in England where the Secretary of State has got to be satisfied on grounds submitted to him whether an order is to be passed, but on the report of subordinate police officers. Sir, in my own Province, I know of cases which came before the High Court of Nagpur where the orders were passed by a Subordinate Sub-Divisional Magistrate. Just on the report of a Police Sub-Inspector people were detained in prison and nobody was allowed to see them to give them legal advice and when the Bar applied on their behalf to the High Court under section 491, even then they were not allowed to appear before the High Court. Sir, there is a lot of difference between the administration of the emergency powers in England and in India. My argument is that in England, after all, the executive is responsible to the Parliament but in India the executive is not at all responsible to the Indian Legislature. So, the executive ought to be more careful here in administering laws of this wide nature. My submission is that the executive not only curtails the personal liberties of the people but has created a sort of feeling in India that it can do whatever it likes in administering these drastic regulations, and that it can encroach upon the personal liberties of people in any walk of life. I submit, therefore, that the Government of India ought to reconsider their position. I am looking at it from the point of view of the prosecution of the War, bringing it to a successful end and keeping the home front strong. If you want to maintain the morale of the people, if you think that the willing co-operation of the people of India is necessary to fight against the Japs, you cannot take powers and use them in such a way as to curtail the liberties of people or to take away whatever residuary power you have kept with the High Court. My Honourable friends Mr. Kunzru and Sir Gopalaswami Ayyangar have fully dilated on this point and I do not want to take up much of the time of the House. But, Sir, I must submit that if the

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Honourable Mr. Kunzru's Resolution is accepted and if these detenus are allowed to have a little legal advice, I do not think that the safety of the realm or the public peace will be endangered. As stated by my Honourable friend Mr. Kunzru in his last speech, we know that the detenus are not in a position to put up their case in a particular form before the authorities concerned. If they get legal advice, they will be able to put up their case in a particular form and they can at least try to satisfy the authorities concerned that they are free from the charge brought against them. You put to Mr. Kunzru a question last time, Sir, whether such a procedure existed in England? Sir Gopalaswami Ayyangar has just now explained the procedure. There might not be a definite procedure like this. But, Sir, in India where so many illiterate people have been put into prison they require help to put up their case before the authorities concerned in a particular form and therefore, Sir, the help of their counsel is needed. What do we find here? Even counsels who have been engaged not for submitting the cases of the detenus to the executive authority but for submitting their cases before the High Court, those very counsels have been persecuted by the executive and a reign of terror is created in certain provinces to which reference was made this morning. If, Sir, that is the position that exists in India, is it not for the Government in the interests of keeping the home front strong to reconsider the matter and revise their rules? Documents have been destroyed; documents which were meant to be presented to the High Court have been destroyed by the executive. Pleaders who were to be engaged got panicky and would not come forward to defend cases of these detenus. Is that the way that the law is being administered for the prosecution of the war? Sir, in Pardivala's case the executive mistook him for Mr. Batliwala. Sir, I will read to you what was stated before the High Court by Mr. Munshi.

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"The desire of the police was to scotch the 'habeas corpus' petition and they succeeded in doing that. So far as Mr. Pardivala was concerned, the knowledge which the police had about him could be made out by the interesting questions which they asked him while he was in their custody. For instance, said Mr. Munshi, they asked him whether he had not stood for election for a Secretaryship of the Congress Socialist Party and whether his wife Mrs. Nargis was not an active Socialist worker. This question naturally surprised Mr. Pardivala because not only he was not connected with the Congress Socialist Party and he had not contested any election but he had no wife".

These are the ways how the executive in India are administering the wide powers that have been given to them under the Defence of India Rules. I take this opportunity of congratulating the High Court of India for upholding the cause of justice and for standing between the executive and the subject and upholding their rights and liberty. My Honourable friend Mr. Kunzru wanted bread. What has he got? He has got Ordinance No. III of 1944 and he got a stone instead of bread. The only power that existed under section 491 of the Criminal Procedure Code has been taken away. I do not want to dilate on that point much, because the matter is *sub judice*. I read three days ago that a case is being started in the Calcutta High Court whether the Ordinance-making authority has got the legal power to abrogate that section. But from the nature of the section it seems that in the Ordinance there is clear mention that this power has been taken away altogether. Sir, after all, it is only the High Courts having some residuary power that can see that no injustice of whatever kind is done to the subject and the personal liberty is not curtailed. Sir, the executive not only do not want to constitute advisory committees, but they do not even trust their High Courts. My point is that in this Ordinance that power is taken away. That shows the distrust of the High Court. I, Sir, protest against it with all the emphasis I can command and I appeal to the House to support the Resolution moved by my Honourable friend.

*THE HONOURABLE MR. HOSSAIN IMAM (Bihar and Orissa: Muhammadan):—Mr. President, the Resolution which the Honourable Dr. Kunzru has moved is not quite what he would have moved if he had had time to revise it. I feel, Sir, that the Government has taken a step which purports to be in consonance with the Resolution but which has utterly failed to catch the spirit of the Resolution. The first part has been accepted in part that they will be informed of the reasons for their detention and that they will be given

*Not corrected by the Honourable Member.

an opportunity of submitting their explanation, a memorandum on their detention. But this will be of no avail if a neutral authority is not charged with the duty of adjudicating on the defence. It would be quite useless and serve no purpose if those who were responsible for framing the charges and for sending him to detention were again to judge whether the detention was right or wrong. It is somewhat on a par with contempt proceedings. In contempt proceedings you have this provision that the judge who is the complainant is also there to decide the matter. But those proceedings are so scarce and so patently on the face of it wrong that there is a great deal of agitation in the country and the Government has promised to revise the rules and regulations for contempt on a Resolution moved in this House. I therefore suggest that, quite apart from the fact of the personnel who are in detention, without adjudicating or giving any judgment on the merits of the detention of the present lot, that it is a step in the right direction and in keeping with the practice of other democratic countries that Indians should also enjoy the rights which are given to their fellow British subjects. We have been told many a time of the blessings which have descended on India because of the British connection, but when we come to tangible things and ask for particular rights which are enjoyed by the British subjects we are denied that. On principle, I mean on theory, we have all the privileges of a British national but in practice none of those rights can descend on us, for, after all, what does Pandit Kunzru ask for ? He does not ask that this Committee should be the final judge. It is not to pass an order which will be binding on the executive authority. It only wants that the executive authority of the province, the Provincial Government, or the Central Government, should have an unbiased opinion, a judicial opinion, on the rights of the two, the detainee and those responsible for the order of detention against him. The arguments which have been placed before the House by the speakers before me are cogent enough. I simply stood up, Sir, to give the moral support of my Party to this Resolution and to say that we Indians feel alike on this question. where the question of the liberties of the subject is concerned there is no difference amongst us. We want that there must be liberty for all.

Sir, I support the Resolution.

THE HONOURABLE SIR REGINALD MAXWELL (Home Member): Sir, when I last discussed this Resolution in this House, I was not able to explain fully what Government intended to do to meet it because final decisions had not then been taken. Had I been able to announce these decisions then, I could have shown point by point how much Government had already done to meet the points advanced by the Honourable Pandit Kunzru in the Resolution as originally drafted. I might remind the House of those points because this Resolution still stands on the agenda as originally drafted and the House should remember how much of it does not require now to be the subject of any recommendation to the Governor General in Council. The first part of the Resolution recommends that all persons detained should be given information about the grounds of their arrest together with the necessary particulars. That, as I shall explain in a minute, has been done by Ordinance III of 1944.

The second recommendation made in part (*b*) of the Resolution is that persons detained should be freely allowed to meet their legal advisers and I explained that point at the last debate and told this House that permission for such interviews is now given. And I might here advert to the point made by the Honourable Sir David Devadoss regarding interviews with professional people, who had been recently arrested, to settle their business or professional affairs. I said at the time that I thought that that suggestion was eminently reasonable and action was taken at once or very soon after by the Central Government to amend the Central Government Security Prisoners' Order, to the effect that, in addition to the interviews ordinarily permissible, any security prisoner may, with the usual permission required, be granted up to two special interviews for the settlement of his business or professional affairs within not more than two months from the date of his arrest. That was the action taken by the Central Government as regards the areas under its immediate control, and the same suggestion was communicated to Provincial Governments with the recommendation that they should adopt it. I have since heard that all Provincial Governments have accepted it in principle; so I think that the Honourable Member will agree that his point has adequately been met.

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The third part of the Resolution—part (*c*)—is that which has been prinicipally under discussion today, but I will now go back to Ordinance III of 1944, which has been in fact the basis of today's debate. I was first asked why it was introduced, or a suggestion was made that the Central Government was forced to do so by a judgment of the Federal Court. That is not quite the position. There were certain remarks made by the Chief Justice of the Calcutta High Court, in which he compared the position of security prisoners in this country with persons detained in the United Kingdom and pointed out that they had no opportunity of securing a hearing before action was taken against them. Although that was in the sense of an *obiter dictum*, and it was not binding as a judicial decision, the Central Government felt that there was considerable force behind those observations and, in fact, they took action in that direction as a matter of ordinary justice. I myself had been inclined to take a similar view before the Calcutta High Court uttered those observations and I had also felt that the indefinite detention of security prisoners without any statutory provision for the review of their cases went beyond the present needs of the case. I, therefore, initiated certain proposals, which were readily approved by the Government of India, to introduce certain, what I might call, liberalizing features into the procedure which was followed in dealing with persons arrested under Defence Rule 26.

The Honourable the mover asked why was the original rule 26 not cancelled when this Ordinance was passed. There is no concealed reason behind that. Rule 26, although not formally cancelled, is in abeyance but it was thought advisable to retain it for purely legal reasons; that is to say, certain cases were pending before the Federal Court and the Privy Council in which certain matters connected with that rule were under consideration and it might have prejudiced the decisions in those cases if the rule had ceased to exist before the matter came before the Courts. The rule was retained purely on legal advice, and I am not concerned with it. All that we and the Provincial Governments now work on is the new Ordinance III of 1944.

Certain criticisms have been levelled against us in connection with that Ordinance——

THE HONOURABLE SIR N. GOPALASWAMI AYYANGAR: May I ask a question on the last point? I would refer to section 10 (*2*) of the Ordinance. That does not show that much consideration was shown to the fact that applications were pending questioning the validity of rule 26 in the High Courts of this country; all the rules pending were deemed to have been discharged by section 10 (*2*).

THE HONOURABLE SIR REGINALD MAXWELL: The cases which were pending before the Federal Court and the Privy Council were not such as would in any way be affected by section 10 (*2*) of the Ordinance.

I was saying that Government brought in Ordinance III of 1944 in order to replace the then existing rule 26. Although that Ordinance has been much criticised in this House, I have failed to notice any appreciation of the very great advance in certain points made by that Ordinance in securing certain rights for persons arrested and detained. It has been my experience in this country that when any action was taken by Government to meet the popular point of view we got very little thanks for it, and all we were asked was, "Why did you not do more?", or "Why did you not take the action earlier?". That has been exactly our experience in the present case. Therefore I should like to take the House very briefly through what I might call the novel features of this Ordinance.

There is, first of all, section 7, which enacts that the grounds of detention are to be communicated to the person arrested together with any necessary particulars. I would point out here only that this goes considerably further than Bengal Regulation III of 1818, which the Calcutta High Court compared favourably with Defence Rule 26, because, as I explained in the last debate, under Regulation III there is no obligation on the part of the detaining authority to supply the prisoner with information about the grounds of his detention. That is one point about section 7. Another point is that it gives the prisoner a statutory right of making a representation. On the last occasion I explained to the House that in fact the absence of any

provision did not prevent prisoner from making representations. But now we have given them a statutory right and there is nothing further depending on anyone's discretion. A third point about that section is that it places a duty on the authority passing the order to inform prisoners of that right and to afford them the earliest opportunity of making their representation if they desire to do so. Thus there can be no question now of any subordinate executive officer withholding any representation ; anything that the prisoner wishes to represent about his case must go to the authority which passed or confirmed the order.

The Honourable the mover asked why this section was confined to the cases of persons detained and why the benefits were not given to persons restricted, and he attempted to support his argument by the analogy of Regulation 18 B. The Honourable Sir Gopalaswami Ayyangar has given him the answer. He has pointed out that the analogy of Regulation 18B quoted by the Honourable the mover was somewhat misleading, because Regulation 18B is only a Regulation authorising detention in the first instance. The Secretary of State may direct that the operation of an order of detention be suspended on certain conditions ; and those conditions to some extent cover the field of the restrictions which can possibly be imposed under old Defence Rule 26 or under the new Ordinance. But it was never contemplated in the United Kingdom that liberties of persons should be restricted in the first instance. Every such person has first to be arrested and detained, and the restrictions, as I said, are imposed only as conditions of release. The Honourable the mover said that in fact the usual procedure on release was to restrict the person concerned, to impose some kind of restrictive order on him. I would very much deny that that is the usual procedure, because I know it is only done in rare cases ; in most cases the release is quite unconditional. Some 12,000 people who had been once detained as security prisoners have been released, and I am quite sure there is nothing like 12,000 restrictive orders in force against them. But assuming that release after detention is followed by a restrictive order, the person concerned has already been supplied with the grounds on which action was taken against him and has already, under section 7 of this Ordinance, had the opportunity of making his representation against it. Therefore the Honourable the mover's argument falls to the ground.

The only argument which can be raised is that in cases of restriction, only in those cases where a person has been restricted in the first instance, he ought to be afforded the same opportunities as a person detained in the first instance. Well, it is open to argument, but I think that the very important obligations created in regard to detention would be somewhat out of place in the case of an order of restriction. I have always regarded it as the most serious thing to deprive any person of his liberty without trial. That is the thing to which the Calcutta High Court were referring. Where the Provincial Government, having ground for suspicion against some person, decides not to deprive him of his liberty but merely to impose certain rules of conduct upon him, in other words, to impose restrictive orders of some kind or other, that is not an exercise of their ultimate power. It is not what they would have done in the United Kingdom. They would have arrested him first ; they would have detained him first there. But, as I said, where a Provincial Government decides to exercise far less onerous action against a person, then I do not think they are called upon to incorporate all these safeguards. I hope the House will agree with me if I do not elaborate that point further.

Now I come to section 9 of the new Ordinance. I was surprised to find that neither the Honourable the mover nor any other member of this House made any reference to that while condemning the Ordinance. That is an entirely new feature which does not exist even in Regulation 18 B of the United Kingdom. It provides that no order of detention may remain in force for more than six months unless expressly renewed after review of all the circumstances of the case. I would draw the attention of the House to the fact that for the purpose of both the sections which I have mentioned, *i.e.*, sections 7 and 9, existing orders under Defence Rule 26 are deemed to have been made on the date of the commencement of this new Ordinance. The effect of that is that the advantages conferred by sections 7 and 9 are not confined to persons newly detained. Had we wished to do as little as possible it would have been easier for us to pass an Ordinance saying that these liberalising features will apply only to newly detained persons. But, no, we did not do that. The effect of deeming the old orders under rule 26 to come under the new Ordinance is that all

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the persons who have been detained from the beginning of the War under rule 26 get these advantages. They are supplied with the grounds of their detention ; they are informed of their right to make representations and they have the statutory right of making those representations and having them considered. Also, their detention is no longer indefinite. Under rule 26, a detention, once ordered, was of indefinite duration. But now, no detention can be indefinite. An order passed can only be in force for 6 months at a time and if circumstances make it necessary to keep the person longer in detention, then the whole matter requires the specific consideration of the authority which passed the order.

It has often been urged upon me that orders should be subject to frequent review and the principle has been accepted in the past in regard to persons who were in detention at the beginning of the War. But, so far, there has been no statutory provision, and although it was open to Provincial Governments to review these orders—in fact, they have gone so far as to release no less than 12,000 persons, of their own motion, before this Ordinance came into effect—still, it is certainly a safeguard for every detained person to be able to feel that his order must, under statutory provision, be considered fully before it can be continued in force for a period exceeding 6 months.

One other point, which has not been commented on or noticed, is that section 8 of the Ordinance meets a point which was referred to *obiter* in a very early judgment of the Federal Court on a rule 26 case regarding the exercise of delegated powers by subordinate authorities. It is now provided under this section that any order made in the exercise of delegated powers is subject to the confirmation of the Government which must first consider all the circumstances of the case including any representation made under section 7. That provision corresponds to Regulation 18B in England, where similar powers are conferred on Regional Commissioners, but whose powers of detention are only temporary and are subject to the confirmation of the Government. I hope, therefore, the House will now realise how much has been done about part (*a*) of the original Resolution and in fact Government have gone even further than the Honourable mover had then thought of urging in several respects including the limitation on the period of detention.

I will now come to the criticism that has been voiced about section 10 of the Ordinance, which excludes the jurisdiction of Courts in cases under the Ordinance, and I would draw the attention of the House to the fact that the main provision, *i.e.*, " that no order made under this Ordinance shall be called in question in any Court " is the necessary reproduction in a separate Ordinance of a provision which applied to rule 26 as it existed before this Ordinance was passed. That provision was not a matter of rule. It was created by section 16 (*1*) of the Defence of India Act itself as passed by the Central Legislature at that time. Naturally, when rule 26 as such was abrogated and was made the subject of a self-contained Ordinance, a provision of that kind, which was applied to it before, had to be incorporated in the new Ordinance. There is no new restriction on the jurisdiction of the Courts. It always existed, and, as I pointed out, it existed by the will of this Legislature and not the will of the Executive——

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : May I point out to the Honourable Member that the power given to the Executive under section 16 (*1*) of the Defence of India Act is contained in section 3 (*9*) of the new Ordinance which runs as follows :—

" Any order made under the powers given by this section shall have effect notwithstanding anything inconsistent therewith contained in any Act, Ordinance or Regulation other than this Ordinance, or in any instrument having effect by virtue of any such Act, Ordinance or Regulation ".

THE HONOURABLE SIR REGINALD MAXWELL : That is only a matter of legal drafting concerning the effect, and the substantive provision is that contained in section 10 which is based on section 16 (*1*) of the Defence of India Act. I emphasise the fact that that restriction came into existence with the Defence of India Act, because a good deal of publicity has been given in the papers to a certain statement of one of the High Courts which made the observation that it was paralysed by these Defence of India Rules. There is nothing whatever in the Rules which curtails the jurisdiction of any Court. There is the other point that has been criticised, namely the exclusion of the *habeas corpus* provision in section 491 of the Criminal Procedure Code. I would point out that what is now being done is entirely consistent with what

was done by the Legislature in regard to various other Regulations authorising the detention of persons without trial for reasons of State. The Regulations are quoted in sub-section (*3*) of section 491 and when an Ordinance precisely analogous to those Regulations is passed, there is nothing new or strange in including it in the same provision as is provided by the Criminal Procedure Code for those other Regulations. But I would like to point out to this House that in reality the exclusion of section 491 makes no difference legally to the powers which the High Court can or cannot exercise. Under a provision such as existed in section 16 (*1*) of the Defence of India Act, although the jurisdiction of the High Courts was to some extent barred by it, it was open to a court to go into the question whether the authority passing the order had legal power to do so or whether there was any mistake of identity or finally even the question whether the order was passed *bona fide*. It has been held before in legal decisions that the restriction placed on the High Court's powers under section 491 of the Criminal Procedure Code does not bar the High Court from going into those matters and in fact the inclusion of section 491 in section 10 of the Ordinance makes very little difference in practice to what a court can or cannot consider, given the fact that it is the will of the Legislature that the High Court should not have ordinary revisional powers over orders passed for reasons of State. A good deal of argument used in this debate has been based on the allegation that the powers given to the executive in this country are not properly used. Certain cases have been quoted which have recently been given some prominence in the press. But I would point out one general feature and that is that the objections which may have been raised to the action taken in certain cases are based on allegations only. No one, not even the High Courts, have heard in full the evidence on which the Governments concerned have acted. The observations which have been made do not really attack the grounds on which the executive took certain action against a certain person. Whether those grounds are right or wrong has never been the subject of a judicial finding. And in regard to the case which has recently been reported from the Lahore High Court I would again point out to this House that it has nothing to do with the principle of the Resolution before this House. The question which was discussed was the withholding or destruction of certain *habeas corpus* applications. How could advisory committees, if constituted, have helped in such a matter ? We might have had advisory committees everywhere, but this was purely a matter of administrative action and was not such as would have come before an advisory committee in any case. The reflection, if any, is on the control exercised by the executive authority of the province in matters of administrative detail over their officers. But that is a matter on which a Provincial Government has sole responsibility to its own Legislature. And apart from that as these cases have shown, I think we can safely leave the High Courts to look after themselves. But in any case I would urge once more that a case of that kind has no bearing on the Resolution before this House and I would urge this House not to be prejudiced by any cases of that kind to which prominence may have been given in the press. On the whole, the general action of the executive in making use of the powers under Defence Rule 26 or under this new Ordinance is a thing which cannot be impugned by quoting a case here or a case there in which the grounds of their action have not really properly ever come before the courts or been argued before them—

THE HONOURABLE THE PRESIDENT : May I inquire whether Government will repeal rule 26 as soon as the pending appeals before the Federal Court and the Privy Council are disposed of ?

THE HONOURABLE SIR REGINALD MAXWELL : I think that point will certainly come up for decision. I expect that to be done subject to such legal advice as we may receive on the point. All I would point out now is that nothing has yet been said in this debate or elsewhere to shake the position of the executive in its use of these powers. Had they been grossly misused, far more cases than these would have come to light. The House may reflect on one point and that is that if these powers had not existed under Defence Rule 26 and if they had not been properly and firmly used it is extremely doubtful whether this House would be sitting here to-day peacefully discussing this question.

Now, I must end by referring to what was the Honourable the mover's main point, and that was the one urged in part (c) of his Resolution. This was the real point at the bottom of his original Resolution and that is why he referred so little to

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the steps which had been taken to meet it. He wants a judicial or *quasi*-judicial tribunal or an advisory committee to go into these cases. But I would point out to the House that the Resolution by its terms recommends only a full judicial tribunal composed of High Court Judges. There is nothing in the Resolution itself about any advisory committee on the British model, although this has been freely urged during the debate. That was not what the Honourable mover recommended in his Resolution. What he said was that Government should seek the help of the judiciary in dealing with these cases of detention. But, as I pointed out before, there is no such provision in the United Kingdom Regulation 18B, that is, no provision requiring members of the judiciary even in the composition of the committees. The composition of the committees is a thing determined by executive action and decision, although I fully admit that there are some lawyers on them and Sir Norman Birkett at the head of them. But the reason why the Honourable the mover urged this was that these cases should be placed before persons who are in a position to weigh the facts. I have already spoken shortly on that point in the last debate and urged that what has to be done is not a judicial but an executive function. A Court can try what the facts are on evidence of a certain kind placed before them. The evidence must be of a certain kind and must be proved in a certain way according to the Evidence Act and on such evidence it can find that the facts are so and so. A Court can also decide what the law is and whatever the law is it must be applied to the facts proved. But where, as in cases of the kind we are now considering, the entire question is whether the law should be applied or not to the facts as known, a Court is no better in a position to give a judicial decision than any layman. It is a matter of executive judgment.

Now, certain references were made, Sir, to discussions in the House of Commons and that was a reasonable reference because several speakers have relied so far on the analogy of the United Kingdom procedure ; and I must, if the House will bear with me for a few minutes longer, refer to a debate which took place in the House of Commons on the 26th November, 1941. I think that has been referred to specifically during this debate. The debate took place on a Motion on the Address which advocated that continued detention beyond a definite period should be subject to a right of appeal to an independent Tribunal that is to say, the debate ranged round almost the same point as that pressed by the Honourable mover in this Resolution.

Now, several lawyers of eminence took part in that debate as Members of the House of Commons, and I should like to read one or two very short extracts of the points that they made during that debate.

The Attorney General quoted certain words which were used by the Lord Chancellor in a similar case during the last war. The Lord Chancellor said :—

" It seems obvious that no tribunal for investigating the question whether circumstances of suspicion exist warranting some restraint can be imagined less appropriate than a court of law ".

Another Member of Parliament of very high legal distinction said :—

" I have always had in mind constantly that there was one exception in which the court of law could not interfere, and that was when the Executive responsible for the safety of the realm had to act on suspicion and either detain persons or restrict them ".

I could give other quotations to the same effect but that would take too long ; but the first point made in that Commons debate was that detention without trial is a function for the executive and not for the judiciary. Another point made was that any Tribunal which might be set up for this purpose would necessarily be an irresponsible body, that is, it would be free to give advise without responsibility for the safety of the realm, and strong exception was taken to that also by Members of Parliament having legal experience. It was pointed out that the responsibility of the Secretary of State is different in kind from that of a law court or even an Advisory Committee. The debate not only covered the question of a purely Judicial Committee, an independent Tribunal, but it also ranged over the value of the Advisory Committees themselves and so it gives a good deal of guidance in considering this question.

Now, one Member, Mr. Pethick-Lawrence, pointed out that the advantage to the detained person would be dubious because, he said,—

" If we remove the ultimate responsibility from the Home Secretary and give it to a court of law, that tends to make the Home Secretary much more lax in coming to his original decision ".

The Home Secretary will take refuge behind the Court and will not consider the case himself but will leave the Court to rectify it, and then the Court will say : Well, the Home Secretary has made this order, and they will require very strong grounds to be advanced before they change it.

Then another distinguished Member said :—

" The attitude of the Home Secretary, who above all things must have the safety of the realm as the most important point in his mind, must be different, and almost certainly will be different from the attitude of a person in a judicial or semi-judicial position ".

I would ask the House to reflect on that pronouncement of a Member of Parliament having great legal experience. Then the Secretary of State himself pointed out the difficulty of his position *vis-a-vis* these Advisory Committees. He said :—

" If I had said to myself ' I will not differ from the Committee for fear that I may be criticized in the House of Commons or the newspapers ' I should be a miserable person, utterly unfit to hold the high office which it is my honour to hold ".

The conclusions which I would draw from the debate and would ask this House to consider are these. If the view is that the orders of detention should be reviewed wholly from a judicial point of view, that is by High Court Judges, as recommended in the Resolution, this will be putting them in a false position and asking them to do work for which Judges are neither required nor suitable. No such decision can be left to a Tribunal which is not responsible for the results. If, on the other hand, the recommendation is for Advisory Committees on the same lines as in England, then, I admit, the objections are practical rather than based on any principle. But, I would point out, first, that Judges are not the best persons for such a purpose, and, secondly, that if, as recommended in the Resolution, they are merely to report to Government, the decision must still rest with the executive authority. Now, if the executive authority is to feel perfectly free to accept or reject that advice, as it must be free, and the point was admitted in this Parliamentary debate, then the present position will not be substantially or practically altered. It only means that an independent Tribunal composed of certain persons consider facts already known to Government and express an opinion on them and Government still remain responsible for the release or detention of the persons concerned. There is some danger both ways. Either the effect of such Tribunals or Committees is to make the authority responsible for detention lax in deciding to detain a person, or he may possibly become too compliant with the advice which he receives in deciding to release him, and thereby, as the Secretary of State, Mr. Morrison, pointed out, he would not be doing his real duty.

I have nearly finished, Sir. I merely want to point out that where a responsibility must be and must remain with the executive, the real remedy for the complaints which have been made, and the dangers which have been pointed out, is not to give the Courts a responsibility which is not properly theirs ; nor is it to attempt to share that responsibility with an Advisory Committee which would not be effective, whose advice need not be accepted, and which would be extremely difficult to maintain in this country. It has been argued, I know, by some Honourable Members that there would be no difficulty in constituting such advisory committees in India. But when I came to consider such a possibility in connection with this very Ordinance, I came to the conclusion that it would be extremely difficult to define their composition in such a way that we could guarantee being able to comply with the provisions.

5 P.M.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Could the Honourable Member speak a little more loudly ? The patter of rain makes it very difficult for this side of the House to hear him.

THE HONOURABLE SIR REGINALD MAXWELL : I very much regret it. I am raising my voice to the utmost, but the hail happens to be louder than my voice.

But, Sir, the remedy is not either of the two things, that is, to set up Courts or to set up advisory committees. The safeguard is, I submit, just what has been done this new Ordinance, namely, to ensure that the person detained has a proper hearing, and to set a definite limit to the period for which a person can be detained without fresh consideration and orders.

[Sir Reginald Maxwell.]

Therefore, while, as I have shown, we have accepted and given effect to, so far as necessary, parts (*a*) and (*b*) of the Resolution, I am sorry that although the case for an advisory committee or advisory committees has been forcefully and weightily urged by several Honourable Members of this House, Government cannot see their way at present to accept this part of the Resolution. I do not say that they will never be able to come to that position. It is a thing that Government will have to keep in mind if they find that the existing system does not work satisfactorily. But I am unable on behalf of Government to promise at this moment that anything can be done in the way of making these orders of detention subject to the advice of special committees appointed for that purpose. Therefore, from that point of view I must oppose the third part of the Resolution. But I hope that in view of what I have explained the Honourable Member will see his way to withdraw it as a whole.

THE HONOURABLE SIR DAVID DEVADOSS (Nominated Non-Official): May I ask one question? I understood the Honourable the Home Member to say that two months' time would be given if legal practitioners were arrested and detained. What about persons who were arrested and detained so far back as August and September, 1942?

THE HONOURABLE SIR REGINALD MAXWELL: I understood that the practical requirement was entirely one which would arise soon after a professional or business man, had been arrested and detained. That was the time which would find him with business or professional obligations on his hands which he would have to carry on. As the Honourable Member explained at the last session, he would have to take steps to see that these obligations were carried on by others, or to make other arrangements to meet them. But if we assume that it is more than two months since he was first detained, those obligations and those engagements should have resolved themselves in some way. Therefore, any person who was detained less than two months before the new Ordinance came into force will have his opportunity; but if he had been detained long ago, I do not think it would be of very great use to him.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: Mr. President, my Honourable friend the Home Member has shown no little debating skill this afternoon in presenting the case of the Government. He has defended the attitude of the Government, which I think most of us regarded as utterly weak, with an ability which all of us must recognise. Nevertheless it is clear that in spite of his skill and ability he has not been able to change the essential features of the question.

In my speech I drew attention to three important points in connection with the Ordinance. The first was its scope; the second was the failure of the Government to agree to the appointment of advisory committees on the British model; and the third was that the new Ordinance would completely oust the jurisdiction of the High Courts. What he said with regard to all these points is interesting and in some cases cogent, but I do not think that anything that has fallen from his lips this afternoon can make us change our opinions on these points.

Let me take first the scope of the Resolution. My Honourable friend said that a comparison with Regulation 18B was misleading because, as pointed out by Sir Gopalaswami Ayyangar, the regulation related to the cases of persons who instead of being detained had been dealt with in a more lenient way. As regards India, his view was that as every detenu would in future have an opportunity of placing his case before the authorities, it could not be argued that if his release was made subject to certain restrictive conditions he should have another opportunity of making representations either to Government or to any committee. Now, my Honourable friend failed to realise that when I referred to restrictive orders I referred to cases of persons who are no longer in detention and to whom therefore Ordinance III will not apply. I admit that in future if restrictive orders are passed against detenus who are released such a course will be adopted only after once giving them an opportunity of meeting the charges against them. But my Honourable friend was absolutely silent with regard to the cases of persons who are not in detention but against whom restrictive orders are in operation. He tried to minimise the seriousness of my complaint by saying that such orders had been passed only against a very small number of persons. I do not know the precise number of detenus who after their

release were subjected to restrictions on their movements or their freedom of action. But so many complaints have come to my notice that I feel that even if the number of such persons in the whole of India amounted to, say, 300 or 400, it was sufficiently large to require attention on the part of Government. The Honourable Member will remember that I pointed out in this connection that such orders operated very harshly in the case of the people whom they prevented from following their usual occupations and earning their livelihood. If a man is sent back to his village simply because it is his village, his release is not of the slightest use to him. Perhaps, when he was under detention, he received some allowance from Government. But, after his release, the allowance ceases even though he may be absolutely unable to support himself and his family. My Honourable friend did not deal adequately with this matter when he demurred to the comparison between the scope of Regulation 18B and the scope of Ordinance No. III of 1944.

Another matter, Sir, to which I referred was the effect of the Ordinance on the jurisdiction of the High Courts. My Honourable friend contested my view and said that the Ordinance would make no difference to the powers which the High Courts enjoyed. He argued that they would still be in a position to decide whether the powers conferred on any authority by the Ordinance had been legally used or had been used in a proper spirit. Now, I should like to refer him to the section of the Criminal Procedure Code which is rendered inoperative by the Ordinance. That section is section 491. Sub-section (*3*) of this section says :—

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

The Honourable Member argued from this that it should not be regarded as novel or strange if other exceptional laws are placed on the same footing as the Regulations and Acts referred to in section 491 (*3*). Sir, the Honourable Member missed the point of our criticism. We asked that the rules relating to the detenus should be liberalised and that they should be given an opportunity of rebutting the charges which the Government might bring against them, be able to obtain legal advice and to place their representations before a Committee consisting of men with ripe judicial experience. Is it any reply, Sir, to our argument to say, when we ask for the liberalising of the existing rules, that Government have deprived these detenus of a protection which they enjoyed because of the exceptions already contained in section 491 ? Section 491 may place certain Regulations and enactments on a special footing. But is that any reason why the scope of this exemption should be extended ? While the Ordinance gives the detenus an opportunity, which they had not previously enjoyed, of meeting the charges against them, it would also deprive them of a right which they greatly cherished which has been found to be valuable in practice and which is much more important than the right of making representations to Government.

Sir, my Honourable friend summarily dismissed the cases relating to the misuse of their powers by the executive to which we drew attention. His defence was that whatever the executive might have done, the High Courts had not questioned the right of the executive to exercise its powers and that such observations as they had made did not show that these powers had been misused. He further went on to say that the small number of cases in regard to which complaints had been made showed the care exercised by the authorities in using the powers vested in them. Sir, the fact that two such glaring instances of misuse of powers as were referred to earlier in the debate have come to the knowledge of the public creates a legitimate fear in the minds of the public that many such cases have occurred in the different provinces which could not be brought to light because the evidence in those cases was not as conclusive as in the cases referred to by me. If the Honourable Member attaches any value to the information which has reached members of the Council, I can assure him that there have been many cases in which the executive has misused its powers and in which undue pressure has been brought to bear on the lawyers to prevent them from defending the accused under the Defence of India Rules. Several cases of that kind have been brought to my notice in the United Provinces. The case of Mr. Baijnath, Vakil of Agra, in connection with which the Chief Justice of the Allahabad High Court said the other day that 'rightly or wrongly' he had come

[Pandit H. N. Kunzru.]

to the conclusion that Mr. Baijnath had been deprived of his liberty because he was defending the accused in certain D. I. R. cases, shows that the matter is not as small as my Honourable friend the Home Member thought. It is a much more serious matter. He who is in a position to exercise uncontrolled power may look at the matter entirely from the point of view of the executive which will never suffer from the operation of the rules to which I have referred. I, on the other hand, look at it from the point of view of an ordinary citizen who may be made to feel the weight of executive authority at any moment. The Honourable the Home Member is mistaken if he thinks that misuse of power occurs only when cases come before the High Courts the authenticity of which cannot be denied. There are various ways, direct and indirect, in which the executive can so use its powers as to be guilty of doing gross injustice.

Apart from this, Sir, I should like to refer to section 491 (*1*) (*b*). It runs as follows :—

" Any High Court may, whenever it thinks fit, direct that a person illegally or improperly detained in public or private custody within such limits be set at liberty ".

If Government only wanted that the power of the executive should not be improperly interfered with, there was no reason why they should try to put an end to the power of the High Court in those cases where there was complaint of illegality or improper detention, which I take to include physical ill-treatment. Indeed, Sir, I believe I am correct in saying that it was because of the existence of this section that Mr. Pardivala was able to forward a petition to the High Court. The petition was not delivered to the High Court by the police officer to whom it was entrusted. But that does not alter the fact that Mr. Pardivala would have had no right to make any representation but for the fact that he was detained under Regulations which did not oust the jurisdiction of the High Court under section 491(*1*) (*b*). I doubt, Sir, whether Mr. Pardivala would have been released but for the fact that he appealed to the High Court. The police, though they did not transmit Mr. Pardivala's representation to the High Court, realised that the matter was a serious one and therefore set him at liberty. Mr. Pardivala was so terrified that he did not attend to Mr. Jai Prakash Narain's case and when asked whether he would like to apply for an interview with Mr. Jai Prakash Narain replied in the negative. This is the state of things at present when the High Court enjoys the power that I have already referred to. What would be the state of things in a province like the Punjab if the power of the High Courts to interfere in any matter was removed altogether ? If persons who thought they were improperly detained could have no opportunity of having a *habeas corpus* petition presented to the High Court, is it not likely that the executive would exercise its powers in a more high-handed manner than it does now ?

I will now pass on to the third point that I raised, namely, the refusal of the Government to agree to the appointment of advisory committees to consider the representations that might be made by the detenus against their detention. My Honourable friend the Home Member in this connection first referred to the terms of my own Resolution and then to the debate which took place in Parliament in 1941. So far as my Resolution is concerned it is perfectly true that I asked for the appointment of committees consisting entirely of Judges of the High Courts. But I am sure my Honourable friend the Home Member will do me the justice of admitting that I distinctly stated that these committees were only to make reports to the Government, the final decision resting with the Government. Obviously then, whatever composition I might have suggested, the committees were to be only advisory in character. I did not suggest the inclusion of lawyers for two reasons. I drafted my Resolution before I had seen Regulation 81B. I had no opportunity at Allahabad of knowing the contents of Regulation 18B. Apart from this, I thought that even if Government might agree to the appointment of a committee consisting of Judges of the High Courts or of men with extensive judicial experience they would never agree to the appointment of committees including lawyers, however responsible they might be. I therefore restricted the composition of the committees suggested by men in order to strengthen my case and to persuade Government to accept my point. But I do not think that this can be urged as a ground against me, as my Honourable friend the Home Member has done, for not agreeing to the appointment of advisory committees. Sir, let me however say since this question has arisen now that I shall be

very pleased if Government appointed advisory committees presided over by responsible lawyers in whose knowledge and impartiality both the public and the Government could place confidence.

Sir, as regards the second point urged by my Honourable friend, namely, the arguments adduced in the debate in the House of Commons in 1941 against the appointment of Advisory Committees, I confess that they did not carry much weight with me. One of the arguments which he mentioned was that the appointment of the Advisory Committees would make the executive more careless than it was, or perhaps he said, to be more accurate, that if appeals to Courts or to judicial bodies were allowed, the executive would be much less careful in exercising its powers than it was. I do not know, Sir, what the case is in England but I think every one who has experience of India will agree that the power of the Courts to intervene has acted as a check on the vagaries of the executive. Instead of making the executive feel that any injustice that might be done under the orders passed by it was of no consequence because the aggrieved person could appeal to a court of law, its effect has been to make the executive careful in exercising its powers, so that their action might not be challenged in a court of law.

Sir, there is just one other point that I should like to refer to. My Honourable friend referred to the remark made by an ex-Lord Chancellor that for the consideration of matters involving executive issues the executive is better than a court of law. Now, Sir, if I had suggested an appeal to a court of law my Honourable friend could validly bring up this argument against me but I have suggested nothing of the kind. All that I have suggested is that persons in whom both the public and the Government can have confidence should be appointed to review the cases of the detenus. Whatever the recommendations of these bodies may be the final decision would still rest with the executive. Besides, Sir, the British Government must have had this observation before them when Regulation 18B was framed. If today we find that Advisory Committees are in existence in England and that the Home Secretary is required to give information to Parliament regarding the number of cases in which he does not accept the recommendations of these Committees, I think the Honourable the Home Member cannot justifiably refer to an observation, which whatever its weight may be, has been disregarded by the British authorities.

Sir, I do not want to deal with other points, although my Honourable friend the Home Member has exposed a large surface to attack. I shall only deal with his complaint that I failed to refer to sections 7 and 8 which confer valuable privileges on the detenus. He complained that I said nothing about the right conferred on the detenus now to make representations to Government and the limit placed on the period for which a man can be automatically detained. Now, I should be sorry, Sir, if I did any injustice to the Government but I purposely refrained from referring to these things and for reasons which I shall very briefly place before the House. When I looked at the Ordinance as a whole and considered it carefully I came to the conclusion that it must be unacceptable to Indians. In spite of sections 7 and 8 it seemed to me that the Ordinance could not be acceptable to us because of the provisions of section 10, that is because the High Courts had been paralyzed.

Another reason, Sir, why I did not refer to sections 7 and 8 was this. It is true that under the present Ordinance the cases of the detenus would be revised every six months but at the present time though the number of the detenus has been considerably reduced I understand that the orders of detention passed against those who are still in custody have been renewed. It is obvious, therefore, that the Ordinance has had no practical value. Apart from this, Sir, I may draw the attention of the Government to a complaint made by the *Hindustan Times* a few days ago that in one province the detenus had simply been asked to state their views on the August Resolution. I do not know whether this information is correct, but if it is, the obligation on the executive not to detain a man indefinitely but to re-examine his case every six months is of no value whatsoever. These were the reasons which prevented me from attaching that value to sections 7 and 8 of Ordinance III which my Honourable friend the Home Member does. His points of view and mine are different. I have complained of the acts of the executive. My Honourable friend, even though he is a member of the Government, will recognise that all members of the executive are not equally careful in regard to the exercise of extraordinary powers which might be conferred. We all differ from the policy

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which generally commends itself to my Honourable friend opposite. We think that he has a narrow outlook. But I do not think that there is anybody here who will not recognise the care which he bestows on the examination of individual cases. Whatever his views on questions of policy might be, in individual cases he tries to see that justice is done. But does he expect us to believe that every officer of Government goes through appeals and representations in the same manner in which my Honourable friend does? I do not think, Sir, that even a member of the Government can go so far as to ask us to repose unbounded confidence in every member of the executive——

THE HONOURABLE THE PRESIDENT: There are many conscientious men in the service.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: There may be many. But here the power is vested in every member of the executive, and that is why we ask that some means should be provided by which the cases of the detenus could be examined by persons who hold responsible positions but whose views are different from those of the executive authorities.

Sir, for the reasons that I have already stated, I am unable to withdraw my Resolution. My Honourable friend has held out to us the hope that at some future date Government might agree to the suggestion that I have made in regard to the formation of advisory committees. I do not know when that time will come. When that time comes, it will be unnecessary for us to bring forward a Motion of the kind that is before us. But that time has not come yet. We must therefore press our views on the authorities.

THE HONOURABLE THE PRESIDENT: Resolution moved :—

"This Council recommends to the Governor-General in Council to take steps to amend the Defence of India Rules in order to provide (*a*) that all persons detained at present under the Defence of India Rules be informed immediately, and those detained hereafter be informed within a fortnight of their arrest of the grounds on which an order of detention has been made against them and furnished with such particulars as may be required to enable them to meet the charges against them, (*b*) that they be freely allowed to meet their legal advisers and such other persons as they may require to consult to present their case and (*c*) that the charges together with the evidence in support of them and the explanations submitted by the detenus be placed in each province or administration before a judge or a committee of judges of the Provincial High Court, or the nearest High Court, who may be asked to submit a report to the Government concerned on each case referred to him or them."

The Question was put and the Council divided :—

AYES—13.

Askuran, Hon. Sir Shantidas.
Ayyangar, Hon. Sir N. Gopalaswami.
Das, Hon. Mr. Mahendra Lal.
Hossain Imam, Hon. Mr.
Kalikar, Hon. Mr. V. V.
Kunzru, Hon. Pandit Hirday Nath.
Mahtha, Hon. Rai Bahadur Sri Narain.
Motilal, Hon. Mr. G. S.
Padshah Sahib Bahadur, Hon. Saiyed Mohamed.
Ray Chaudhury, Hon. Mr. Kumarsankar.
Rezai Karim, Hon. Moulvi A. Z. M.
Roy Chowdhury, Hon. Mr. Susil Kumar.
Yuveraj Dutta Singh, Hon. Raja.

NOES—26.

Buta Singh, Hon. Sir.
Charanjit Singh, Hon. Raja.
Chinoy, Hon. Sir Rahimtoola.
Conran-Smith, Hon. Mr. E.
Das, Hon. Rai Bahadur Satyendra Kumar.
Devadoss, Hon. Sir David.
Ghosal, Hon. Sir Jogna.
Hissamuddin Bahadur, Hon. Lt.-Col. Sir.
Hydari, Hon. Mr. M. S. A.
Jogendra Singh, Hon. Sir.
Jones, Hon. Mr. C. E.
Khurshid Ali Khan, Hon. Nawabzada.
Lal, Hon. Mr. Shavax A.
Menon, Hon. Sir Ramunni.
Muhammad Hussain, Hon. Khan Bahadur Mian Ali Baksh.
Mahomed Usman, Hon. Sir.
Mukherjee, Hon. Sir Satya Charan.
Noon, Hon. Sir Firoz Khan.
Pai, Hon. Mr. Ammembal Vittal.
Parker, Hon. Mr. R. H.
Patro, Hon. Sir A. P.
Pillai, Hon. Mr. N. R.
Prior, Hon. Mr. H. C.
Sen, Hon. Mr. B. R.
Sobha Singh, Hon. Sardar Bahadur
Wilson, Hon. Sir Leonard.

The Motion was negatived.

RESOLUTION *RE* PRICE CONTROL AND REQUIREMENTS OF AGRICULTURISTS.

THE HONOURABLE MR. HOSSAIN IMAM (Bihar and Orissa : Muhammadan) : Have I your permission, Sir, to read my Resolution today, so that it can be discussed on the next non-official day ?

THE HONOURABLE THE PRESIDENT : Yes. I do not think it can be discussed today.

THE HONOURABLE MR. HOSSAIN IMAM : Sir, I move :

"That this Council recommends to the Governor General in Council that price control and adequate supply of the requirements of the agriculturists be taken in hand."

THE HONOURABLE THE PRESIDENT : Your Resolution will be discussed on the next non-official day.

THE HONOURABLE MR. HOSSAIN IMAM : Thank you, Sir.

STATEMENT OF BUSINESS.

THE HONOURABLE SIR MAHOMED USMAN (Leader of the House) : Sir, I suggest that the following two Bills which have been laid on the table may be taken up for consideration on Monday, the 21st February :—

(1) The Coffee Market Expansion (Amendment) Bill.

(2) The Central Excises and Salt Bill.

The Council then adjourned till Eleven of the Clock on Monday, the 21st February 1944.