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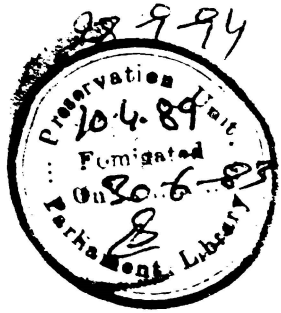
SEVENTH SESSION

OF THE

FOURTH LEGISLATIVE ASSEMBLY, 1934



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Legislative Assembly.

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THE HONOURABLE SIR SHANMUKHAM CHETTY, K.C.I.E.

Deputy President:

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SIR LESLIE HUDSON, KT., M.L.A.

MR. N. M. JOSHI, M.L.A.

Secretary:

MIAN MUHAMMAD RAFI, BAR.-AT-LAW.

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MR. T. R. PHOOKUN, M.L.A.

MR. MUHAMMAD YAMIN KHAN, C.I.E., M.L.A.

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LEGISLATIVE ASSEMBLY.

Tuesday, 10th April, 1934.

The Assembly met in the Assembly Chamber of the Council House at Eleven of the Clock, Mr. President (The Honourable Sir Shanmukham Chetty) in the Chair.

QUESTIONS AND ANSWERS.

DELIVERY WORK IN EXTRA-DEPARTMENTAL POST OFFICES AND POSTMEN AND OVERSEERS IN BENGAL AND ASSAM CIRCLE ORDERED TO DEMIT OFFICE.

657. ***Mr. S. C. Mitra:** (*a*) Is it a fact that Government have issued orders directing that the delivery work in extra-departmental post offices must be done by extra-departmental delivery agents? If so, will Government please lay a copy of the order on the table?

(*b*) Is it a fact that the Postmaster-General, Bengal and Assam, issued instructions by an express letter No. S.-296, dated the 21st February, 1934, to all Superintendents of Post Offices and first class Postmasters to carry out the retrenchment of personnel in all cadres below the clerical cadre and to order the retrenched personnel to demit office before the 1st April, 1934?

(*c*) If the reply be in the affirmative, will Government please state the total number of postmen and overseers in Bengal and Assam Circle who have been ordered to demit office on or before the 31st March, 1934 on the basis of that order and also the number of such officials whose service is below 25 years and below 10 years?

(*d*) Is it a fact that orders have also been issued to appoint extra-departmental delivery agents in place of the postmen under orders of discharge? If so, will Government state on what monthly allowances they will be appointed and what is the scale of pay of the postmen they will replace?

(*e*) Is there any possibility of the postmen under 25 years service now under order of discharge being absorbed in vacancies in the postmen's cadre elsewhere?

The Honourable Sir Frank Noyce: (*a*) The fact is not as stated, extra-departmental delivery agents are being employed only in those extra-departmental post offices in which the delivery work is not sufficient to justify the employment of wholetime postmen or village postmen. The second part of the question does not arise.

(*b*) Yes. These instructions were issued in the interests of the staff themselves as according to orders then in force the period for the grant of retrenchment concessions was due to expire on the 31st March, 1934.

(*c*) Government regret that the information is not readily available. The position, however, is that as the period for retrenchment concessions has been extended in the Posts and Telegraphs Department for one year from the 1st April, 1934, the Postmaster-General, Bengal and Assam, issued revised instructions on the 28th March, 1934, cancelling, for the present, the retrenchment of such officials as had not actually vacated their posts.

(*d*) Yes, but only where the volume of traffic justifies the employment of an extra departmental agent. As regards the second part, the monthly allowance of an extra-departmental delivery agent does not ordinarily exceed Rs. 10 a month while the scale of pay for wholetime postmen is Rs. 25—1—45 per month in the towns of Calcutta, Howrah and Alipore and Rs. 20—1—40 in the rest of the Bengal and Assam Circle.

(*e*) No. For the purpose of retrenchment, officials of the postmen class in each postal division or under each first class post office are treated as one unit.

Mr. Lalchand Navalrai: May I know from the Honourable Member whether the orders were only with regard to the retrenchment of personnel in the clerical cadre? Why was it only with regard to this clerical cadre and not in the case of the other cadres, *vide* clause (*d*)?

The Honourable Sir Frank Noyce: I think retrenchment has been proceeding also in regard to the other cadres. Retrenchment has been going on throughout the Department.

Mr. Lalchand Navalrai: But were there no orders with regard to this before, and, therefore, these orders were made in regard only to this cadre of clerks? Was there no order, along with the other orders under which the general retrenchment was going on? Why was there no such order with regard to these clerks also, so that it became necessary to give separate orders with regard to the clerks?

The Honourable Sir Frank Noyce: Orders in regard to the different cadres may issue separately; there is no reason why they should all issue together.

Mr. Lalchand Navalrai: I wanted to know whether there was a separate order on that account, *viz.*, that there was no order previously with regard to these men?

The Honourable Sir Frank Noyce: I am not conversant with all the details of this case. If my Honourable friend will put down a question, I shall be glad to obtain the information.

TREATMENT OF AN *EX*-STRIKER IN THE ENGINEERING DEPARTMENT ON THE GREAT INDIAN PENINSULA RAILWAY AT NAGPUR AS A NEW ENTRANT ON RE-INSTATEMENT.

658. ***Mr. N. M. Joshi:** (*a*) Will Government be pleased to state if it is a fact that an *ex*-striker in the Engineering Department on the Great Indian Peninsula Railway at Nagpur, when re-instated, is treated as a new entrant?

(*b*) Is it a fact that an *ex*-striker in the Transportation Department, if re-engaged, has his service prior to the strike, counted and also taken into consideration at the time of retrenchment?

(*c*) Is it a fact that owing to this differential treatment twenty workers in the Engineering Department at Nagpur were retrenched as being new men?

(*d*) Will Government be pleased to state the reasons for this differential treatment?

Mr. P. R. Rau: With your permission, Sir, I propose to reply to questions Nos. 658, 659, 663 and 664 together.

I have called for information, and will lay a reply on the table of the House, in due course.

Mr. Lalchand Navalrai: May I know how many times during the past three or four days the Honourable Member has stated that replies are being sent for?

Mr. President (The Honourable Sir Shanmukham Chetty): Order, order.

Re-Instated *ex*-Strikers in the Engineering Department of the Great Indian Peninsula Railway at Nagpur.

†659. ***Mr. N. M. Joshi:** (*a*) Will Government be pleased to state if it is a fact that the *ex*-strikers in the Engineering Department at Nagpur on the Great Indian Peninsula Railway were re-instated within two months of their discharge, consequent upon their going on strike?

(*b*) Is it a fact that there is a rule on the Great Indian Peninsula Railway that if a man is discharged and re-engaged within six months from the date of his discharge, his service prior to the discharge is counted for the purposes of gratuity and other privileges?

(*c*) If the reply to part (*b*) be in the affirmative, will Government be pleased to state whether the cases of those re-engaged strikers do not come within the purview of that rule?

(*d*) Are Government prepared to inquire into the matter and state the result?

Block Retrenchment on the Great Indian Peninsula Railway.

660. ***Mr. N. M. Joshi:** Will Government be pleased to state whether it is a fact that at present block retrenchment is being effected on the Great Indian Peninsula Railway?

Mr. P. R. Rau: The Agent, Great Indian Peninsula Railway, reports that no block retrenchment is being effected on the railway at present.

Ex-Strikers on the Great Indian Peninsula Railway not yet re-instated.

661. ***Mr. N. M. Joshi:** Will Government be pleased to state the number of *ex*-strikers on the Great Indian Peninsula Railway, who have still not been re-instated?

Mr. P. R. Rau: There are still 3,495, who have not yet been taken back.

Maintenance of Two Waiting Lists of *ex*-Strikers on the Great Indian Peninsula Railway.

662. ***Mr. N. M. Joshi:** (*a*) Will Government be pleased to state if it is a fact that the Great Indian Peninsula Railway Administration maintains two separate waiting lists of ex-strikers, classed as 'A' and 'B'?

† For answer to this question, *see* answer to question No. 658.

(*b*) Is it a fact that the ex-strikers on list 'A' are given preference over those on list 'B'?

(*c*) If the replies to the preceding parts be in the affirmative, will Government be pleased to state the reasons for this preference?

Mr. P. R. Rau: (*a*) I understand that on the Great Indian Peninsula Railway, *ex*-strikers are divided into the following three categories:

1st waiting list.—*Ex*-strikers who complied with the terms of the Government of India communiqué of the 1st March, 1930.

2nd waiting list.—Such of the men from the 1st waiting list as declined to accept an offer of employment on other State-managed Railways.

Register for re-employment.—*Ex*-strikers who failed to comply with the terms of the Government of India communiqué of the 1st March, 1930.

(*b*) Those who are on either of the waiting lists are given preference over those on the register for re-employment. Those on the 2nd waiting list are to be re-instated after those on the 1st waiting list have been re-instated.

(*c*) Government consider that *ex*-strikers who returned to duty within the period prescribed should have preference over those who did not. It was solely in order to allay all avoidable discontent and hardship that they arranged to keep the others on a special register and gave them preference over outsiders when vacancies occurred. The whole question is fully explained in paragraph 19 of the Railway Board's letter to the General Secretary, All-India Railwaymen's Federation, dated the 24th December, 1930, a copy of which I lay on the table.

Extract paragraph 19 from Railway Board's letter to the General Secretary All-India Railwaymen's Federation, dated the 24th December, 1930.

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19. It will be observed that the terms of these communiques apply only to persons who offered to return to duty within a prescribed period and do not impose any obligation on the Railway Board or the Railway Administrations in respect of persons who did not. With regard to the latter, however, the Railway Board have, *suo motu*, and solely with a view to allaying all avoidable discontent and hardship, issued instructions to the Agents of State-managed Railways:

(i) that men who failed to comply with the terms of the communiqué of March 1, when they apply for appointment, should have their names registered and that when vacancies occur, they should be given preference to other applicants, such register to be kept open upto the 31st December, 1931. This instruction was issued in June, 1930, and it is now proposed to issue further instructions, as indicated in paragraph 13, which are more favourable to the strikers;

(ii) that the question of fixing the initial pay of such men on re-employment is left to the discretion of the Agents but that the Board have no doubt that the Agents will issue orders to the appointing officers to give full consideration to the qualification, experience and the last pay drawn by each individual when determining the rate of such initial pay;

(iii) that such men should, on re-employment, be subject to the standard of medical examination prescribed in the case of persons already in the service and not the higher standard imposed on candidates for employment;

(iv) that such men shall, on re-employment, be treated as new entrants but that the question of treating the period during which they remained out of employment as *dies non* for the purpose of retiring gratuity will be considered at the time of termination of their service and decided on the merits of each case.

The Board have also informed the Agents of Company-managed Railways that they are most anxious that such persons should be given employment in railways at the earliest possible date and suggested that some preference be shown to them when vacancies are filled on their railways and further that application from candidates for vacant posts be advertised in the newspapers read by residents in the area served by the Great Indian Peninsula Railway, the attention of the Agent, Great Indian Peninsula Railway, being drawn to such advertisement.

Dr. Ziauddin Ahmad: May I ask one question? Is it not a fact that persons who were strikers are put on a premium and persons who helped the Government at the time are put at a discount?

Mr. P. R. Rau: I do not think that is the case.

Mr. N. M. Joshi: May I know whether it is not a greater crime to be a black leg than a striker?

Mr. P. R. Rau: That is a matter of opinion.

Re-Instatement of certain ex-Strikers of Bhusaval and Nagpur on the Great Indian Peninsula Railway.

†663. ***Mr. N. M. Joshi:** (*a*) Will Government be pleased to state if it is a fact that certain ex-strikers at Bhusaval and Nagpur on the Great Indian Peninsula Railway have been refused re-instatement on the ground that they have not fulfilled the conditions of the Government of India Communiqué, dated the 1st March, 1930, in regard to the settlement of the strike?

(*b*) If the reply to part (*a*) be in the affirmative, will Government be pleased to state how they did not fulfil the conditions?

(*c*) Are Government prepared to inquire into the matter and state the result of the inquiry?

Reduction of Men on the Great Indian Peninsula Railway.

†664. ***Mr. N. M. Joshi:** Will Government be pleased to state how many more men are likely to be reduced on the Great Indian Peninsula Railway?

Recruitment of Outsiders on the Great Indian Peninsula Railway.

665. ***Mr. N. M. Joshi:** (*a*) Will Government be pleased to state if it is a fact that outsiders have been recruited on the Great Indian Peninsula Railway in the vacancies recently filled up?

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† For answer to this question, *see* answer to question No. 658.

(*b*) If the reply to part (*a*) be in the affirmative, will Government be pleased to state if this recruitment of outsiders does not go against the instructions issued by the Railway Board?

(*c*) Are Government prepared to inquire into the matter and state the result of the inquiry?

Mr. P. R. Rau: I have called for information and will lay a reply on the table of the House, in due course.

EXCLUSION OF THE DELHI CAMP ALLOWANCE FOR THE PURPOSE OF ALLOTMENT OF QUARTERS TO THE STAFF OF THE ATTACHED OFFICES.

666. ***Rao Bahadur B. L. Patil:** (*a*) Is it a fact that Delhi camp allowance granted to the clerical staff of the Attached Offices of the Government of India is excluded for the purpose of allotment of quarters while it is included for recovery of rent?

(*b*) If so, are Government aware that the clerical staff of the Attached Offices are made to pay more than the staff of the Secretariat for the same accommodation and are deprived of the accommodation which is due to them on the basis of emoluments on which rent is recovered from them, for example, men in the Secretariat drawing Rs. 350 per mensem pay for C unorthodox type of quarter Rs. 35 and those in the Attached Offices drawing the same salary, pay Rs. 40 on Rs. 350 plus Rs. 51 Delhi camp allowance, for which emoluments they should get B unorthodox type of quarter, the maximum rent of which is Rs. 40?

(*c*) If so, do Government propose to remove the discrimination between the staff of the Secretariat and the Attached Offices by including or excluding the Delhi camp allowance for both purposes? If not, why not?

The Honourable Sir Frank Noyce: (*a*) Yes. The classification of Government servants for the purpose of allotment of residences is based on their substantive pay, and it has been laid down that the term "pay" has the meaning assigned to it in Fundamental Rule 9(21)(*a*). It, therefore, does not include compensatory allowances.

The recovery of rent, on the other hand, is based on "emoluments" as defined in Fundamental Rule 45C, which include compensatory allowances.

(*b*) It is evident that in the example given by the Honourable Member, the clerk in receipt of Delhi Camp Allowance pays more rent than the clerk who receives nothing in addition to his pay. But I am unable to agree that for this reason he is entitled to accommodation of a higher class.

In the first place, there is no reason why a clerk who receives a compensatory allowance should merely on this account be regarded as superior to a clerk who does not.

Secondly, the classification prescribed by the Allotment Rules depends on the basic status of the individual; and if items such as officiating pay and compensatory allowances are taken into account considerable hardship will be caused. For example, a clerk transferred to a post in which he ceased to draw Delhi Camp Allowance would, if the Honourable Member's views were accepted, lose his lien on his quarters immediately.

Thirdly, the example given by the Honourable Member refers to the B and C class unorthodox quarters, as to which an anomaly admittedly exists. The standard rent of the C class quarters, which is now higher than that of the B class quarters, will be revised as soon as the new quarters now under construction are completed.

(*c*) Government cannot agree that there is any discrimination and for the reasons given do not propose to change the principle on which allotments are made.

TENDERS FOR BODY VARNISH HARD DRYING INSIDE.

667. ***Mr. S. C. Mitra:** (*a*) Is it a fact that the Indian Stores Department invited tenders for Body Varnish Hard Drying Inside as per Indian Stores Department specification, and that the tender of Messrs. Jenson and Nicholson was accepted?

(*b*) Is it a fact that as a result of the acceptance of the tender, Running Contract No. H6040/10, dated the 5th March, 1930, was made with Messrs. Jenson and Nicholson for the supply of this varnish to the East Indian Railway during 1931-32?

(*c*) Is it a fact that the actual supply was subsequently found to be not in accordance with the Indian Stores Department specification mentioned in the tender?

(*d*) Is it a fact that the material supplied in accordance with the said Contract was found unsatisfactory and unsuitable and was rejected?

(*e*) Is it a fact that the East Indian Railway authorities subsequently accepted the said rejected supply and insisted upon getting this inferior quality at the same originally contracted for rate without calling for fresh tenders for this cheaper quality?

(*f*) Is it a fact that according to the rules for the submission of tenders, a contract is liable to be cancelled and the tenderer held responsible for the breach of contract if the supply is not according to the specifications mentioned in the tenders? If so, why was not this rule applied in the case of the supply of Body Varnish Hard Drying Inside by Messrs. Jenson and Nicholson, the successful tenderer?

(*g*) Do Government propose to inquire into the matter? If not, why not?

(*h*) Are Government aware that there are several other cases in which particular tenderers were allowed to supply materials which were not according to the Indian Stores Department specifications mentioned in the tenders of the successful tenderers, and in whose favour the specifications were changed without calling for fresh tenders? If not, do Government propose to inquire into such cases and lay a copy of the result of such inquiries on the table of this House? If not, why not?

Mr. P. R. Rau: I have called for the information, and shall lay it on the table, on receipt.

Mr. F. E. James: Can the Honourable Member enlighten this House as to what exactly is the meaning of "Body Varnish Hard Drying Inside"?

Mr. P. R. Rau: I am afraid that is beyond me; perhaps Mr. S. C. Mitra can answer that question.

Mr. S. C. Mitra: If you want it, I can certainly explain what this means, but I am afraid the Honourable the President will not perhaps be willing to permit me to do so.

GRANT OF TRAVELLING AND HALTING ALLOWANCES TO MEMBERS OF THE INDIAN MEDICAL COUNCIL.

668. ***Mr. S. C. Mitra:** (*a*) Will Government be pleased to state whether any rules have been framed regarding the grant of travelling and halting allowances to members of the Indian Medical Council?

(*b*) Is it a fact that Government have directed that Provincial Governments should meet these charges for members representing various electorates in the provincial area, or nominated by such Provincial Governments?

(*c*) If the answer to part (*b*) be in the affirmative, why has this distinction been made in the case of the Indian Medical Council?

(*d*) Is it a fact that the travelling and halting allowance of members of the Imperial Council of Agricultural Research or the Inter-University Board and various *ad hoc* Committees which the Government of India appoint, are paid by the Central Government out of Central revenues?

(*e*) Are Government aware that Provincial Governments grant allowances at provincial rates which vary in each province and different rates are fixed for different individuals of the same Province?

(*f*) Are Government further aware that in the case of the payment of allowances to members of the Executive Committee some provinces may have to pay a larger amount than other provinces from which either fewer members have, or no member has, been elected?

(*g*) Are Government also aware that owing to meetings being held in Delhi some Provinces will have to pay a larger amount than others?

(*h*) Will Government be pleased to state if they have considered the possibility of providing by rules that meetings of the Council may be held by rotation in the capital of each of the provinces?

Mr. G. S. Bajpai: (*d*) No.

(*b*), (*c*) and (*d*). The Government of India consulted Provincial Governments, who have generally expressed their willingness to meet the expenditure.

The Government of India do not pay any travelling or halting allowances in connection with the meetings of the Inter-University Board. As regards the Imperial Council of Agricultural Research and *ad hoc* committees, the practice is not uniform. Generally speaking, the travelling and halting allowances of official members are paid from the same source as their salaries. As regards non-official members, the matter is regulated by the terms sanctioned for the particular committee or body.

(*e*) The rates of travelling allowance and halting allowance are not uniform in all provinces.

(*f*) It will be open to the Council to meet this charge from its own funds.

(*g*) This is likely.

(*h*) Under section 8 (*i*) of the Indian Medical Council Act, it is for the Council to appoint the place of its meeting.

LEAVE FACILITIES TO OFFICIAL MEMBERS OF THE INDIAN MEDICAL COUNCIL.

669. *Mr. S. C. Mitra: (a) Will Government be pleased to state what facilities are granted by way of leave to members of the Indian Medical Council who are officials to enable them to attend meetings of the Medical Council?

(b) Is it a fact that officials nominated to the Council by Local Governments are permitted to attend the meetings of the Council and are treated as being on duty, whereas other officials who have been elected to the Council are required to apply for leave and can only attend the meeting if such application for leave is granted?

Mr. G. S. Bajpai: (a) and (b). Government have no information, but will make enquiries on the subject.

FUNCTIONS OF THE SECRETARY OF THE INDIAN MEDICAL COUNCIL.

670. *Mr. S. C. Mitra: (a) Is it a fact that the paid Secretary of the Committee is not a member of the Indian Medical Council?

(b) Is there any truth in the newspaper statement that the Secretary is going to be a member of the inspecting body which will visit the different medical institutions in the country?

(c) Is it a fact that the Indian Medical Council negatived the idea of the Secretary being a member of the inspecting body?

(d) If so, will Government please state the special reasons for overriding the decision of the Medical Council for providing special powers to the paid Secretary of the said Council?

Mr. G. S. Bajpai: (a) Yes.

(b), (c) and (d). The Medical Council, at their first meeting, resolved to make a regulation debarring the Secretary from appointment as an Inspector. The proposed regulation is subject to the previous sanction of the Governor General in Council, and is now under consideration by that authority.

Mr. B. Sitaramaraju: Is it not a fact that the Simla Conference made a recommendation that the Secretary should never be a Member of the Council?

Mr. G. S. Bajpai: I do not think that the Simla Conference made any recommendation to that effect.

WAR PREPARATION WORK IN CERTAIN BRANCHES OF THE ARMY HADQUARTERS.

671. *Mr. S. G. Jog: (a) Will Government please state the number of war preparation sections in the M. G. O. Branch and the number of officers, technical clerks and other establishments, sanctioned for them, and the total annual cost on this account?

(b) Will Government please state the total annual cost in respect of officers and others, sanctioned for war preparation work in the offices of the C. G. S., the A. G., and the Q. M. G. at Army Headquarters?

Mr. G. R. F. Tottenham: It is the main function of the Army to be ready for war and, in that sense, the whole of Army Headquarters may be said to be employed on war preparation work. If the Honourable Member would care to come and explain to me in greater detail what it is that he wants to know, I shall endeavour to give him all the information at my disposal.

POST OF ASSISTANT MASTER-GENERAL OF THE ORDNANCE.

672. ***Mr. S. G. Jog:** Will Government please state whether the post of A. M. G. O., Army Headquarters, is a new appointment? If so, when, and for what new duties. was this post sanctioned?

Mr. G. R. F. Tottenham: No. It is only the title of the appointment and not the appointment itself that is new.

MOVE OF THE MASTER-GENERAL OF THE ORDNANCE BRANCH CAMP OFFICE TO DELHI.

673. ***Mr. S. G. Jog:** (*a*) Is it a fact that the former M. G. O., Major-General Kirwan took Government's sanction for the move of his camp office avowedly to give change of climate to men by turn? If so, will Government please state why M. G.-5 should come to Delhi every year?

(*b*) Is it a fact that Government have previously declared that the location of Army offices in Simla throughout the year did not involve any loss of efficiency? If so, are Government, in the interests of economy, prepared to withdraw sanction for the move of the M. G. O. Branch camp office? If not, why not?

(*c*) Are Government aware of the extent of heartburning caused among that section of the M.G. O.'s office which is not brought to Delhi?

Mr. G. R. F. Tottenham: (*a*) The reply to the first portion of the question is in the negative. The second portion does not arise.

(*b*) I have been unable to trace any previous declaration of the nature referred to by the Honourable Member. The annual moves of the various branches of Army Headquarters are dictated by reasons of administrative convenience and efficiency and Government are not prepared to withdraw sanction for them.

(*c*) Government are aware that individuals would prefer to come to Delhi instead of staying in Simla for the cold weather.

SOLDIER AND LADY CLERKS IN THE ARMY HEADQUARTERS.

674. ***Mr. S. C. Mitra:** (*a*) With reference to the answer to my starred question No. 342 of the 6th March, 1934, wherein it had been suggested that the soldier and ex-soldier clerks at Army Headquarters represent a small proportion of the total establishment, is it a fact that in view of the following figures the proportion of the military category is as high as one-third?

Total No. of Clerks.	*No. by categories.*
620 (including 20 technical military Clerks)	100 soldier clerks. 50 lady clerks. 93 *ex*-soldier clerks.

(*b*) Will Government please state the total amount of the pay of the 243 soldier, ex-soldier and lady clerks and that of the 357 Indian clerks?

(*c*) Is it a fact that according to existing orders there is no limit to the cadre of ex-soldier clerks, who are regarded as civilian clerks, and that any number of the soldier clerks could be civilianised any time and replaced in the soldier clerks' cadre by fresh recruits, thereby gradually increasing the proportion of non-Indian element, and correspondingly decreasing that of the Indian clerks at Army Headquarters?

(*d*) In view of the suggestion made that a soldier with practical military knowledge is essential in military work:

(i) is it a fact that military work is carried on in the Army Department Secretariat of the Government of India? If so, what is the strength of soldier and ex-soldier clerks in the office mentioned?

(ii) Are Government prepared to include soldier and ex-soldier clerks in the Army Department Secretariat? If not, why not?

(*e*) Are Government prepared to lay on the table the file dealing with the necessity, and fixation of the proportion of soldier clerks at Army Headquarters and their exemption from the Public Service Commission control? If not, why not?

Mr. G. R. F. Tottenham: (*a*) The Honourable Member has, I think, based his statistics on certain rough figures that I gave in reply to a supplementary question some time ago, in which I said from memory that there were about 100 soldier clerks. In this term I intended to include both soldier and *ex*-soldier clerks. The correct figures are as follows:

Soldier Clerks	...	...	27
Ex-soldier clerks	...	...	93
Lady clerks	...	...	52
Other civilian clerks	...	...	558
		Total	730

The proportion of the military element is thus 16·4 per cent. of the total establishment.

(*b*) The correct figures are 172 soldier, *ex*-soldier and lady clerks, and 558 other civilian clerks. It will take some time and an appreciable amount of labour to work out the cost of each category, but I am obtaining the information and will lay a reply on the table in due course.

(*c*) No, Sir. The maximum number of soldier, ex-soldier and lady clerks is definitely fixed at 25 per cent of the total establishment.

(*d*) (i). The Army Department is certainly concerned with military affairs but its work does not require the same detailed knowledge of army machinery as is required in the branches of Army Headquarters. No soldier, or ex-soldier clerks are, therefore, employed in the Army Department.

(ii) No, Sir—because they are unnecessary.

(*e*) No, because the reasons have already been sufficiently explained.

DISCRIMINATION IN THE MATTER OF PAY AND ALLOWANCES IN THE ARMY HEADQUARTERS.

675. *Mr. S. C. Mitra: (a) With reference to the answers to my starred questions Nos. 344 and 349, dated the 6th March, 1934, wherein Government expressed reluctance to accept English procedure as precedent for Government of India, are Government aware of the existence, at page 37 of the printed Budget Estimates of Expenditure on Defence Services 1934-35, of the following paragraph:

"In March 1925, orders were issued revising the rates of pay of all regular King's commissioned officers of the Army in India with effect from July 1924. The principles adopted in the revision departed considerably from previous practice and the officers' pay was based on the rates current in England?"

(b) If so, will Government be pleased to state why in one case the English practice is followed, while in another it is not done likewise?

Mr. G. R. F. Tottenham: (a) Yes.

(b) Because the circumstances in the two cases are entirely different. The fact that the pay of officers recruited in England and serving in India is based on the pay of officers serving in England is no reason why the pay of clerks recruited and serving in India should be based on the pay of clerks recruited and serving in England.

SOLDIER AND LADY CLERKS IN THE ARMY HEADQUARTERS.

676. *Mr. S. C. Mitra: (a) With reference to the answers to my starred question No. 345 of the 6th March, 1934, wherein it had been explained that Government experienced difficulty in getting soldiers to serve at Army Headquarters on the lowest rate for which Indians are available, will Government please state why soldiers could not be had to serve on their regimental rates of pay?

(b) Is it a fact that military discipline precludes a soldier from exercising option as to the choice of a station at which he should serve?

(c) Will Government please state what is the regimental pay of a soldier before his attachment to Army Headquarters as a clerk on Rs. 190 per mensem to start with?

(d) Will Government please state the year when the pay of a lady clerk at Army Headquarters was less than Rs. 100 per mensem, the number of the lady clerks then serving, and the number of resignations that followed the sudden reduction in the rate of pay? What was the exact rate then prevailing?

(e) Will Government please state whether the proportion of pay (including overseas pay) of an Indian to an English clerk at the High Commissioner's office is 3: 1 initially, as is the case at Army Headquarters where an Indian gets less than one-third of what a Britisher receives? If not, what is the actual proportion?

Mr. G. R. F. Tottenham: (a) Because without additional pay there would be no inducement to the soldier to take up clerical work and obtain the necessary certificate of education.

(*b*) It is true that soldiers must serve as soldiers wherever they may be sent, but soldiers are under no obligation to serve as clerks either in their own units or in staff offices.

(*c*) The average monthly pay and allowances of a private soldier work out at approximately Rs. 70 per mensem, but, in addition, he gets certain concessions in kind such as free board and lodging and fuel.

(*d*) The starting pay of lady clerks has been Rs. 100 since 1920. Before that there was no regular time scale of pay and it would be very difficult, if not impossible, to obtain the information asked for by the Honourable Member. My information is that the pay generally given to lady clerks before 1920 was less than Rs. 100 and this was found to be insufficient.

(*e*) Government have no information regarding the rates of pay in the High Commissioner's office.

Mr. B. Sitaramaraju: Has the pay of these lady clerks now been increased?

Mr. G. R. F. Tottenham: No, Sir: It is still Rs. 100.

Training in Arsenals to Indians for Working as Technical Clerks at the Army Headquarters.

677. *Mr. S. C. Mitra: (*a*) With reference to the answer to my starred question No. 348 of the 6th March, is it a fact that a military subordinate of the Indian Army Ordnance Corps serving in the M. G. O. Branch, is regarded as serving in his own department? If so, will Government please state why in the answer to my starred question No. 58 of the 30th January, 1934, it was stated that seven out of eleven technical military clerks serving in the M. G. O. Branch had already been replaced in the Corps?

(*b*) Will Government please state why Indians with suitable qualifications are not given the requisite specialized training in arsenals with a view to their functioning as technical clerks at Army Headquarters?

Mr. G. R. F. Tottenham: (*a*) The answer to the first part of the question is in the affirmative. The answer to the second part is that the actual strength of the I.A.O.C. is fixed according to the exigencies of the service. When members of the corps are transferred from arsenals for work at headquarters some of them have to be replaced in arsenals while others need not.

(*b*) As already explained in answer to previous questions, Indians are being so trained.

Lady Clerks in the Central Military Offices and in the Government of India Offices.

678. *Mr. S. C. Mitra: Will Government please state (*a*) the total number of lady clerks employed in the central military offices (including the Army Department Secretariat), and (*b*) the total number throughout the other Government of India offices?

The Honourable Sir Harry Haig: The information is being collected and will be laid on the table in due course.

DUTIES OF THE DIRECTOR OF REGULATIONS AND FORMS.

679. *Mr S. C. Mitra: Is it a fact that the Director of Regulations and Forms is not in a position to suggest any alteration to the substance of Regulations with which the Army authorities alone are concerned? Are his duties merely to effect economy in printing of amendments and forms?

Mr. G. R. F. Tottenham: The answer is in the negative. I explained the functions of the Director of Regulations and Forms at some length in my answer on the 30th January, 1934, to starred question No. 59 to which I would refer the Honourable Member.

RECRUITMENT OF LADY CLERKS.

680. *Mr. S. C. Mitra: Will Government please state whether they have adopted the policy of recruiting, for certain classes of work, lady clerks at a higher rate of pay, than men clerks, thus putting an additional burden on the Indian tax-payer? If so, why?

The Honourable Sir Harry Haig: Ladies are equally eligible with men for clerical posts in certain offices at the Headquarters of the Government of India and when appointed to the second or third division in these offices are given a higher initial rate of pay.

Mr. M. Maswood Ahmad: What is the amount of the higher additional pay that is given to these lady clerks?

The Honourable Sir Harry Haig: The initial rate of pay is Rs.100.

Mr. B. Sitaramaraju: What is the necessity for giving these lady clerks the higher rate of initial pay?

The Honourable Sir Harry Haig: That, Sir, is a matter that was gone into carefully some years ago, I think, by a Committee, and they came to the conclusion that that was the minimum rate of pay which should be offered.

UNSTARRED QUESTIONS AND ANSWERS.

CHANGE IN THE DATE OF THE MILITARY ACADEMY EXAMINATION.

338. Mr. S. G. Jog: (*a*) Is it a fact that the examination of the Indian Military Academy was fixed for the 26th March, 1934?

(*b*) Is it a fact that the date was changed to the 27th March, 1934?

(*c*) Will Government please state the reason why the date was changed?

(*d*) Was the date dependent on the visibility of the moon, and if so, why was not the date of the examination made alternative?

(*e*) Is there any precedent for such a change of date?

(*f*) Was any representation made in the matter? If so, by whom?

(*g*) What is the number of candidates for whose convenience this date was changed?

(*h*) Are Government aware that this sudden change has caused inconvenience to other candidates?

(*i*) Are Government aware that by not announcing the alternative dates beforehand they handicapped some candidates?

Mr. G. R. F. Tottenham: (*a*) to (*i*). The Public Service Commission originally notified that the examination would commence on the 26th March, and, as the official calendar showed that the holiday would fall either on the 27th or the 28th March, they arranged that papers should be taken only in the afternoons of those days. On the appearance of the moon, it became certain that the 'Id' would fall on the 26th March and the Public Service Commission accordingly postponed the examination until the 27th, as they always endeavour to avoid holding examinations on major closed holidays. They have no reason to suppose that any inconvenience was thereby caused to any candidate or that any candidate was handicapped by the change. All candidates had in any case to be present in Delhi on March 26th and under the revised arrangements the examination finished on the date originally proposed.

CONSOLIDATED ALLOWANCE TO SPECIAL TICKET EXAMINERS ON THE NORTH WESTERN RAILWAY.

339. Khan Bahadur Haji Wajihuddin: (*a*) Will Government be pleased to enquire and state if it is a fact that the decision of the Railway Board, sanctioning enhanced consolidated allowance as an *ex gratia* measure to the old Travelling Ticket Examiners of the Audit Department on the North Western Railway, was in respect of those who held the post substantively?

(*b*) Is it a fact that Special Ticket Examiners are still paid daily allowance?

(*c*) Is it a fact that the Divisional Superintendent, Delhi, at his own discretion has sanctioned enhanced consolidated allowance to one Babu Labhu Ram Teji who was a permanent Ticket Collector officiating as temporary Special Ticket Examiner and who was promoted as temporary Travelling Ticket Examiner?

(*d*) Is it a fact that Babu Labhu Ram Teji was not confirmed as a Travelling Ticket Examiner before 1st June, 1931, when the Travelling Ticket Examiners' cadre is said to have been abolished?

(*e*) If the Divisional Superintendent, Delhi, could exercise his discretion in favour of the above named employee, what objection is there in granting enhanced consolidated allowance to those permanent Ticket Collectors who fulfil the same conditions as Babu Labhu Ram Teji (Messrs. Mathews, Lakhu Ram, and M. Abdulla of Lahore Division) and who worked as Travelling Ticket Examiners for a longer period?

(*f*) If the payment of enhanced consolidated allowance is a matter of discretion, what objection is there if all the employees working as Special Ticket Examiners are paid this consolidated allowance?

Mr. P. R. Rau: (*a*) Yes.

(*b*) to (*f*). I have called for information and will lay a reply on the table of the House, in due course.

DIFFERENT RULES GOVERNING PAY AND ALLOWANCES FOR THE STAFF IN DIFFERENT DIVISIONS OF THE NORTH WESTERN RAILWAY.

340. **Khan Bahadur Haji Wajihuddin:** Will Government be pleased to state if it is a fact that in different Divisions of the North Western Railway there are different rules, governing pay and allowances for the staff? If so, why?

Mr. P. R. Rau: I have called for information and will lay a reply on the table of the House, in due course.

ALLOTMENT OF A PARTICULAR QUARTER TO A PARTICULAR PERSON EVERY YEAR IN NEW DELHI.

341. **Mr. S. G. Jog:** (*a*) With reference to the reply to parts (*d*) and (*e*) of the starred question No. 1452, given on the 20th December, 1933, regarding allotment of a particular quarter to a particular person every year in New Delhi, will Government please state if they have come to any decision in the matter? If not, when do they expect to pass orders?

(*b*) Are there any difficulties in adopting the same practice in respect of allotment of clerks' quarters in Delhi which prevails in Simla, which permits the exchange of quarters in accordance with the priority of receipt of application? If so, what?

The Honourable Sir Frank Noyce: (*a*) No. It is proposed to take the matter up in connection with a general revision of the rules which is likely to be made in the course of the summer.

(*b*) There are at present 1,626 married clerks' quarters in New Delhi, and this number will be increased to 2,253 when the quarters under construction are completed. There are only 338 quarters in Simla, and the system in force there under which tenants are permitted to change their quarters in order of prior occupation would not be suitable for adoption in Delhi where the number of quarters available will shortly be over six times as great. I would point out, however, that it is not necessary to adopt the Simla system in order to permit tenants to change their quarters.

ATTENDANCE OF THE HINDU STAFF OF THE MACHINE SECTION OF THE RAILWAY CLEARING ACCOUNTS OFFICE ON RELIGIOUS HOLIDAYS.

342. **Mr. Gaya Prasad Singh:** (*a*) Is it a fact that the Hindu staff of the Machine Section of the Railway Clearing Accounts Office is asked to attend office on religious holidays, whereas the Muhammadan staff is not?

(*b*) Is it a fact that the staff of the Machine Section is generally asked to sit late and even have to work for eleven hours continuously?

(*c*) Is it a fact that the grievances of the staff of the Machine Section have not so far been redressed in spite of their repeated requests?

(*d*) Do Government compensate the overburdened staff in any form? If so, what?

Mr. P. R. Rau: (*a*) I am informed that such attendance is not required generally but only when the exigencies of work require it.

(*b*) I understand the staff is required to work late hours only when it is absolutely necessary in the interests of public services. The question is being investigated further.

(*c*) and (*d*). I understand the Director, Railway Clearing Accounts Office has already taken action on some of the grievances by granting compensation holidays, arranging transfers, reducing the rate of outturn and so forth and the matter is receiving further attention. Some of the operators are also granted special pay.

THE SUGAR (EXCISE DUTY) BILL.

PRESENTATION OF THE REPORT OF THE SELECT COMMITTEE.

The Honourable Sir George Schuster (Finance Member): Sir, I beg to present the Report of the Select Committee on the Bill to provide for the imposition and collection of an excise duty on sugar.

PRACTICE OF SENDING IN NOTICES OF AMENDMENTS AND NOTES OF DISSENT, ETC., WRITTEN IN PENCIL ON SCRAPS OF PAPER.

Mr. President (The Honourable Sir Shanmukham Chetty): With regard to the reports of Select Committees presented to the House, the Chair would request Honourable Members to send in their additional minutes or minutes of dissent either typed or written in *ink* on foolscap size paper, otherwise the minutes will not be taken. The Chair has to make this remark because one Honourable Member has sent his minute of dissent on this slip block paper written on both sides in pencil.

THE INDIAN STATES (PROTECTION) BILL.

Mr. President (The Honourable Sir Shanmukham Chetty): The House will now resume consideration of the following amendment moved by Mr. Lalchand Navalrai on the 9th April, 1934:

"That in sub-clause (*a*) (*j*) of clause 3 of the Bill, after the word 'established' the words 'by law' be inserted."

Maulvi Muhammad Shafee Daoodi (Tirhut Division: Muhammadan): Sir, I rise to support this amendment, because I feel that there is a great flaw in the wording of the Bill as it stands. It appears that we are going to punish a man for bringing into hatred, contempt or to excite disaffection towards the administration established in any State in India. It is necessary, therefore, that we should define all the words contained in this clause as definitely as possible. Although we have had a long discussion about the words "hatred, contempt and disaffection", we have now come to the substantial words in the clause which are "administration established in any State in India". It is the attitude of the man towards the "administration established in any State in India" that is going to be taken into consideration. One fails to understand that a man should be punished for something indefinite. There must be some definite rule of conduct in a society or in a State, the acting on which or the omission of which should be punishable. But the words used in the Bill are "administration established in any State in India". When we begin to scrutinise the administration established in an Indian State, we at once come to the conclusion that the "administration established in any State

[Maulvi Muhammad Shafee Daoodi.]

in India" is not at all definite. The other day, the Honourable the Law Member was pleased to make a remark that whatever the administration of the Indian State may be, it is the action towards that administration which is made punishable by this Bill. But one has to understand what the administration is against which such and such acts need not be done. Before one knows what the administration actually is, one cannot be held liable for doing anything against it or omitting to do anything against it. One would not expect a man to be punished for administration established by the whim of the ruler and that also in a manner which is not known to the people. People must know for certain what sort of administration is established in an Indian State the respect of which is expected from people living in British India. Before they know the nature of the administration, they cannot be expected to withhold action against it. I submit it must be made definite, and unless it is made definite, the punishment would be quite unjustifiable. If it is intended to mean that the administration, even if it is whimsical, based on the whim of the ruler, must be respected by people living in British India, it is something unreasonable, and nobody could be expected to accord his conduct in favour of it. I, therefore, submit that the amendment which has been proposed must be seriously considered by those in authority before the Bill is passed into law. Otherwise, we will be giving our consent to penalise a man for action without telling him how his action affects the administration. The Home Member says that it is no concern of ours to understand what the administration of the Indian State is, but the man who would be prosecuted can very well take the defence that unless he knew what the administration he was asked to respect, was, he should not be punished. There will be no reasonable reply to this defence. It would be sheer injustice to punish a man for acting against an administration which is so indefinite in its nature. I, therefore, support this amendment with all the strength I can command.

The Honourable Sir Brojendra Mitter (Law Member): Sir, my submission is that the insertion of the words "by law" would render the clause meaningless. The clause, as drafted, runs:

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

It seems there is some confusion in the minds of Mr. Navalrai and others who supported him as to the meaning of the word "established". He did not explain what he understood by the words "Administration established in any State in India". From one part of his speech it appeared that he understood the word "established" to mean, brought into existence. In another part of his speech, I thought he understood the word "established" as referring to the internal constitution of the State, and this last understanding is supported by Mr. Shafee Daoodi who said that one must know what was the nature of the administration established in any State, which means that you must know what the constitution of the State is. Mr. Shafee Daoodi argued that it was indefinite and you ought to make it definite by introducing the words "by law". But may I ask, how you make it definite? The insertion of the words does not give you any idea of the internal constitution.

Mr. Lalchand Navalrai (Sind: Non-Muhammadan Rural): The words "by law" make it definite.

The Honourable Sir Brojendra Mitter: What law? If you understand the word "established" to mean brought into existence, then, I say, very few States are brought into existence by any law. I may refer—not that I accept the interpretation that "established" means brought into existence; I do not accept it; but on the assumption that "established" means brought into existence—I may refer the House to a passage in a well-known book on Jurisprudence, Holland's Jurisprudence at page 396 which runs:

"A new State arises either: Originally, where no State existed previously, a case now necessarily of infrequent occurrence; or derivatively, by separation from a previously existing State, and this either by agreement with the older State, or against its wishes. It is in the last-mentioned case that other nations often feel a difficulty in deciding upon the reception which should be given to the new claimant for national honours."

A new State, therefore, does not come into existence by any process of law. States come into existence in diverse ways. We know many States in India came into existence when the Mughal Empire crumbled away; they set up for themselves as independent or semi-independent bodies. We know how recently the State of Manchuko came into existence. Did it come into existence by the operation of any law? It did not. We know the Soviet Russia came into existence, not by the operation of any law, but through revolution. Therefore, if by the word "established" you understand "brought into existence", then very few States are established by the operation of any law. By the insertion of the words "by law" you render the clause meaningless. Sir, "established" does not mean brought into existence. "Established" is not a term of art, but it is an ordinary English word and the meaning is "set up on a secure or permanent basis". When an Administration is set up on a secure or permanent basis, the Administration is established, and in most States that is done by the recognition of other States. Never mind how a State comes into existence; the moment other nations recognise that State as an international unit, it is established.

Maulvi Muhammad Shafee Daoodi: But it is the question of the administration of the State.

The Honourable Sir Brojendra Mitter: It was pointed out at a previous stage of the debate that the word "Administration" meant Government. When a Government is recognised by other States, then it becomes established. In India that recognition does not come from other States or international units, but it comes from the Paramount Power; that is to say, the moment the Crown of England recognises the Government of a particular State, it can be said that the administration of that State is established. That is the meaning of the expression "Administration established in any State"; that is, the Government of a State which has been set up on a secure and permanent basis by the recognition of the Crown of England.

Mr. S. C. Mitra (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Then, why don't you add the words "recognised by Government"? The difficulty is, an usurper may come and occupy the *gadi* of a State and he holds the administration of the State for the time being, and the question is whether we are entitled to criticise that man. If we do so, we may bring his administration into contempt.

Sir Muhammad Yakub (Rohilkund and Kumaon Divisions: Muhammadan Rural): He will not be recognised by the sovereign power.

The Honourable Sir Brojendra Mitter: I follow my Honourable friend's point of view. If an usurper comes and sits on the *gadi* the administration is not established till recognition comes from the Government. If by "established" it means, as I submit it does mean, set up on a secure or a permanent basis, the Government of an usurper like Bacha-i-Sa-Kao was never established.

Mr. S. C. Mitra: Even the Government of India recognised him.

The Honourable Sir Brojendra Mitter: I do not think they did. An usurper merely sitting on the *gadi* does not establish himself, the establishment comes only when he is on a secure or permanent basis, and that comes *vis-a-vis* the States in India only through the recognition of the Paramount Power, the British Crown. Therefore, my submission is that the expression "established by law"—I am now dealing with the amendment—would be meaningless, whichever way you interpret the word "established". If by "established" you mean brought into existence, then it is meaningless, because very few States are brought into existence by any operation of law. If by "established" you mean set up on a secure and permanent basis, it would equally be meaningless, because a State in India is set up on a secure or permanent basis not by the operation of any law, but by recognition of the Paramount Power. Therefore, my submission is this that in any view the introduction of these words would render the clause meaningless.

Maulvi Muhammad Shafee Daoodi: Why should you not in that case substitute for the word "established", "recognised by the Paramount Power"?

The Honourable Sir Brojendra Mitter: That is not the amendment. I am talking on the amendment. If such an amendment were tabled, I could deal with it.

Sir Abdur Rahim (Calcutta and Suburbs: Muhammadan Urban): Sir, I must say that I have heard with a certain amount of surprise the explanation given by the Honourable the Law Member. He says the phrase "established by law" would be inappropriate, because it could not be predicated of many States that there was any law by which they were established. A State might have established itself by usurpation, by conquest, by raids and invasions and methods of that character which

certainly are not unknown to history. Most States have established themselves, including the Government of India as it exists at the present day, by usurpation. That is the history of most States; but my Honourable and learned friend has used the phrase "established by law" in connection with the Government of India and the Local Governments. Has that any meaning at all?

The Honourable Sir Brojendra Mitter: In the course of the debate I pointed out that the Government of India and the Local Governments had been established by Parliamentary Statute.

Sir Abdur Rahim: Does that imply that there can be no law except Parliamentary Statutes? Has not my learned friend heard of customary law and common law? How many administrations are not indeed established by common law? Take the administration of England itself. It is entirely based on Common Law, that is, customary law? Therefore, either the words "established by law" have no meaning and the authors of the Penal Code erred, although I should not like to say that of such eminent lawyers as the authors of the Penal Code, or my friends on the other side are absolutely wrong.

Then, my Honourable friend says that administration means Government. Why has he departed from that word in this case? Why has he advisedly used the word "administration" in place of "Government" which you find throughout the Penal Code?

The Honourable Sir Brojendra Mitter: I think there is an amendment like that, and when we come to the amendment I shall deal with it.

Sir Abdur Rahim: I have been dealing with the argument which has been already used by my Honourable friend.

Then, Sir, there is a still more important point. He says the word "established" means recognition by the Paramount Power. That is really the gist of the whole matter. Sir, whenever British officials and statesmen put forward a certain proposal deliberately, I for one always think that there is some meaning behind it. Therefore, when this Bill used the words "administration of a State", I was wondering why the phrase "Government established by law" which stared them in the face in the Penal Code was deliberately departed from. Now, Sir, what does this mean,—recognition by the Paramount Power? It means that no State has any legal existence so far as the British Government is concerned unless it is recognised. I see my Honourable friend, the Law Member, nods his head, so that I have his approval; and that is exactly what I thought and that is the whole scheme of this Bill. That is to say, it is no longer an Asiatic Power which existed independently of the Paramount Power, the British Crown. That is not so. It is now deliberately the policy of Government to publish to the world and to the States and to us that no State has any existence apart from the recognition given to it by the British Government. Sir, this is a matter for very serious consideration, especially by those States who hug the idea of Paramountcy with so much zeal and enthusiasm. I am one who is a staunch believer in democracy. Nothing has happened anywhere in the world as yet which has shaken my

[Sir Abdur Rahim.]

faith in democracy. I do not believe in autocracy. Its days are over, and the sooner autocratic States anywhere in the world disappear, the better. They will disappear. That, however, is another matter. But when the States claim a certain status, it is for them to consider how far this Bill or Bills of this character are intended or tend to enhance their status or to reduce their status. After the explanation given by the Honourable the Law Member, there can be no doubt what the object of this Bill is so far as the status of the princes is concerned.

Mr. Gaya Prasad Singh (Muzaffarpur *cum* Champaran: Non-Muhammadan): Sir, in spite of the learned disquisition of my esteemed friend, Sir Abdur Rahim, I feel some difficulty in understanding the scope of this amendment and in accepting it. I think the expression "established by law", when spoken with reference to Government, is a legal or a constitutional fiction. In one of my earlier speeches, I referred to the definition of "Government established by law in British India" as an instance of legal fiction, and I ventured to say on that occasion that the Government of India was not established at that time by law. The law came to be promulgated later on. But when the Mughal Empire declined and when the British merchants came out to this country, they began their trade, and, in course of time, as history shows, they usurped a part of this country, may be by force, may be by persuasion, may be in some instances by fraud. But whatever the methods may have been, it was by usurpation or by some method or other that they came to establish themselves, first as the East India Company, and then, later on, under the Crown. And then, when they had established themselves firmly, they began to promulgate the law, either by Parliament in England or the Legislature in this country, and then they continued this legal fiction and incorporated that expression in their law books,— 'Government established by law". I venture to submit that it is not a *de jure* Government, but a *de facto* Government which in most cases establishes itself by methods not always legal. I will give you a few instances. The United States of America was, as we all know, under the domination of England. Now it is an independent territory; and how has that Government come to establish itself? As history teaches us, there was the American War of Independence, there was George Washington who established the new Government by force, and the United States of America came to have an independent existence. Was it established by law? Is there any power in this world which would refuse to recognise the United States of America as a Government established by law? But what was the origin of that Government? It was merely by revolt, or insurrection or rebellion.

Sir Abdur Rahim: On a point of explanation: I do not think my Honourable friend has really understood my point. I said law does not mean merely Statute law which was passed by a Legislature—it includes customary law and common law and facts which have been existing for some time.

Mr. Gaya Prasad Singh: I was not referring to your explanation. I was going to develop my own point with regard to that. As I was going to say in this particular case of the United States, we are speaking merely as a theoretical proposition without any political or other implication in it. The Government of the United States has come to establish

itself, not by law, but by usurpation or conquest, or whatever it may be. Take the case of Afghanistan to which reference was made by my Honourable friend, the Law Member. When King Amanulla Khan went to England, there was a insurrection behind his back, and when he came, he found himself dispossessed of his kingdom (*Honourable Members*: "No, no"), and there was civil war and bloodshed, and, as a result of that, he was forced to retreat from his country, and the new Government established in Afghanistan was recognised in course of time by the British Government and by other Governments, respectively. Was the Government of Afghanistan after the flight of Amanulla established by law? No. As we all know, there was civil war or revolt in Afghanistan resulting in the establishment of the present Government. The power when it establishes itself firmly promulgates a law, call it customary law, call it parliamentary law or what you like. The origin of the States hardly rests on any authoritative legal foundation. I shall be frank on this point. There was the Indian Mutiny of 1857. It failed. If it had succeeded and if these people had been able to establish themselves in this country, dethroning the present Government of India, and, in course of time, if that Government had been recognised by England, by France and by other Powers as an independent Sovereign State, what would you call that Government? Would you not call it a Government established by law, because the people rebelled against the existing Government, and then the stronger of the two contending forces established itself firmly and afterwards promulgated whatever law was needed? I submit that the origin of a State in very rare cases is founded on law. I am not going to refer to history; there are many ways in which, for instance, the Kingdom of Hyderabad might have been established. Mysore was under Hyder Ali and Tippu Sultan, and it was then annexed and made over to the present dynasty. Tippu Sultan himself, as history says, was an usurper. How then can it be said that the present State of Mysore is an administration established by law? My point is this: that the addition of the words "established by law" will not carry us any further. It might complicate matters in many cases. We have to recognise States as they are—the *de facto* Governments. My Honourable friend, the Leader of the Opposition, has said that if administration means Government, why not the word "Government" be substituted in place of the word "administration"? But in British India itself we find that there are many smaller Governments which are not designated as Governments, but as administrations. For instance, as far as I know, Coorg is called an administration: it is not called the Government of Coorg; similarly, the administration of Ajmer-Merwara is never called the Government of Ajmer-Merwara; owing to the smallness in size and importance of these territories, we call them administrations . . .

An Honourable Member: They are not governed, but administered only.

Mr. Gaya Prasad Singh: Whether you call it merely administration, or administration established by law, it will not carry matters very far.

My Honourable friend, Mr. Lalchand Navalrai, the other day quoted the instance of some prince in Kathiawar or in Sind having imprisoned a lot of people in a fort without any law. These are executive actions of an irresponsible character which may or may not happen everyday in an Indian State. In our own British India, we have got the Regulation of 1818, under which people have been clapped into jail indefinitely, and they

[Mr. Gaya Prasad Singh.]

have not been brought to trial before a regular Court of law. I am not making any comment on that point; but the reference of my Honourable friend, Mr. Lalchand Navalrai, was hardly appropriate to the subject we are discussing, because we are discussing the origin of the Government and not the irresponsible character of the executive. The words used are "Whoever brings, etc., etc., towards the administration established by law". That takes us back to the origin of the administration and not to the irresponsible executive actions which the head of that administration might be pursuing from time to time. Therefore, the addition of the words "by law" will not improve matters at all. Rather it will bring in complications. Take Kashmir, for instance: How was Kashmir acquired? I am not referring to history, but I understand Kashmir was acquired and it was sold to the forefather of the present Maharaja under certain conditions. The addition of the words "established by law" will hardly improve matters. That is my contention. How can the mere addition of these words make the administrations of these States more responsible and more amenable to law? Therefore, I have no very strong antipathy to these words if they are inserted, but they will not improve matters at all. It is better to leave the word as it is, because, if a particular case goes before a Court of law, the origin of the States might come into question and discussion, and then the whole situation might be landed in constitutional difficulty. Therefore, I am not enamoured of this amendment.

Raja Bahadur G. Krishnamachariar (Tanjore *cum* Trichinopoly: Non-Muhammadan Rural): Sir, I too oppose this amendment, but there are one or two points that I should like to speak about. In the first instance, I entirely agree with my Honourable friend, Sir Abdur Rahim, when he said that the entire scheme in all this legislation was to shove in the idea of Paramountcy whether it existed or not, by all sorts of means, so that, later in life, when somebody referred to this legislation, he would say: "Did we not enact this piece of legislation? What were you doing all these days?" It is entirely at the back of this legislation . . . . .

Sir Cowasji Jehangir (Bombay City: Non-Muhammadan Urban): Then ask for its being withdrawn: oppose it.

Raja Bahadur G. Krishnamachariar: Well, I shall consider it. Perhaps my friend will then listen to what I say. The fact that I am attacking a certain explanation of the Law Member does not mean that I attack the principle of the Bill, which I most heartily support. What I do say is that in opposing the amendment, the learned Law Member laid down certain propositions which I am out to contest and which I am out to prove cannot be sustained. That does not mean that the principle of the Bill is wrong, that the principle of this Bill could not be enunciated in phrases which would be unobjectionable. That, Sir, is my position. So my friend, Sir Cowasji Jehangir, will understand that every time an objection is raised, it does not mean that the Bill should be withdrawn.

Sir, as regards my Honourable friend, the Law Member, he enunciated a certain proposition which almost took my breath away. He stated that "established" means recognised by the Crown of England. Now, will my Honourable friend, before the discussion closes,—and I have tabled an amendment which raises this question definitely and specifically,—show

me a scrap of paper,—perhaps he will search the archives of his office from the time that Lord Macaulay sat in his chair up to the present day, —whether he can show me a scrap of paper by which it could be stated correctly, justifiably and legally that a Government established in an Indian State means a Government recognised by the British Crown? As against it I shall quote a statement, and, if necessary, I can quote many such instances regarding practically every State, except those little States which have accepted a *Sanad* which, in the words of my friend, Mr. Neogy, undertook to be loyal and call themselves feudatory,—to show that the contention of the Honourable the Law Member is not correct. Sir, Lord William Bentinck in 1832 wrote in respect of the Maharaja Scindia as follows:

"I do not possess any authority to confer or to take away the ruling power, because the Maharaja Scindia is the absolute ruler of his country. The British Government have neither seated any one on the *Gadi*, nor can they depose."

What is the idea, Sir, in claiming after that that the British Crown should recognise an Indian State, as if without that recognition you cannot invest that State with an independent existence? But, Sir, the whole argument is entirely irrelevant. . . . .

The Honourable Sir Brojendra Mitter: Is not what has been read out by the Honourable Member tantamount to recognition?

Raja Bahadur G. Krishnamachariar: Is it so? The British Government asserts itself, and those unfortunate Indian princes have got to recognise them; they have no other go. In the year 1832, Lord William Bentinck had absolutely no power either to depose the Maharaja Scindia or to confer any power on him. The Scindia sat on his throne himself. Lord William Bentinck said that he had nothing to do with him. But can anybody say: "Oh, he is not Scindia". It does not mean any recognition at all any more than I can say that you are sitting in that Chair, it is highly impertinent on the part of anybody to come and say,—because you hold a statutory position and you sit in that Chair by the authority of a Statute,—I recognise the Chair; let the President continue to sit. Similarly, as I said, the whole argument is irrelevant for this reason, that the question is not as to the origin of a State. The question is as to how the administration came into existence. The word is "administration", and not "State". If the wording was that it is a State established, and if the amendment was that it should stand as a State established by law, then the entire argument of my friend would hold good, but nobody talks here about a State and how it came into existence, and I very respectfully submit, in spite of the arguments of my friends on both sides, the question as to how the State came into existence, and all that discussion about Bacha-i-Sa Kao and King Amanullah are absolutely irrelevant. The word is "administration", and every administration may be established by law, whatever that law may be. It need not be an act of Parliament, as my friend, Sir Abdur Rahim, said. There is an administration which has been in existence for so long that the memory of man runneth not to the contrary. Is that not an administration established? Consequently, my Honourable friend, the Law Member, was entirely wrong when he said that the addition of the words "by law" to the word "administration" would go to create such great confusion as to make the entire thing unworkable on the grounds stated by him. But, as I have said, I oppose this amendment. . . .

Mr. S. C. Mitra: May I interrupt the Honourable Member for a moment? Will he tell us what is the administration in the Alwar State today? Is it the British administration now carried on, or it is the administration of the Maharaja of Alwar, and where is the Maharaja, according to the Honourable Member's theory?

Raja Bahadur G. Krishnamachariar: You mean now or before?

Mr. S. C. Mitra: Now.

Raja Bahadur G. Krishnamachariar: Sir, how the British Government came into existence in Alwar, I cannot say, but I shall quote my authority. In support of my position, I said in an earlier portion of my speech, that it was all *Zabardast*. I was laughed at. I was ridiculed, and I do not know what feeling was engendered in the minds of my friends opposite, but, a little later, when I deal with my amendment, I shall call in as my witness Lord Dalhousie, and Lord Hastings.

Sir Cowasji Jehangir: Which one?

Raja Bahadur G. Krishnamachariar: Lord Dalhousie, famous for his annexationist policy. There is only one Lord Dalhousie so far as India is concerned, because, our friend, the Marquis of Dalhousie, annexed Province after Province, including my unfortunate kingdom of Tanjore. I am going to call him as a witness. If you want an earlier witness. . . .

An Honourable Member: Who will summon him?

Raja Bahadur G. Krishnamachariar: With regard to my friend, Mr. Mitra's question, my answer is, possession is nine points of law. The British Government is administering Alwar, and we do not know why they are administering the State. Surely, the Maharaja of Alwar can, for his own convenience, ask the British Government to administer the affairs of his State, or his advisers in the shape of advice can issue commands which he dare not disobey, or finding his own position created by these advisers difficult, he might have given over charge of his administration to those who are now in charge of it. There have been several instances in other States. If you want such instances, I can go on citing them till this evening. Whatever may be the reason, it is just as well that this administration goes on. . . .

Mr. S. C. Mitra: What about Nabha?

Raja Bahadur G. Krishnamachariar: We are not concerned with a rambling discussion as to the State of the Indian princes, because for one thing we have no material, and for another thing it is entirely irrelevant. The whole question is whether this amendment "established by law" is appropriate. I say, Sir, what law,—administration established by law,—by the law which is passed in their own States. Then, I say, a ruler can pass a rule himself. . . . .

An Honourable Member: Let him.

Raja Bahadur G. Krishnamachariar: What is the good of saying "let him". There is an administration working, there is an administration which the ruler has recognised, there is an administration which he allows it to be conducted by others,—what is the point in saying "let him"? But the fact that the administration is there and the fact that the administration has been brought into existence by the will of the ruler himself, is absolutely sufficient authority, and to use the word "law", when the law, so far as an Indian State is concerned, is just as authoritative when passed by a Legislature as the one issued under a *firman* Consequently, I submit that this amendment is entirely useless, and I oppose it.

Mr. C. S. Ranga Iyer (Rohilkund and Kumaon Divisions: Non-Muhammadan Rural): Sir, when the Honourable the Leader of the Opposition started showing a certain amount of ardour for a phrase in the Indian Penal Code "Government established by law", I began to wonder why he spoke at all on a previous amendment which also was incidentally, if curiously, for the removal of a phrase borrowed bodily from the penal law relating to "disaffection". You cannot have it both ways. If you think that the Indian Penal Code is your legal bible and you should not tamper with the language that is in it, then all your original argument regarding the deletion of the "disaffection" phrase falls to the ground, and now assisted by the undoubtedly gifted wisdom and talents of the Leader of the Centre Party, a new aspect has been presented to us, the Raja Bahadur, following the line of the Leader of the Opposition. The question is: why should you call it administration established in any State in India, why not established by law? Surely, with all the experience that the Raja Bahadur undoubtedly has in an Indian State, I could not understand, whether he insists upon using the same phrase which is used in the Indian Penal Code for British India, for the Indian States. I cannot understand this, because . . . . .

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Raja Bahadur G. Krishnamachariar: I never said that the words "by law" should be there. I opposed the amendment by saying, don't have those words, because it will complicate the situation. I did not say, established by law.

Mr. C. S. Ranga Iyer: Then he opposed the Leader of the Opposition?

Raja Bahadur G. Krishnamachariar: I opposed the amendment. I am not concerned with the Leader of the Opposition.

Mr. C. S. Ranga Iyer: He threatened to summon Lord Dalhousie as a witness. I am glad he opposed the amendment, but when he threatened to summon Lord Dalhousie, I thought through the *medium* of Sir Alfred Lyall (Laughter) in his well known book which the Raja Bahadur used to get by heart in his younger years, "Rise and Expansion of British Dominion in India", the Raja Bahadur has turned the table on the Leader of the Opposition. The whole position is this. You cannot have that phrase as suggested in this amendment, because the Government established in British India is quite different from the Government established in the Indian States. The British Indian Government, as already pointed out by the Honourable the Law Member, is established

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by parliamentary Statute. The Governments in India of the Indian States have grown more or less by convention. As the Honourable the Political Secretary pointed out in his speech on the 4th February, if I remember the date aright, he said that the form of Government in one Indian State differs from the form of Government in another Indian State, but the form of Government in the Indian States differs from the form of Government in British India, as the former is a paternal, more or less, form of Government and with facilities for the subjects of approaching directly the ruling chief of the State concerned. So far as the distinction between British India and Indian States is concerned, I would ask the Honourable the Leader of the Opposition to study the history on that point. Once under the Indian Penal Code he said they were "Asiatic Power with independent States", and he said that that independent status is gone, and, therefore, why should we not describe their present status as Government as established by law? That independent status may have existed once upon a time, but from time to time the position of the States has changed according to the changing times; it has never become the same or is likely to become the same for a long time as that of British India. We all know how the change came. As for Lord Dalhousie's time, when the Raja Bahadur will summon him as a witness, I shall place my medium before him when his amendment comes which I hope to oppose. Lord Dalhousie said:

"Unless I believed the prosperity and the happiness of its inhabitants would be promoted by their being placed permanently under British rule, no other advantage which could arise out of the measure would move me to propose it."

"There has never been any doubt about the recognised principle"

—says Sir Alfred Lyall—

"of public policy, based on long usage and tradition, that no Indian principality can pass to an adopted heir without the assent and confirmation of the paramount English Government."

Raja Bahadur G. Krishnamachariar: Is that a reference to the Rajah of Tanjore?

Mr. C. S. Ranga Iyer: I am coming to the Rajah of Tanjore when you move your amendment, I am coming to the King of Oudh when you move your amendment, and I shall discuss Lord Dalhousie's annexationist policy when the Honourable Member moves his amendment. I shall presently show how that policy has changed. It changed slowly in Lord Canning's time, this is how the change took place:

"It may be worth while to add here that this doctrine of lapse is now practically obsolete, having been superseded by the formal recognition, in Lord Canning's Governor Generalship, of the right of ruling chiefs, on the failure of heirs natural, to adopt successors according to the laws or customs of their religion, their race, or their family, *so long as they are loyal to the crown and faithful to their engagements.*"

The emphasis lies on the last phrase, "so long as they are loyal to the crown and faithful to their engagements". This leads me to a question put by the Honourable the Leader of the Opposition. He said, is it this law, that law, common law, or some other law? My answer to that is, it is the law embodied in treaties and observed in practice. The

working of the treaties must be examined in the light of actual experience, and I do not know in what language the Leader of the Opposition would put that position. He cannot by any stretch of imagination call it "Government established by law". He said that he would like to get rid of these autocratic States. When he gets rid of these autocratic States, when he follows up the annexationist policy of Lord Dalhousie, abandoned by the British Government. . . .

Sir Abdur Rahim: I did not say that I would get rid of these States. I said generally that I believed in democracy and that I did not believe in autocracy. I did not suggest for a moment that I would get rid of the States.

Mr. C. S. Ranga Iyer: I am very glad that my Honourable friend has thrown some light on his own phrase get rid of "these autocratic States". That, I think, was the phrase he used. There was no occasion here to refer to "the autocratic States" if the Honourable the Leader of the Opposition was in love with the form of constitution that obtains in the Indian States. Without meaning any offence, the form that prevails in the Indian States is an autocratic form and probably he wants to change that form. But even that form has not been changed at present, and even if the form is changed, even if the rulers of States are by their own consent assimilated to the position of their liege and lord the King of England their own Emperor, and they become responsible rulers of Indian States with a responsible Government, even then there will be considerations in regard to treaty rights, in regard to the power of the Paramount Power. I wonder whether the Honourable the Leader of the Opposition has read the most authoritative document in regard to the Indian States, which is none other than the Butler Commission's report, —if he has read that authoritative document, he, at any rate, would not have stood up in this House and said, remove the present description of the States which is rather crude, because it is different from that attributed to British India and say that they should be levelled up to the position in British India and they should be described as "Government established by law". For, the Butler Commission's report says in its beautifully cryptic but extremely expressive phrase, "Paramountcy must be Paramount". If you recognise the Paramount Power, if you recognise in law the existence of the Paramount Authority and if you recognise the evolution that has taken place in the position of the States, and in the light of a statement made by Lord Reading on an historic occasion in regard to a premier Indian State in his capacity as Viceroy of India, a great legal authority himself, then he would have recognised that there is a distinction between the position of the States and the position of British India, and there is a distinction between the Paramount Power and the position of the Indian States. The Paramount Power has the right of interfering where interference is necessary, and that right of interference has not been given away. You cannot, therefore, say that the Government of an Indian State is Government established by law. It is a Government that has established itself there, and I shall tell you by way of an example how this kind of Government came to be established. I can give a very good illustration by referring to the State to which Mr. Gaya Prasad Singh referred, Mysore, but about which he did not care to

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throw light, as it is a well known story, but obviously as the Leader of the Opposition has forgotten this particular episode when he rose to speak, it is just as well to refresh his mind and the mind of many of us:

"An important addition has been made to list of these self-governing principalities by the revival of the State of Mysore in Southern India."

The phrase—self-governing principalities, the word "principality" incidentally reveals how incongruous was the argument of the Honourable the Leader of the Opposition when he wanted that the Honourable the Leader of the House should demolish his own argument by just using the phrase "Government established by law":

"The territory had been forcibly seized by Hyder Ali, reconquered from Tippoo Sultan by Lord Mornington when part of it was restored to the old Hindu dynasty, but in 1831 the Indian Government had been obliged to assume the administration and retained it for 50 years."

When actually the Indian Government had retained the administration of Mysore for 50 years, even then, though its position was more or less like that of a Province in India so far as administration by the British Officer through a British authority was concerned, but even then by no stretch of legal imagination or by no perversion of the law could the position of Mysore be described in legal language as Government established by law:

"In 1881, however, the State was reconstituted under the rule of the descendent of the ancient Hindu family from whom it had been taken nearly a century earlier under conditions that provided for the acknowledgment of British sovereignty and for the welfare of the Mysore people. These conditions have been faithfully observed and this just political action of the British Government was taken by all the native chiefs throughout India as a confirmation of the declared intention to uphold their territorial independence."

The last expression "territorial independence" is sufficient for my purpose. I need not on this occasion dwell on this, because I do not want to prolong the discussion. I want it to be cut short quickly, so that, instead of waiting in Delhi which is developing into a large Turkish Bath, we might go home early enough, but the Honourable the Leader of the Opposition must know and knows that there are occasions, circumstances under which the Paramount Power can interfere and does interfere with the administration of the Indian State and the occasion and the circumstances are absolutely different from any such occasion that one can visualise to oneself even in his widest dream in regard to the administration in British India. The distinction is not the historic distinction of Tweedledum and Tweedledee. It is a real genuine distinction, and, therefore, I hope the House will not listen to such argument as the Honourable the Leader of the Opposition placed before it, and if they threaten to press this to a division, reject it without any consideration whatever, but I hope they will have the sense not to press it to a division, because they are only playing with phrases which they in their cooler moments will think have no bearing to the circumstances and the facts that we are handling.

Mr. Muhammad Yamin Khan (Agra Division: Muhammadan Rural): We had a very interesting debate on a very simple issue. What I understood my friend, Mr. Lalchand Navalrai, meant has not been touched by any of the speakers up to this time. What my friend meant by this amendment is this. He wants to exclude all the administrations of those States where a constitution has not been granted to the States people and he wants only that this should be applicable to those States where a constitution has been granted by the rulers of the States, and, if I am not mistaken, what he meant by the words "established by the law" is that a law has been constituted granting a constitution to the people for the purpose of administering the State.

Mr. Lalchand Navalrai: You are to a large extent correct.

Mr. Muhammad Yamin Khan: His amendment had nothing whatsoever to do with the origin of the State, whether a particular dacoit came or whether a freebooter came or a Provincial Governor became the ruler. We are not concerned with that. Here we have got certain administrations, and my friend wants to make a distinction in those States and he says that this provision should be extended to those States where a constitution like the British Indian Constitution is prevailing, and he wants to exclude all those States where there is no constitution and they are ruled personally by an autocrat. The second underlying thing in his amendment to which he did not give expression to, but which was subsequently given expression to by interruptions by certain Members, was to the effect as to how are you going to recognise the administration of States which are not governed by the ruler, but by certain persons appointed by the Paramount Power like Alwar, Nabha and other States. Beyond these two points, we have nothing to do with other matters, such as when a power came into existence, whether it was legally constituted or illegally constituted, whether they are usurpers, and so on. On the question whether the House should accept this amendment, I may tell the House that I do not agree with my friend's amendment at all. He cannot have my support to the amendment as it has been narrowed down. I will give my reasoning, and I will point out the mistake under which my friend was labouring. My Honourable friend used the words which he found in the Indian Penal Code and which has led to this interesting talk, because, in the Indian Penal Code, we have got the words "established by law". As some Honourable Members have observed, up to 1857, there was no Government established by law in the ordinary sense of the expression. Whatever Statutes there may have been of the British Parliament, they could not be applicable to India under law, because those laws were made by a party who had no concern legally with India, because India was governed in the name of the Mughal Emperor and the East India Company was nothing more than a mere contractor on behalf of the Mughal Emperor. They were the administrators, and administrators in the name of another Power, and that Power was there; therefore, the British law could not be applicable to India. After 1858, ...

Mr. President (The Honourable Sir Shanmukham Chetty): Order, order. The Honourable Member himself rightly started by saying that this historical and academic question was apparently of no use for present purposes.

Mr. Muhammad Yamin Khan: Quite right, Sir, but I am simply meeting the arguments which you were pleased to allow other Honourable Members to indulge in, and, therefore, unless I meet those arguments, I cannot clear up this important issue. I am meeting the arguments of my learned friend, Sir Abdur Rahim. Whatever may be the position, previously, after 1858, all laws which were passed by the British Parliament are the laws for India whenever they refer to India.

Mr. S. C. Mitra: What about laws passed before—say in 1833 and 1843?

Mr. Muhammad Yamin Khan: They are not applicable to India unless they have been accepted by the proper authority later on, but after 1858 the Government of India passed to the Crown of England and all laws flow from the Crown. The constitutional position is that all laws are made by the King. No law can be made by anybody except by the King. I am talking of English Law; I am not talking of Hindu Law or Muslim Law; I am talking of English Law: no law can be made by anybody except by the King . . . .

Sir Muhammad Yakub: Is that the English Law?

Mr. Muhammad Yamin Khan: . . . . and laws may be made by the authority of the King, as the King has delegated his power to a certain body, his counsellors which have taken the shape of Parliament. The latter body can make laws and rules and regulations, but unless and until they get the assent of His Majesty the King-Emperor, they are not valid. In effect, that is only a sort of advice which is given by Parliament. Under the English Constitution, the King has got the power to dissolve Parliament at any time he likes.

Mr. N. M. Joshi (Nominated Non-Official): Very interesting indeed!

The Honourable Sir Brojendra Mitter: My Honourable friend may qualify it by saying "the King in Parliament".

Mr. Muhammad Yamin Khan: Now, Sir, in the case of a law made by the King in Parliament, it means that the King on the advice of Parliament has made that law. Without the King, the Parliament cannot enact any law, and unless such law gets the assent of the King, that law by Parliament has got no force and nobody will follow it. In the same sense, in the case of the Constitution relating to India, no law can be made by the Houses of Legislature until that is given sanction to by the King's representatives.

Mr. B. V. Jadhav (Bombay Central Division: Non-Muhammadan Rural): But Parliament once beheaded the King.

Mr. Muhammad Yamin Khan: I would have expected a better interruption from my Honourable friend than this meaningless one. The King of England has granted a Constitution to the people of England and that has become the Constitution, and under that Constitution laws are made. In the same way, the rulers of the Indian States have got an

inherent power by virtue of their customary law or whatever my friend, Sir Abdur Rahim, may call it, or the common law of the State. My friend says—where is the common law, where is the customary law? I say, in the State there is a common law, a customary law by which the ruler of the State governs. Such common law may have originated a long time ago, but still if a particular State is following a particular kind of law, that law is the prevalent law and that law is the customary or common law of the State. That is the inheritance from the Constitution or the Government that is established in those States, and if those States are carrying on their administration by a particular kind of Government, then we can say that it is according to the law which is prevailing there, like the common law of the State which has established those Administrations in those particular States.

Mr. N. M. Joshi: Very clear, very clear indeed!

Mr. Muhammad Yamin Khan: Therefore, my friend's argument has got no bearing on this issue. There is the common law, there is the customary law. My friend, Mr. Lalchand Navalrai, may want that his argument should now come in, *viz.*, that this must apply only to those States which are following the principle of democracy on the British lines. I say, Sir, that India is India and we cannot expect that India should become Europe in a day or two (Hear, hear) or even in a decade or two decades. India will change by the time she achieves progress on British lines, but unless European education is diffused throughout India, you cannot say that the administration of those States is bad. There are many States which are carrying on their administration with the greatest efficiency although they have not based their Constitution on the principles of democracy, but such Indian State rulers are nevertheless paying the greatest heed to the progress of their subjects, and, therefore, it is not right and proper that they should be excluded, simply because they do not find their subjects sufficiently advanced to take up the responsibilities which they themselves are discharging for the good of their subjects. (Hear, hear) Sir, there are several States which have not got many of their people educated. It may be that the forefathers of the present rulers might have been responsible for not having brought in the blessings of education to their subjects, but you cannot punish a present enlightened ruler who is doing his best at present to educate and prepare his subjects for taking up civic responsibilities in the future. Therefore, the banning of that ruler and of that Administration is not right and proper. Therefore, I think the House cannot accept this argument in favour of the exclusion of States which have not granted a Constitution.

The second point which my Honourable friend wants concerns the Administrations of such States which have been set up by the Paramount Power. Now, he wants them to be excluded, but I cannot support that too, because, if the Paramount Power has set up an Administration in any particular State, it is because the ruler or his Administration was at fault. They did not possibly treat their subjects properly, and, if they did not treat their subjects properly and there arose grievances between the rulers and the ruled, then certainly the Paramount Power had to intervene. The intervention has never come, simply because there has been a grievance between two people who were rulers, but the Paramount Power

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has always intervened whenever there has been reached a stage of antagonism between the rulers and the ruled. If the ruled were not satisfied with the ruler, then certainly it becomes the duty of the Paramount Power under the Constitution to supersede that ruler or his Administration by some other Administration. If there had been a democracy, the ministry would have been thrown out if the people were not satisfied with the present ministry and they would have outvoted such ministry and then the ministry would have been changed. But what would have happened in the case of an aristocratic Government where there could be no other change except through the intervention of the Paramount Power: and if the Paramount Power is doing its level best in order to safeguard the people who are the victims of the misrule of their rulers, then, I think, protection becomes necessary and must be granted to such subjects, and it must be extended to those Administrations which have been set up by the Paramount Power. Therefore, on this point also, I cannot support my Honourable friend, Mr. Lalchand Navalrai:

Mr. Lalchand Navalrai: I never expected you to support me.

Mr. Muhammad Yamin Khan: Whether you expected me to support you or not, that is a different matter. With regard to his difficulty about finding a word in the Indian Penal Code, I have explained that it has no bearing, and, by the addition of the words "established by law", it will not improve this matter. Therefore, I hope that this amendment will be rejected altogether.

Diwan Bahadur Harbilas Sarda (Ajmer-Merwara: General): Sir, I am unable to support the amendment moved by my Honourable friend, Mr. Lalchand Navalrai. He wants to insert the words "by law" after the word "established". I hold that the insertion of the words "by law" is absolutely inappropriate in this clause. I also hold that it is redundant and unnecessary, and if the interpretation of the amendment of my Honourable friend, Mr. Lalchand Navalrai, as given by my Honourable friend, Mr. Muhammad Yamin Khan, is to be accepted, then this amendment becomes absolutely out of place. Sir, the word "administration" occurs in a number of places in this Bill. I am not quite sure whether the word "administration" or "administrations", wherever they occur, are quite appropriate, but I do not propose to go into the question of the proper use of the word "administration" in the discussion on this amendment. I hope I shall have an opportunity of making a few remarks on the third reading about the whole of this Bill, and I shall then discuss the question whether the words "administration" or "administrations" used in this Bill are proper or not.

This Bill deals with Governments or Administrations which exist at the time. This Bill does not seek to go into the origin of these Governments or Administrations. This Bill has nothing whatever to do as to how a particular State or States came into existence. This Bill seeks to establish and maintain certain relations with States and Administrations that are in existence, and, consequently, it is absolutely unnecessary and inappropriate to add any words which would in any way carry the mind to

the origin of those Administrations or States. Now, what is the meaning of the phrase "established law"? I think if we understand the words "established" and "law" in their fuller sense, then "established by law", "established" and "in existence" become identical. "Established" does not necessarily mean "originated"; "established ' means "exists". And what is the meaning of "law"? Law is an expression of the opinion of the people. Law means nothing more than what is known as the expression of opinion of a people. When the opinion of the people is expressed in a particular formula or form, that is called "law". Therefore, if we understand properly what is meant by "established by law", there will be no difference whatever between "established by law" and any Government which is existing and which is continuing and which is being maintained and obeyed by the people. "Established by law" means a Government which administers the country, which makes laws, which keeps order and peace, when the laws which it makes are obeyed by the people. That Government is a Government which is established by law. In this sense, whatever the origin of the British Government of India may be, the British Government of India must be taken to be a Government established by law. The same applies to the Governments of His Highness the Maharaja of Bikaner or Jodhpur. However these States might have originated, we must hold that these States are for all practical purposes established by law and we should not take these words in their theoretical sense. And our Government must deal with these States as States established by law. Therefore, taking this as the meaning of the phrase "established by law", I think it is absolutely unnecessary to add the words "by law" there. As this Bill deals with the Governments which are in existence in India at the present moment and which have relations with His Majesty's Government in India, the words used in the Bill "towards the administration established in any State in India" are quite sufficient. When a State is recognised, the established Administration means the Government of that State. Consequently, whatever form of Government obtains in any recognised State in India, that administration is the administration with which we have dealings which are under the suzerainty of His Majesty the King-Emperor. My Honourable friend, Mr. Muhammad Yamin Khan, suggested that the meaning of the words "by law" is "administration established in any State in India" which has got a Constitution the word "constitution," meaning certain rights given to the public or to the subjects of that State and certain laws which limit the will of the Sovereign of that State. This certainly is not intended by the words "by law". He may ingeniously try to interpret it that way, but the words "by law" cannot bear the interpretation that the State is not only established, but which has got a certain Constitution. Constitution or no Constitution, the State is there. It exists there. Her Majesty's Government or the Government of India have relations with that State, and this Bill only seeks that the relations of the Goverment of India with that State should continue in peace and be regulated in such a way that the Government of India or the Suzerain Government may be able to discharge its duties towards that State which has been recognised by Her Majesty's Government.

I do not want to say anything about the question of Paramountcy because I hold that that question is absolutely irrelevant to the issue raised by this amendment. The question of Paramountcy stands by itself,

[Diwan Bahadur Harbilas Sarda.]

and if I have an opportunity of speaking on the third reading of the Bill, I hope to explain how the question of Paramountcy is not only relevant, but is most intimately connected with this Bill. But that is a matter which, I think, is irrelevant at the present moment, and, therefore, I do not wish to say anything on it now.

The Honourable Sir Harry Haig (Home Member): Sir, we have listened this morning to some very interesting lectures on law, on Constitutions and on history, and had I not been oppressed by a certain feeling that we have before us legislative business, and indeed a great deal of legislative business, I should have passed a very pleasant morning. But I must endeavour to bring my mind back to the amendment on this Bill which we are discussing, and I should like to say, to begin with, that I find myself very much in sympathy with my Honourable friend, Mr. Gaya Prasad Singh, who explained that he found considerable difficulty in understanding what this amendment really meant. I share that difficulty, and I have a suspicion, as I listened to some of the speeches made on the opposite side, that many Honourable Members also share that difficulty, not excluding the Honourable Member who moved the amendment.

Mr. Lalchand Navalrai: I have no difficulty. It is quite plain to me.

The Honourable Sir Harry Haig: There is one interpretation that might be placed on this amendment. It may be held that we have not given a sufficiently clear definition of the States to whom this clause is intended to apply, that when we say "Administrations established in certain States", that that is not clear enough and it is necessary to add certain words to make it clear. Our view, on the contrary, is that the words "Administrations established in any State in India" are perfectly clear and that by adding the words "by law" we should be importing some uncertainty into what is at the moment plain. The ordinary meaning of the expression "established by law" is, I think, very clearly illustrated in the case of the Government of British India which is established by a Government of India Act. One view is that Government established by law is only a Government which is established by a definite piece of legislation. Another view advanced by my Honourable friend, the Leader of the Opposition, is that Governments are established by something which he calls "customary law" and I suppose he argues that any Government that has been in existence for a certain time eventually becomes a Government established by law. If that is the position, the addition of the words "by law" really does no good at all. On the other hand, if the position which we take is correct, the addition of these words is mischievous, because it excludes in an arbitrary way a large number of administrations which we want to include. That is one of the possible meanings to be attached to this amendment. The other is the meaning which I fancy the Honourable the Mover himself desires to attach. He does not want that this protection should be extended to all the States in India. He wishes to pick out certain States which in his view are more commendable than others and to restrict that protection to those. Apparently he wishes to restrict the protection to States which have, is it a written Constitution? That is one interpretation which has been put on the amendment—a written Constitution. Therefore, if, for

instance, there was a Government established like the British Government which has no written Constitution, then that would be excluded from these provisions. It seems to me difficult to justify any such differentiation. Or it may be that my Honourable friend has in mind that only those administrations should receive protection whose administration is conducted in accordance with certain internal laws framed by the ruler. Well, Sir, if that is the meaning, I am informed by my Honourable friend, the Political Secretary, that all the States have some body of law; naturally, in more advanced and in more primitive States, there will be considerable differences as to the extent of that body of law, but there is a body of law.

Mr. Lalchand Navalrai: What about *Firmans*? They are no law. They are merely orders.

The Honourable Sir Harry Haig: It is certainly a law. We are now getting into questions of what is the legislative authority, but that does not affect the question whether particular provisions are or are not law. It is quite obvious that if the Honourable Member is seeking to attribute to this amendment a meaning of that sort, then it would introduce a most inextricable confusion into the law. Who could say what particular amount of law could be described as established by law? I suggest, Sir, that whichever way we look at this amendment, it is either mischievous or superfluous, and I am strongly opposed to it (Applause.)

Mr. President (The Honourable Sir Shanmukham Chetty): The question is:

"That in sub-clause (*a*) (*j*) of clause 3 of the Bill, after the word 'established' the words 'by law' be inserted."

The motion was negatived.

Mr. B. V. Jadhav: Sir, I beg to move:

"That in clause 3 of the Bill, in the proposed *Explanation 5*, the words 'and without attempting to excite hatred, contempt or disaffection' be omitted."

Sir, this *Explanation 5* has been added in the Select Committee, and it runs thus:

"*Explanation 5*.—Statements of fact made without malicious intention and without attempting to excite hatred, contempt or disaffection shall not be deemed to be of the nature described in clause (*j*) of this sub-section."

When actions of several States are criticised in the press or on the platform, the intention generally is to expose the maladministration and thus to induce the States to reform their ways. Nobody wants to encourage newspapers who want to blackmail the States or who want to take unfair advantage, but the actions of certain Durbars are such that even a plain statement of facts may amount to the commission of the offence. Statements made without malicious intention—that is all right. But where does the onus of proof lie? I think the wording is such that it will lie upon the accused to show that he was not actuated by any malicious motive. In the same way, there are the words "without attempting to excite hatred, contempt or disaffection". This is even more difficult

[Mr. B. V. Jadhav.]

than to prove that there was no malicious intention. Even a bare statement of facts will amount to an attempt. Some of the actions of Indian States are such that their bare statement is likely to excite hatred against the rulers, there is also contempt and disaffection towards them, for, here the commission of the offence is not in actually producing the result, but without attempting to excite. The prosecution may say that the editor of a certain newspaper has published a certain fact and the publication of that fact itself is an attempt to excite, etc. Papers have been put in our hands in which certain allegations have been made against certain princes. I am not going to divulge any of those things here, but if those facts are published in newspapers when this *Explanation* is adopted by this House, I think the bare publication of the facts is sure, even if it be a fact, to be held as attempting to excite hatred, contempt or disaffection towards the person of the ruler. I, therefore, place before this House that this is a very dangerous provision, because it will stifle not merely legitimate criticism, but even statement of fact apart from criticisms, and, therefore, it is likely to be used very harshly against the publishers of even well meaning newspapers. The onus even in this case will be upon the accused to prove that it was not an attempt, and it is very difficult to prove that it is not an attempt because attempt does not require even intention. Therefore, I hold that at all events the words "and without attempting to excite hatred, contempt or disaffection" should be omitted and that the words "Statements of fact made without malicious intention" should remain in this *Explanation*. By the omission of the words "without attempting to excite hatred, etc." the object of the *Explanation* is not defeated, but it will save a great deal of harm to the newspapers. Sir, I move.

Mr. President (The Honourable Sir Shanmukham Chetty): Amendment moved:

"That in clause 3 of the Bill, in the proposed *Explanation 5*, the words 'and without attempting to excite hatred, contempt or disaffection' be omitted."

Mr. Muhammad Muazzam Sahib Bahadur (North Madras: Muhammadan): Sir, the effect of the amendment proposed by my Honourable friend, Mr. Jadhav, will be entirely to nullify the object of the *Explanation*. As the *Explanation* reads, statements of fact without malicious intention shall not be deemed to be of the nature described in clause (*j*). There is also something in addition to that, and that is that statements of fact made without attempting to excite hatred, contempt or disaffection are excluded from the mischief of the clause. That is to say, there are two ingredients. One is that these statements of fact should be made without malicious intention, and the other is that they should be made without attempting to excite hatred, contempt or disaffection. As I understood my Honourable friend, Mr. Jadhav, I think he meant to say that the moment you make a statement of fact without malicious intention, there is an attempt—the very publication of a statement of that nature amounts to an attempt to excite hatred, contempt or disaffection. Sir, I entirely disagree; it means nothing of the kind. I may make a perfectly honest statement of fact and I may also at the same time attempt to excite

hatred, contempt or disaffection, or I may not do the latter. It all depends upon the way I put this statement of fact in print. It may be that I make comments here and there, that I exaggerate the position in a way which is not warranted by the facts, there are ever so many ways in which I may attempt to excite hatred or contempt, because it is just possible that I may not honestly state facts as they have occurred on a particular occasion. If I make an honest statement of facts, I do not come under this sub-section, but if there is this ingredient of an attempt on my part, then, as I make that statement of fact to excite hatred, etc., I will be liable, and I think those words have been added advisedly, otherwise the scope of the *Explanation*, as I said, would be altogether nullified.

Mr. Lalchand Navalrai: Upon whom will the burden of proof be?

Mr. Muhammad Muazzam Sahib Bahadur: My answer to that is that the Courts will determine from the statements of fact as they appear.

Mr. B. V. Jadhav: There are no Courts.

Mr. Muhammad Muazzam Sahib Bahadur: In applying this *Explanation*, the District Magistrate will be guided by the fact whether, from a reading of the statement of facts, it is clear that there is no malicious intention and that there is no attempt on the part of the writer to excite hatred, etc. In coming to that conclusion, he will be guided by the ordinary meaning which the words used by the writer convey. That is my answer to my Honourable friend.

Mr. Lalchand Navalrai: The *Explanation* puts the burden on the accused.

The Honourable Sir Brojendra Mitter: Sir, it is appreciated by Honourable Members that clause 3 is taken from the sedition section of the Penal Code, section 124A. In that section, there are certain *Explanations*; for instance, *bonâ fide* comments expressing disapprobation of the measures of Government do not constitute sedition. Again, *bonâ fide* comments expressing disapprobation of administrative or other acts of Government do not amount to sedition. Sir Cowasji Jehangir, at the Simla debate, drew the attention of Government to the fact that a publication might not come within the category of comments either of any measures of Government or of any administrative acts of Government; nevertheless, if it be a *bonâ fide* recital of facts, it ought to be excluded from sedition. That was his suggestion. Following up that suggestion, we have introduced a new *Explanation*, which is all in favour of the newspaper. We have exempted *bonâ fide* recitals of fact. But in order that a recital of facts may be *bonâ fide*, it must not be malicious and it must not excite hatred, contempt or disaffection. That is the meaning of this *Explanation*. We are exempting statements of fact made without malicious intention and without attempting to excite hatred, contempt or disaffection. Sir, this is quite reasonable.

Sir Abdur Rahim: May I ask my Honourable friend if that is the meaning of *bonâ fide*?

The Honourable Sir Brojendra Mitter: I am using the term *bonâ fide* in the ordinary popular sense for the sake of brevity. The gist of it all is this. As in the sedition section *bonâ fide* comments are permitted, similarly we say that a *bonâ fide* recital of facts will be permitted. That is the whole idea underlying this clause and this *Explanation*. Turning to the *Explanations* in section 124A, you will find that the second *Explanation* says:

"Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section."

Similarly, *Explanation* 3 says:

"Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection do not constitute an offence under this section."

Therefore, whenever you are protecting *bonâ fide* action, either in the way of comment or in the way of recital of facts, that must be without an attempt to excite hatred, contempt or disaffection. The *Explanation* is in line with the protection given by the Penal Code. If you take out these words, what will be the result? The result will be that a man may attempt in his recital of facts, say, by prominent headlines or stressing certain facts or underlining certain facts, to excite feelings of hatred, contempt or disaffection; nevertheless, he will be protected; but we do not want to extend the protection to him. We only want to give protection to *bonâ fide* recital of facts and that *bonâ fide* recital of facts must be free from malice and from any attempt to excite feelings of hatred, contempt or disaffection. The amendment would defeat the purpose of the clause, and I oppose it.

1 P.M.

Sir Cowasji Jehangir: Mr. President, I do not want to repeat what I have said before this House on two different occasions, but since an amendment has been moved, I consider it my duty to support it. The one fundamental mistake that Government appear to me to make is that they rely upon law and upon Statutes framed for British India and not for the Indian States. The Penal Code was intended for British India and nor for the Indian States. The circumstances in British India are totally different to the circumstances in Indian States. I make bold to say that any exposure of maladministration in British India by merely relating the facts would most possibly not excite hatred or contempt. But in the majority of cases, a mere relation or statement of facts of what occurs in some Indian States will excite contempt or hatred. That is the distinction. My Honourable friend, the Law Member, has referred us to two *Explanations* in the Penal Code; but those *Explanations* were drafted and passed for British India. I have been complaining that my Honourable friends place the administration of British India on the same level as the administration of the Indian States: it is not fair to themselves; it is not fair to us. If I relate in this House a statement of facts of some of the occurrences in Indian States, I am confident that both my Honourable friends opposite will say that I did attempt to create hatred and contempt: I cannot help it; the mere statement of facts is such. Such statements of fact it would be very difficult to find in British India. It would be very very rare where a British Indian official, English or Indian, would

be guilty of such acts. That is the difference and that is the distinction. Now, look at the *Explanation*. My Honourable friend, the Law Member, used the words *bonâ fide*. Where are the words "good faith" or the words *bonâ fide* in this clause? What does he say to that?

The Honourable Sir Brojendra Mitter: Absence of malicious intention; that is the gist.

Sir Cowasji Jehangir: Let us read it. Good faith is defined in the Penal Code as my Honourable friend, Sir Abdur Rahim, reminds me:

"Nothing is said to be done or believed in 'good faith' which is done or believed without due care and attention."

My point is that if this new *Explanation* referred to British India, I might not have objection to it. But this *Explanation*, when applied to conditions prevailing in Indian States, is of not much protection to the Press. You say "statements of fact made without malicious intention and without attempting to excite hatred or contempt". You do not say that those statements of fact should be *bonâ fide*. A *bonâ fide* statement of facts under this *Explanation* would fall within the mischief of this clause because, the statement of facts would be of such a character that it would be impossible not to excite hatred or contempt. What has my Honourable friend got to say to that?

The Honourable Sir Brojendra Mitter: The words in the *Explanation* are "without malicious intention". Now, malice has got a technical meaning in law. It means a wrongful act done intentionally without just cause or excuse; the reverse of good faith. If you do a thing in good faith and without exciting feelings of hatred, contempt or disaffection, for instance, with the idea of getting legitimate grievances removed, then you would be protected. But if the recital of facts be such that there is an attempt to excite feelings of hatred, contempt or disaffection, then protection will not be available. It is only when the attempt is to get a legitimate grievance removed that protection will be extended—not otherwise.

Sir Cowasji Jehangir: If I may say so, what the Honourable the Law Member has been saying supports me rather than breaking down my argument. The words are "without malicious intention and without attempting to excite hatred, contempt or disaffection". My complaint is against the words "without attempting to excite hatred, contempt or disaffection", which I say in most cases will not be possible, viewing the circumstances that prevail in Indian States today. Regarding the amendment moved by Mr. Jadhav to omit these qualifications, I would be perfectly prepared to allow *bonâ fide* statements of facts if a redraft is made omitting the words we complain about, and including some words such as *bonâ fide* statement of facts or statement of facts in good faith. That is what I have been pleading for, because I feel fairly confident that, however honest the intentions of a newspaper may be, they will fall within the mischief of this clause. It may be that Government will not take action; but the discretion is left with them. I want it made perfectly clear in the Act itself, I know that the contention has always been that Government will not misuse these powers given to them, that they will judge for themselves whether the statement of facts is such as will create hatred or contempt or is deliberately

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meant to create hatred or contempt, or as to whether the statements of facts are *bonâ fide* and in good faith in order to remedy grievances. That may be so, but the power is given to the Government, to the executive authority, and a mere statement of facts may come within the mischief of this clause, however much they may be made in good faith. That is my contention, and I am prepared to support this amendment, unless a redraft is supplied to us in order to cover the points I have raised. That is why I said yesterday that the *Explanation* does not meet with our objection. If it had met us completely, believe me, Sir, I would have taken another line yesterday. It does not meet us; it practically leaves us where we were without the *Explanation*.

Diwan Bahadur A. Ramaswami Mudaliar (Madras City: Non-Muhammadan Urban): Sir, the position is very simple as I understand this *Explanation*. This *Explanation* is intended for the benefit of those who want to bring out an absolute statement of facts with regard to a particular State. If you want to come under the *Explanation*, and if you want to have the benefit of this *Explanation*, you have to prove two things, first that, you had no malicious intention, and, secondly, that what you wrote did not amount to an attempt to excite hatred or disaffection. I grant that you can prove the one regarding malicious intention provided you are able to prove that you made the statement with the best of motives to bring about a change in the methods of administration. But how are you going to prove that your statement of facts does not amount to an attempt to excite hatred or disaffection? I want the Honourable the Law Member to realise that, whether a statement of fact is an attempt to excite hatred or disaffection or not does not depend upon the intention of the person who makes the statement of facts. There are two ingredients you have fixed here to get this man out of the penalties of this clause. One is malicious intention. I can prove if I were editing a paper that I had no malicious intention and that my statement of facts was made merely because I wanted the authorities of the State concerned to know that certain things were going wrong in the State in order that they may correct the situation there. But how am I to prove that this does not amount to an attempt to create hatred or disaffection? It is a thing outside my volition. I have nothing to do with it. People may be excited without my intending to excite them. Is there the element of intention in the attempt to excite hatred or disaffection? That is the point?

Mr. Gaya Prasad Singh: On whom will the onus lie?

Diwan Bahadur A. Ramaswami Mudaliar: The onus will lie on the accused to prove these two things. Here it is not a question of prosecution, it is a question of forfeiture. If he wants to get the benefit of the *Explanation*, he has to prove two things, first, that he had no malicious intention, and, secondly, that in what he wrote there was no attempt to excite hatred or disaffection. Now, how is he to prove it? The onus of proof lies on the other side, that, as a matter of fact, it has caused hatred or contempt. Well, if that is so, how is the accused to get the benefit of this *Explanation* at all? Circumstances in many States are such that a bare recital of the facts is bound to cause hatred or contempt. That is the difficulty which some of us feel. I accept the definition which the Law Member has given, but then the accused

should come under the benefit of this *Explanation*. I think it is a perfectly simple proposition. If we can have an amendment which could bring into effect the intention which the Government have got, then we will be satisfied. But as it is at present, the accused person does not get the benefit of the *Explanation* which the Select Committee thought they were securing for him by adding this *Explanation*.

The Honourable Sir Brojendra Mitter: May I say one word, Sir? The Diwan Bahadur asked how is a man to prove that he did not attempt to excite disaffection or hatred? Attempt is the direct movement towards commission after preparation has been made. . . .

An Honourable Member: That attempt is different altogether.

The Honourable Sir Brojendra Mitter: An attempt to commit a crime must be something more than a mere preparation. . . .

Mr. President (The Honourable Sir Shanmukham Chetty): Is that an overt act following a statement of fact?

The Honourable Sir Brojendra Mitter: The overt act is the publication. The publication may be in such manner that it amounts to an attempt to excite hatred or disaffection. The narration of facts in a particular sequence may be such an attempt; in a different sequence it may not be an attempt. An attempt to commit a crime must be something more than a mere preparation. Acts remotely leading towards commission of the offence are not to be considered as attempts to commit it, but acts immediately connected with it are. That being so, it is not difficult for a man to prove what he did, did not amount to an attempt. . . .

Sir Cowasji Jehangir: Has the Honourable Member got a dictionary, or what is he reading from?

The Honourable Sir Brojendra Mitter: From a commentary on the Indian Penal Code.

Sir Cowasji Jehangir: With the greatest respect, if he will leave these books alone, we will get on faster.

The Honourable Sir Brojendra Mitter: I cannot leave these books alone. We are dealing with law. These are words used not in the popular sense; each word has a definite meaning in law, and I must tell the House what that meaning is.

Now, the point which the Diwan Bahadur made was this, that it would be impossible for a man to prove that what he was doing was not an attempt to create hatred or contempt. I say it need not be difficult for anybody to prove that, because attempt is something definite, a definite action on the part of the accused himself, and he surely ought to be able to prove that what he did, did not amount to an attempt. That is all I have to say.

Sir Abdur Rahim: Sir, I want to say a few words. The position I took up in the Select Committee was that the whole of this clause was bad and that it ought to go, and I did not try to improve the wording of it. But the amendment is that a *bonâ fide* statement of facts should

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be protected, even though those facts were such as might tend to bring certain administration into hatred or contempt. That was the point, I believe, which was made by Sir Cowasji Jehangir, and the Government wanted to accept the position. They wanted to devise this *Explanation* in order to meet the point raised by my friend; that is to say, to exempt from punishment or from the penalty described in clause 3, although the effect of the publication of those statements might bring into hatred or contempt certain States. But if the *Explanation* remains, as it is now drafted, then, as pointed out by my friend, the Diwan Bahadur, it would surely mean that the onus is shifted on the accused person or the owner or proprietor of a press to show that if these words, although perfectly true and *bonâ fide*, and contain merely a statement of facts and nothing more, excite hatred and contempt although there is no malicious intention—the intention may have been perfectly *bonâ fide*,—then the *Explanation* does not protect the proprietor of the press. That is the difficulty.

The Honourable Sir Brojendra Mitter: If the Honourable Member will pardon me, attempt has reference to a man's own action; it has no reference to the effect. That is the mistake that the Honourable Member is making.

Sir Abdur Rahim: I understand the position, but the case that is made on this side is that there may be facts in connection with the administration of a State a mere recital of which would bring into hatred and contempt the administration of that State, and that ought to be protected. I understand that is the position which was accepted by the Government. If that is so, where is the necessity of adding these words? By adding these words, you are throwing the burden on the proprietor of the press, and those words, however *bonâ fide*, however correct the statements may be, will not exempt the press from forfeiture. That is the difficulty.

The Honourable Sir Brojendra Mitter: The Honourable Member is now not objecting to "attempt", he is objecting to "tend".

Sir Abdur Rahim: We are objecting to the words "attempting to bring into hatred or contempt or to excite disaffection". If you simply said, "*bonâ fide* statements of fact made without any malicious intention", that would meet the case of my Honourable friend, Sir Cowasji Jehangir. If you bring in the other words, then you are laying an onus on the accused person or the proprietor of the press to prove that by those words he did not mean to excite hatred and contempt, and that, as my Honourable friend must know, is a very difficult position for a newspaper proprietor to meet, because many people write to the newspapers, and no proprietor of any paper can really be responsible for the effect of every word that appears in the paper. Therefore, there is a great deal of difference between the *Explanation* which was sought for by my Honourable friend and the *Explanation* as is now given.

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

The Assembly re-assembled after Lunch at Half Past Two of the Clock, Mr. President (The Honourable Sir Shanmukham Chetty) in the Chair.

Mr. S. C. Sen (Bengal National Chamber of Commerce: Indian Commerce): As I was one of the persons who put in this amendment, it is necessary that I should say a few words on this subject. The previous *Explanations* which are in this clause deal with a different class of subject, namely, discussions and comments, but now we have come to another part, namely, telling the truth. I take it that even the Home Member will consider that it is everybody's right to speak the truth, though in this Government we are not allowed to say so. In Bengal, they have the courage to say that you will not speak the truth and we debar you from speaking the truth upon certain matters, but here, although the Honourable the Home Member concedes that you should speak the truth, he has hedged it with so many safeguards that it is not possible for us to know where we are. With this object in view and to minimise the effect of the various safeguards, I propose this amendment. Now, let us see what the clause says. *Explanation* 5 says:

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

So far, up to the words "malicious intention", we say that, if I intended to use the truth in a particular way, I may be liable. That has nothing to do with the truth, but by the particular use I make of the truth I make myself liable, but the clause goes on "without attempting to do certain things". How is it possible for any man to tell the truth unless that truth recoils against the person in respect of whom I tell the truth? No endeavour and no attempt on my part is necessary, but the effect is the same. For instance, so far as the Indian prince is concerned, if I say that on such and such a day he took away forcibly a woman from the lawful custody of her husband and on such and such a night he did this thing and that thing and that, for the purpose of doing that thing, he committed murder, supposing I say all these authentic facts, what would they bring into the mind of the people in the territory of the prince or in British India? Will they have any great love for the man or will they have hatred for the man? Therefore, by telling the truth, without any overt act being done, you will be bringing that prince into hatred or contempt. Is that reason, is that logic or is that consistent with morality? The words are "without attempting to excite". How is it possible to avoid exciting contempt? The mere repetition of these words with a view to formulating the charges against the man would be an attempt on my part to excite disaffection. I say that this is an attempt on my part of the Legislature and the Government to prevent people from telling the truth. If that is the intention of the Government, let them say so in plain words as they did in Bengal. They said we will not allow you to tell the truth however laudable the object may be, but here apparently the Government of India have not got that courage, and, therefore, they want to penalise the telling of the truth by putting forth all these safeguards. I think if they want to put in the safeguards, the words "with malicious intention" are sufficient. So far as the intention is concerned, as is well known, the intention is proved by the natural effect the words will have. If, as I say, as I said before, the facts about a particular prince are brought out and facts and figures are given, then naturally they will imply

[Mr. S. C. Sen.]

disaffection and hatred. You cannot avoid that, but if you want to take things from the moral point of view, you will see that you are perfectly justified in putting in a safeguard in the way as you have done here by the words "malicious intention". If you can show that I have used the words with malicious intention, that ought to be sufficient for the purpose of the Government. With these words, I support the amendment.

Mr. S. C. Mitra: Government have gone a good deal in accepting this *Explanation*, and I hope they will have the grace to accept this amendment also when they will clearly understand that we do not demand much by this amendment. In the press something may come out and it could be proved that it was written not only without any malicious intention, but with the best of intentions. A man gives publicity to certain things, but it may not be the intention of the publisher to bring the State into hatred or contempt. The purpose of the publisher may be to do good to the ruler himself, for the purpose of bringing him round to a proper state of mind. Even then the writer will come under the mischief of this clause. I think it is not the intention of Government even to punish such a man. A few days ago, we received some printed papers where there was an allegation against a neighbouring Indian prince taking away a girl from her lawful guardianship. By publishing that fact, a newspaper editor may, with the best of intentions, try to bring the ruler to his senses, so that he may not commit such acts. I think such statements should not come under the purview of this clause. It must be admitted that with a view to improving the condition of things in a State, criticism is necessary. Now, if not only fair criticism inspired by the sole object of bringing about improvements in the standard of administration, but even a truthful statement of facts presented with the best of intentions in order to bring round a ruler to his senses becomes punishable, then I think the purpose of this legislation will not be served and Government should not help, by enacting such laws, in protecting unnecessarily the States concerned from such statements being published about them. I hope, after careful consideration, the Government will see that this is a very reasonable amendment and that much will not be lost, but if they cannot accede to all these reasonable amendments from this side of the House, then, Sir, that will merely show the perverseness of the Government because of the feeling of the strength of their votes in this House.

Sirdar Harbans Singh Brar (East Punjab: Sikh): Mr. President, the extent to which the law of sedition is being extended by the Government shows that that law is to include all that is not flattery. By his amendment is meant that a fair statement of facts, without any malicious intention, should be allowed to be put in a publication, and if the amendment is not accepted, it will mean that almost anything which is even a bare statement of facts shall be attempted to be interpreted as having been made in an attempt to create disaffection and other things of the kind. I for one feel that it is not wise that that step should be taken. No doubt we have such a provision in our own enactments, but conditions in British India are quite different. If a thing is not allowed to be published in the Press, we have a right in the Legislature to bring those grievances to the attention of the Government and the authorities concerned. But what about the States? There are no such Legislatures there, there are no means of bringing grievances to the attention of the

authorities in the Indian States or other things which may be happening within those States and even where the ruler may have a good intention, unless it is brought to his notice that certain grievances exist which he may be willing even to remedy, what can he do, and it will be impossible for him to do anything. In the same way, it will be impossible for the authorities in British India, *viz.*, the Political Department, to interfere in a State unless things are brought to their notice and attention as to what is wrong there and that cannot be done unless a free expression of opinion is allowed to be ventilated in the Press and fair play is allowed to operate, without, of course, any malicious intention. Of course if there proves to be a malicious intention, by all means punish that, but where there is no malicious intention, we must ask that things should be reproduced as the facts stand. We have been seeing lately, and not without some good reasons, things brought to our knowledge which happened in some of the States. I need not mention any individual State, because, as far as my own experience is concerned, that is in no way unfavourable to the princes; but still there are in certain States things which exist which we find are not what they ought to be. We heard recently in this very House of the case of a State which borrowed 25 lakhs from the Government of India, and, in the same year, paid back as much as 50 lakhs to the Government of India,—and how was that money obtained? That is common knowledge and everybody knows, because pamphlets were supplied to us and they tell very harrowing tales indeed. Now, supposing such things are published in the Press, it will be quite open to the Magistrate to interpret it in this way that it is an attempt to create disaffection. I would, therefore, urge upon the Government to be fair-minded and to give a chance to the public to place their grievances before both their rulers and before the Government of India in the Political Department, as a result of marked acts of injustice done by their officials or ministers, by way of ventilating their grievances in the Press; and if that is allowed, a much more happier state of things will come into being. I would, therefore, urge upon the Government that they may be pleased to accept this amendment.

The Honourable Sir Harry Haig: Sir, I have little to add to the exposition of our case which has already been given by my Honourable colleague, the Law Member, nor have I any expectation of being able to change the views of my Honourable friend, Sir Cowasji Jehangir. We have had this discussion before, and we still remain each of us of the same opinion. My Honourable friend, Sir Cowasji Jehangir, said that the circumstances in the States are different to the circumstances in British India, and, therefore, we should make some change in the law applicable to them. My answer is that this *Explanation* does make a change. It does not reproduce the law in existence in British India,—it goes much wider. In British India, as I understand the matter, it is no defence to a charge of sedition that the intention of the accused was not to produce a certain effect. The question is whether it *did* produce a certain effect. Now, the whole object of our *Explanation* is to eliminate the question of the effect produced. We do not say that it is necessary for the defendant in this case to show that a certain effect was not produced: we say he must show that his intention was not malicious and that he was not attempting to produce certain results. In both cases the House will recognize that those are acts of his and not effects produced by his acts, and that I think is the really important point. Now, Sir, it has been

[Sir Harry Haig.]

said that a narration of facts may be of such a kind that it is inevitable that it will produce feelings of hatred or contempt, and so on. My answer is that if that narration of facts is of a colourless kind, then it will be a reasonable presumption that the writer was not attempting to produce these feelings; but, as everybody knows, facts, even facts, can be narrated in very different ways. Facts may be narrated in a calm, impartial manner, and they can be presented in a very exciting manner; and it is only when they are presented in an exciting manner that it will be reasonable for the Court to conclude that the attempt was to cause that excitement. Sir, I oppose the amendment.

Mr. President (The Honourable Sir Shanmukham Chetty): The question is:

"That in clause 3 of the Bill, in the proposed *Explanation 5*, the words 'and without attempting to excite hatred, contempt or disaffection' be omitted."

The Assembly divided:

AYES—27.

Abdul Matin Chaudhury, Mr.
Abdur Rahim, Sir.
Azhar Ali, Mr. Muhammad.
Bhuput Sing, Mr.
Das, Mr. B.
Dutt, Mr. Amar Nath.
Isra, Chaudhri.
Jadhav, Mr. B. V.
Jehangir, Sir Cowasji.
Jog, Mr. S. G.
Joshi, Mr. N. M.
Lahiri Chaudhury, Mr. D. K.
Lalchand Navalrai, Mr.
Mitra, Mr. S. C.
Mudaliar, Diwan Bahadur A Ramaswami.
Murtuza Saheb Bahadur, Maulvi Sayyid.
Neogy, Mr. K. C.
Parma Nand, Bhai.
Patil, Rao Bahadur B. L.
Reddi, Mr. P. G.
Reddi, Mr. T. N. Ramakrishna.
Sen, Mr. S. C.
Shaiee Daoodi, Maulvi Muhammad.
Singh, Mr. Gaya Prasad.
Sitaramaraju, Mr. B.
Thampan, Mr. K. P.
Uppi Saheb Bahadur, Mr.

NOES—49.

Abdul Aziz, Khan Bahadur Mian.
Ahmad Nawaz Khan, Major Nawab.
Anklesaria, Mr. N. N.
Bagla, Lala Rameshwar Prasad.
Bajpai, Mr. G. S.
Bhore, The Honourable Sir Joseph.
Brij Kishore, Rai Bahadur Lala
Cox, Mr. A. R.
Dalal, Dr. R. D.
Darwin, Mr. J. H.
DeSouza, Dr. F. X.
Dillon, Mr. W.
Dumasia, Mr. N. M.
Glancy, Mr. B. J.
Graham, Sir Lancelot.
Grantham, Mr. S. G.
Haig, The Honourable Sir Harry.
Hardy, Mr. G. S.
Hezlett, Mr. J.
Hudson, Sir Leslie.
Irwin, Mr. C. J.
Ismail Ali Khan, Kunwar Hajee.
James, Mr. F. E.
Jawahar Singh, Sardar Bahadur Sardar Sir.
Lindsay, Sir Darcy.
Macmillan, Mr. A. M.
Mitter, The Honourable Sir Brojendra.
Morgan, Mr. G.
Muazzam Sahib Bahadur, Mr. Muhammad.
Mukharji, Mr. D. N.
Mukherjee, Rai Bahadur S. C.
Nihal Singh, Sardar.
Noyce, The Honourable Sir Frank.
Pandit, Rao Bahadur S. R.
Rafiuddin Ahmad, Khan Bahadur Maulvi.
Rajah, Rao Bahadur M. C.
Ramakrishna, Mr. V.
Rau, Mr. P. R.
Sarma, Mr. G. K. S.
Sarma, Mr R. S.
Schuster, The Honourable Sir George.
Scott, Mr. J. Ramsay.
Sher Muhammad Khan Gakhar, Captain.
Singh, Mr. Pradyumna Prashad.
Sloan, Mr. T.
Tottenham, Mr. G. R. F.
Varma, Mr. S. P.
Yakub, Sir Muhammad.
Yamin Khan, Mr. Muhammad.

The motion was negatived.

Mr. President (The Honourable Sir Shanmukham Chetty): The question is:

"That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

Mr. President (The Honourable Sir Shanmukham Chetty): The question is

"That clause 4 stand part of the Bill."

Mr. Lalchand Navalrai: Sir, I beg to move:

3 P. M.

"That for clause 4 of the Bill the following be substituted :

'4. When a District Magistrate or in a Presidency town the Chief Presidency Magistrate is of opinion that within his jurisdiction an assembly of 5 or more persons have committed an act for the purpose of proceeding from British India into the territory of a State established by law in India and that the entry of such persons into the said territory or their presence therein is likely or will tend to subvert the Administration of the said State or cause danger to human life or safety or a disturbance of the public tranquillity or a riot or an affray within the said territory, he may, by order declare that assembly an unlawful assembly within the meaning of section 141 of the Indian Penal Code and the provisions of Chapter VIII of the Indian Penal Code and Chapter IX of the Code of Criminal Procedure, 1898, shall apply'."

Sir, it is necessary to make it clear to the House what my amendment really means. My amendment is not that the whole of clause 4 should be deleted as was to be suggested by my Honourable friend, Sardar Sant Singh, who has not moved his amendment. In my opinion, the whole clause should not be omitted, because this clause 4 refers to *jathas* being formed in order to be sent to the States. By this amendment of mine, I do not say, when *jathas* are formed for a particular purpose, injurious in some way or other, that they should not be obstructed or that no injunction should be issued against them. I only suggest certain improvements in this clause, and, therefore, I have put in my amendment which improves only certain portions of the clause while retaining the other parts of the clause intact. Clause 4 in the Bill, as it stands, states

"When.....attempts are being made to promote assemblies of persons for the purpose of proceeding from British India into the territory of a State in India,"

and then the Magistrate may issue an order. I submit these words are too wide, too vague and such that will be interpreted in a manner which would make it very difficult for the Magistrate also to decide whether there is an occasion for issuing an order. It will also be difficult for the other side to prove that there was no idea of forming them into a *jatha*. The words are, "when attempts are being made to promote assemblies of persons". I submit that the words "attempts are being made" should be substituted by "when an assembly of five or more persons have committed an act for the purpose of proceeding, etc.,". I want they should actually commit some act for the purpose of proceeding. In other words,

[Mr. Lalchand Navalrai.]

they have done some apparent act. I will describe the stages and then it will be clear to the House what I want. At present I say that some thing must be done to form *jathas*, and it is only then that the Magistrate can definitely and justly find out whether there is any necessity for issuing an injunction. Why I object to the word "attempt" is this. The Honourable the Law Member in some previous amendment touched upon the word "attempt" and he began saying that the Government wanted to put in the word "attempt". I say that the word "attempt" is such that there have been several interpretations under the Penal Code upon its meaning. Therefore, to introduce the same word over which in India we have had so much difficulty and over which the Judges have given different views, is wholly unreasonable. I submit there ought to be clearer words put in, some stage should be shown by which there is a reasonable belief that a *jatha* is going to be formed. Now, take the word "attempt". "Attempt" has not been defined in this Bill, nor in the Penal Code. The commentaries and the various opinions on the word "attempt" are these. They say there is always an intention to commit an offence or to do an act, and there is always first of all the intention. They say intention is not attempt, that is quite right. Then they say there is preparation. Thereafter they state there is attempt and then only the act would follow. With regard to preparation and attempt, there is again a confusion. If a preparation is a different thing from attempt, then also there is difficulty. In forming a *jatha*, what is the preparation and what is the attempt? These things it will be very difficult for the Magistrate to decide. The point to decide would be whether such a stage has arrived to form a *jatha* which can be termed an attempt. If this is not found out, then you would be even taking simply an idea to form a *jatha* to be an attempt. Now, the law, as interpreted under the Penal Code, is this. The Judges have said that in an "attempt" there are several stages. The last stage will be the penultimate stage, that is to say, the penultimate act after which it will be actual formation of *jathas*. That is the last stage. There are several stages in "attempt" which are little more than preparation. Therefore, some Judges say that if there is a little more than preparation done, then it becomes an attempt. Some say, no, there ought to be some substantial stage of it. Others go further and require the last act after which a *jatha* gets actually formed Therefore, I submit, if there is so much confusion and dispute over the interpretation of the word "attempt", why use it? I ask the Honourable Members on the Government side to say what will be that stage when they will say that an attempt for a *jatha* is being made? I ask the Honourable the Law Member to clear the point. If one man says to the other man, "let us form a *jatha*", is that an attempt? Some Magistrates will say, he asked him that *jathas* should be formed, there is, therefore, an attempt, and an order should be issued. Let us take another case, there are two people who meet and say "we will form into a *jatha*, but we want other people also to join us, go and collect those people". Supposing they have gone out and told people to join, is that a stage which can be called an attempt? Very good. Let us go a little further. Some people have met, they have consented to form into a *jatha*, but they want certain things to be collected and taken along with them—some food or some materials. They have not yet formed into a *jatha*. Is that the stage where there is actual attempt? I submit,

there will be very great difficulty in interpreting what is really an attempt. I should like to be definitely told in this House by the Law Member or the Home Member as to what they mean by "attempt" at forming a *jatha*, because there is a very great conflict of opinion about this. Here is a *jatha* which means certain people, five or more, forming themselves into a group and saying. "We are going into a State to create disturbance". It is not clear whether they attempt at it.

I do not wish to waste the time of the House any further. I have put in my amendment to make the position clear, and I hope the House will agree with me that the word "attempt" should not be used as it appears in the Bill, but that words should be used, as I have suggested in my amendment, namely, that they have committed an act for the purpose of proceeding to a State. The act will be like this. People go to the station. They actually purchase tickets, or, even before going to the station, they have purchased tickets. This would be an act done. Therefore, I am submitting that these words of mine should be accepted. and I hope the House will appreciate the difference. The word "attempt" is a very confusing word, a word which has confounded several Judges, a word which, up to this time, has not been defined in the Indian Penal Code, and a statutory definition has not been given to it anywhere. How are you going to use that word with respect to the States Bill? You must realise one thing. In India, if there is an attempt going to be made and information is laid before the Magistrate, then the Magistrate will be in a position to find out how far that attempt has proceeded. But what will be the procedure now? If an order is sought from a Magistrate with regard to any State, some State officer or some favourite will come forward and make an assertion to the Home Member that there is an attempt being made for a *jatha* being formed. The Home Member or the Political Secretary will certainly believe that, and as the man goes there from the ruler or the prince who has got nervous, they will assume that an attempt is really being made. Therefore, the word "attempt" should be removed.

Then, I come to the second part of my amendment. In the Bill, you find that the words used are, "when their presence is likely or will tend to cause obstruction to the administration". You again see the fallacy of these words being used. What is the meaning of the word "obstruction"? It will be very difficult to say what is obstruction and what is not. The object of the Bill is that something should not be done to destroy or jeopardise or cripple the administration of a State. But what is the meaning of "obstruction"? That word, again, is not defined in the Indian Penal Code or anywhere else. We have to go to the dictionary meaning and common sense meaning of the word. Now, supposing in this House some members of the Swaraj Party intend to obstruct the business. Is that an offence? Have the British Government ever come forward to penalise those Members here who come to obstruct the passing of a certain Bill? I will give another instance. Suppose there is a piece of land going to be sold in an Indian State by the prince, but the people of the State want it for a particular purpose. People in India form into a *jatha* to go and explain to the State administration and also to tell the people not to purchase that land. Is that obstruction to the administration? If such things are done, then I think it is no use making laws like this. It is better to leave the rulers to break their own heads with their people and not to ask for help here. They are asking for help

[Mr. Lalchand Navalrai.]

which, I think, Government would not give to any British subject here. And now, by showing them so much kindness, they are only spoiling these princes more and more. I, therefore, submit that the word "obstruction" should be taken away and the words "to subvert the administration" should be inserted. Instead of "attempts are being made, etc." the words should be, "have committed an act for the purpose of proceeding from British India", etc. Sir, with these words, I move my amendment.

Mr. President (The Honourable Sir Shanmukham Chetty): Amendment moved:

"That for clause 4 of the Bill the following be substituted :

'4. When a District Magistrate or in a Presidency town the Chief Presidency Magistrate is of opinion that within his jurisdiction an assembly of 5 or more persons have committed an act for the purpose of proceeding from British India into the territory of a State established by law in India and that the entry of such persons into the said territory or their presence therein is likely or will tend to subvert the Administration of the said State or cause danger to human life or safety or a disturbance of the public tranquillity or a riot or an affray within the said territory, he may, by order declare that assembly an unlawful assembly within the meaning of section 141 of the Indian Penal Code and the provisions of Chapter VIII of the Indian Penal Code and Chapter IX of the Code of Criminal Procedure, 1898, shall apply'."

The Honourable Sir Harry Haig: Sir, I think the most convenient way to deal with my Honourable friend's amendment will be to try and show in the first place what are the Government proposals, and, in the second place, what are the Honourable Member's proposals, and what is the difference between them. Now, the Government proposal for procedure is this. In the first place, the District Magistrate must be satisfied that attempts are being made to promote assemblies, that is to say, that a general situation exists in his district. The wording originally was, "that there is in his jurisdiction a movement" etc. Objection was taken to that wording in the Select Committee. It was thought that "movement" was not a word which had a definite legal signification, and, therefore, it was felt by some of my Honourable and learned friends that it would be better to substitute the word "attempt" which has a definite legal signification. Personally I regretted that substitution; I think that the meaning is really conveyed more satisfactorily by the original wording, but I do not quarrel with the wording as amended by the Select Committee. But the point to which I wish to invite the attention of the House is this, that the District Magistrate has, in the first place, to satisfy himself of certain conditions in his district which are leading to the assembling of *jathas*. When he is satisfied of that, he may, by an order in writing, prohibit the assembly of such *jathas*, and, thereafter, if such *jathas* do assemble, they are unlawful. Those are the proposals of Government. Now, Sir, the proposal of my Honourable friend is totally different. He proposes to deal with each individual *jatha* as it arises. The Magistrate has to wait until an assembly of five or more persons have committed an act for the purpose of proceeding from British India into the territory of an Indian State; that is to say, in effect he is to wait until a particular *jatha* practically has assembled. Then, if he is quick enough, he is allowed to declare that assembly an unlawful assembly and then it can be dispersed. But that procedure would be entirely ineffective to deal with the situation we

are contemplating where there will be a large number of *jathas* assembling simultaneously for the purpose of invading an Indian State. It would be quite useless to have a provision which necessitates the Magistrate being present when each *jatha* is actually assembling and then declaring that it is unlawful. Such a procedure obviously could do nothing to prevent the invasion of a State by a number of bands of men from British India. Therefore, my main, and, I hope, decisive, objection to this proposal is that it will be entirely ineffective and really my Honourable friend, though he took some credit to himself for not moving for the omission of this clause altogether, could in my opinion just as well have moved the complete omission of the clause, as move the substitution of these words. I would just as soon have no clause at all as the provisions which my Honourable friend opposite offers me.

The other point raised by the Honourable Member was that for the word "obstruction" he had substituted the word "subvert". That also would have a very weakening effect on the procedure we propose, for the Honourable Member contemplates that no action should be taken unless a Magistrate is satisfied that the object of these *jathas* is the very extreme object of subverting the State. That may be, and probably is, the ultimate object but it is extremely difficult in the earlier stages for anybody to say positively that the object of these *jathas* is to go as far as to subvert the administration of the State. It may be perfectly obvious that the intention of those who organise the *jathas* is to obstruct the administration of the State: that is a thing that can very easily be established; but to go further and to say that the object is to subvert the State is to ask the Magistrate, in my judgment, to reach conclusions which really it would not be in his power to reach, and there again this substitution of "subversion" for "obstruction" would so seriously weaken the provisions as to render them largely ineffective. Sir, I oppose the amendment.

Mr. President (The Honourable Sir Shanmukham Chetty): The question is:

"That for clause 4 of the Bill the following be substituted :

'4. When a District Magistrate or in a Presidency town the Chief Presidency Magistrate is of opinion that within his jurisdiction an assembly of 5 or more persons have committed an act for the purpose of proceeding from British India into the territory of a State established by law in India and that the entry of such persons into the said territory or their presence therein is likely or will tend to subvert the Administration of the said State or cause danger to human life or safety or a disturbance of the public tranquillity or a riot or an affray within the said territory, he may, by order declare that assembly an unlawful assembly within the meaning of section 141 of the Indian Penal Code and the provisions of Chapter VIII of the Indian Penal Code and Chapter IX of the Code of Criminal Procedure, 1898, shall apply'."

The motion was negatived.

Mr. President (The Honourable Sir Shanmukham Chetty): The question is:

"That clause 4 stand part of the Bill."

The motion was adopted.

Clause 4 was added to the Bill.

Mr. President (The Honourable Sir Shanmukham Chetty): The question is:

"That clause 5 stand part of the Bill."

Mr. Lalchand Navalrai: Sir, I move:

"That clause 5 of the Bill be omitted."

This clause refers to the power of a Magistrate to direct prohibition of certain acts in connection with Indian States. We all know that we have a similar section in the Criminal Procedure Code—section 144: we are quite aware of it, because very many times it has been abused, and rather mismanaged. A similar provision is now sought to be made by this clause 5. This clause says:

"Where, in the opinion of a District Magistrate or *in a Presidency-town the Chief* Presidency Magistrate, there is sufficient ground for proceeding under this section *and immediate prevention or speedy remedy is desirable,* such Magistrate may, by written order stating the material facts of the case and served in the manner provided by section 134 of the Code of Criminal Procedure, 1898, direct any person to abstain from a certain act if such Magistrate considers that such direction is likely to prevent or tends to prevent *obstruction to* the Administration of a State in India or danger to human life or safety or a disturbance of the public tranquillity or a riot or an affray within the said State."

My humble submission is that now that the clause has been passed which prohibits *jathas* from going to the Indian States and the Magistrate can pass a prohibitory order in order to prevent *jathas* from going there, to make this omnibus clause in which it is left to the Magistrate to pass any order on any person to abstain from a particular act—I submit, to allow such a provision to be made is quite unnecessary after clause 4 has been accepted. I also say that such a provision will be very much abused. If this is enacted, it will create more mischief than good, for the orders that the Magistrate will make will be made on the suggestion or information given by the State people; and then the complaint will have to be filed by the Government themselves, and when a complaint comes from a Government to any Magistrate it will be only very few Magistrates who will be so independent as not to treat that as an order of the Government. It will work as a death-knell. I submit that this is not my opinion only, but that in two places in India the District Magistrates—the administrators there have given the same opinion; and you will, therefore, realise that there will be corruption in getting such orders and that orders of any nature will be obtained on a mere assertion. I submit, therefore, that this clause should not be enacted. How this clause is being applied and acted upon in India can be explained by one or two instances. You may be knowing that well-known case which is called the Guntur Mahatma Gandhi cap case. In that case, what had happened was that, in Guntur, the District Magistrate had passed an order to the effect that no one should put on a Gandhi cap. Of course, everybody can understand how easy it is to get such orders passed, because you are not defining the order in the clause itself, but you are leaving it to the District Magistrate to pass any order to prohibit a person from doing a certain thing. The District Magistrate, for instance, can say: "Oh, you don't put on a Gandhi cap" or pass some such order, and

that must be obeyed, and we know that such absurd orders have been made, and it is not possible to enumerate the extent to which such orders might go.

[At this stage, Mr. President (The Honourable Sir Shanmukham Chetty) vacated the Chair which was then occupied by Mr. Deputy President (Mr. Abdul Matin Chaudhury).]

Therefore, you give a blank cheque in the hands of the District Magistrates. Those Honourable Members who know how these orders are passed in India will be able to appreciate my viewpoint.

Now, Sir, as I said, there will be (1) corruption in getting such orders, and (2) there will be no independence left to the Magistrates when they want to please the princes who want particular orders passed. Therefore, on that ground this enactment should not be made. In support of these two contentions of mine, I would refer to the opinions given at page 22 of Paper No. 15. I will first refer to the opinion of the District Magistrate of Nilgiris, in which he says this:

"The provisions against 'interference with the administration of a State'' are very wide. It is obvious that they could be abused. The expectation that they will not is apparently based upon the presumption they will be administered in good faith by Magistrates and Governments. Against this presumption must be put the possibility (to put it no higher), that future Magistrates and Governments may not be incorruptible". . . . .

Of course, he is referring to the future Magistrates and Governments . . .

The Honourable Sir Harry Haig: It sounds like Mr. Winston Churchill.

Mr. Lachand Navalrai: Is it so? I don't think this District Magistrate has got a lesson from Mr. Winston Churchill. Now, proceeding further, he says:

"and that many of the States, who may desire the application of these provisions, have sufficient wealth to make the bribing of individuals a matter of no account to them. I think it inexpedient to put those in authority in India in the position of being able to grant or refuse a favour to an Indian State, so far as it is possible to avoid this."

Sir, this is not my personal opinion, but it is the authoritative opinion of a District Magistrate based upon his own experience.

Further on, he says this:

"The procedure under sections 5 and 6 are analogous to those under Criminal Procedure Code, 144. Proceedings under C. P. C. 144 are judicial proceedings of a court, not administrative Acts. I do not know upon what information the District Magistrate would normally base his opinion that action under section 5 or 6 is necessary. In practice it would probably be upon information given by the Government, and the effect of Government's action upon any except the most independent Magistrate would be equivalent to an order. I think it better that the terms of the Act should be more in accordance with the probable facts and, if Government is likely to exercise such authority, the responsibility should be openly placed upon it."

Certainly, Sir, the responsibility to pass this measure should not be placed upon this House at all. If Government want to help these people, let there be an Ordinance, let there be an order and let the responsibility be on the Government, and not on us, Members.

[Mr. Lalchand Navalrai.]

Then, Sir, I will also refer to another District Magistrate's opinion, I mean the District Magistrate of South Canara. This is what he says:

"Another point that I should like to emphasise is that the Bill proposes to give to the District Magistrate considerable powers with a view to protecting Native States from undesirable activities having their origin in British India. But for a District Magistrate to be able to act properly in this way it would be necessary that he should know very much more than he does at present about what is going on in Native States. I have been District Magistrate in Tinnevelly, Malabar, South Kanara and Kurnool and in all these districts there were one or more Native States on the border or within the district, and I can say that with the exception of extradition correspondence there was absolutely no correspondence between the District Magistrate and the Administration of the Native State on matters affecting Law and Order in those States. This shows, I think (*i*) that the British police and the police of the several States get on quite well with the law as it is and (*ii*) that there is no need in South India for any Bill as now drafted."

Now, Sir, these opinions are quite clearly in favour of the case I have made out in support of my amendment, and so it will be a mistake to pass this Bill as it is drafted at present.

Then, Sir, I would submit that this clause of the Bill is wider than even section 144, and in this connection I would also quote the opinion of another District Magistrate. He says this:

"Clauses 5 and 6 relate to matters which are covered by section 144, Cr. P. C. when similar contingencies are feared in British India, but go much further than that section. I am unable to see any justification for taking powers to deal with possible contingencies in the States in excess of those which Government takes to deal with similar activities directed against itself. The phrase 'interference with the administration of the said State' has, so far as I am aware, no counterpart in the existing law of British India, and it seems to me to be most undesirable to saddle District Magistrates with the responsibility of enforcing sections so loosely worded."

Sir, nothing can describe better than what these opinions do, and I submit, when this House has experience of the way in which section 144 is abused, this House would be well advised to accept my amendment to delete this clause 5. With these words, I move my amendment.

Mr. Deputy President (Mr. Abdul Matin Chaudhury): Amendment moved:

"That clause 5 of the Bill be omitted."

Mr. B. Das (Orissa Division: Non-Muhammadan): Sir, I want to understand the implications of clause 5 of the Bill. When I moved for circulation in the Simla Session, I pointed out that there might be occasions when British Indians like you (Mr. Deputy President) and me might be asked to preside over Indian States Peoples' Conferences in British India. In fact, I had the honour of once presiding over the Orissa States Peoples' Conference at Cuttack. My reading of this clause is, if a certain petty chief would approach the District Magistrate and tell him that if such and such a conference would be held, it will cause disaffection against him, and this clause might be used against the holding of that conference. Throughout this Bill steps are being taken to protect the maladministration of these princes. I am not talking here of big and orderly States whose cause my Honourable friend, the Raja Bahadur,

advocates. I have no experience of those States and how the administration is run there, but living on the border land of the 26 Orissa States—I have made it clear that some of these States are well administered, but they are noble exceptions, only a very few. The others live almost in barbaric conditions, where, as I have said on another occasion and I again lay emphasis on it, there is forced labour, there is no safety of human life, and in one or two States no honour of women is respected. The people of those States pay heavy taxation which even we in British India do not pay, and when these people gather in British India and want to hold a meeting, the representatives of those States will go to the District Magistrate and tell him that those people are conspiring and there will be trouble in the State. As I stated last time, supposing I am chosen to preside over the Indian States Peoples' Conference at Bombay, my Honourable friend, Sir Cowasji Jehangir's town,—I repeat that I may some day preside over such a meeting—the Collector of Bombay may issue an order prohibiting me from presiding over that conference. I want to know whether by implication this clause 5 prohibits the holding of such conferences in British India. For instance, we read the other day that a petty little chief in Kathiawar, the Nawab of Mangrole, was running amok. He passed orders that Hindus could play music before mosques and that Muslims could have cow-slaughter anywhere they liked. Suppose some of his people gather somewhere and want to protest against this mad *firman*,—as the word *firman* has been very often used,—or this executive order of the Nawab of Mangrole. The Collector in the neighbouring of Ahmedabad or Kaira may prohibit these people from meeting there, because it might cause disaffection against the particular State. If the Honourable the Home Member concedes the recognition of the elementary rights of citizenship to the States people, so that they can represent not only to the princes and their administrations, but also to the Paramount Power, the British administrators, the Political Agents and also the mighty overlord, the Honourable the Political Secretary, we in British India will not bother then. We have enough troubles in our own affairs, and we would not like to bother ourselves as to how the Indian States people are being misruled by the Indian States. But today these States people have no right of redress at the hands of their own administrations, and they have no right of representation to the Political Agents. As the able minute of dissent says, clause 5 is unnecessary in view of clause 3 which has already been passed although we voted against it. If this Bill becomes law, you will find agents, provocateur, touts, pimps, etc., of Indian States in British towns. Although at present these princes have no right of having a representative or agent at Delhi, the Capital of the British Indian Empire, they will now keep these agents, agents provocateur in British Indian towns, and whatever we may say here, those fellows, in order to justify their existence, will report wrongly and falsely against British Indian subjects and their sympathetic action whenever time permits us to express sympathy against the maladministration of these States. These princes will run down to the town, they have easier access to the District Magistrate than we have, and will tell the Magistrate that a serious situation has arisen, such and such a conference, or such and such a meeting, or such and such deliberations should be prohibited. It is on that ground alone that I support the deletion of this clause. I fully agree with the minute of dissent that this clause is unnecessary and superfluous. This clause will cause further irritation.

[Mr. B. Das.]

Yesterday, the Honourable the Home Member said that I drew a fantastic picture that clause 3 was aimed at the Congress and that it was meant to forge fresh weagons against the Congress. If that appeared to be fantastic and exaggerated, I only said that clause 3 was meant to put a further weight on the already strangulated nationalist Press of India. The other clauses will give these princes ample protection, not that they need protection from us, but this clause 5 takes away the very small chance that the States people have to gather at a neighbouring British town and hold a conference in all constitutional manners, so that they can ventilate their grievances, pass resolutions, not only to be sent to those princes, but to be sent to the mighty Political Secretary of the Government of India, so that, he, instead of throwing them into the waste paper basket, can read them and take some action. If I were the Political Secretary, I would feel happy that in spite of his overlordism, in spite of all the bureaucratic dogmas that the Political Secretary adopts in the administration of the Political Department, the States people have still confidence in him. They meet and gather in a British Indian town, pass resolutions and forward them to him by telegram or by letter, so that the Political Secretary may take action. If the Honourable the Political Secretary is allowed to speak out his own mind, if the conscience of the Political Department will allow him to speak out his own mind, the mind of Mr. Glancy, not of Mr. Glancy, the Political Secretary, I am sure, he will say that some of these complaints, some of these resolutions that are passed in various conferences have ample justification. They seek redress of their grievances, and what is the weapon left to any subject of a Native State or a subject in British India? The only thing is constitutional agitation. In India, we turned that agitation into other channels, with the result that so many Ordinances were passed. Today we cannot hold a meeting of the All-India Congress Committee. We cannot hold a Congress Session. We know how the President of the Congress, my old friend, Mr. Aney, was harassed and ill-treated at Midnapur by the Jail Superintendent, although the District Magistrate knew that Mr. Aney was the President of the Indian National Congress. The States people may be very well organised in the Hyderabad State where a brilliant man like my friend, Raja Bahadur Krishnamachariar advises His Exalted Highness the Nizam, with his knowledge of Shastraic laws and his knowledge of the Hindu religion and his knowledge of Persian and Arabic. He must be advising the Nizam's Government to administer the State properly and to concede to the people of that State elementary rights of citizenship, but I am talking now of these petty princes. Today many of these petty princes are almost barbarians. They have no education and no knowledge. I know the Orissa princes are sent to Raipur along with princes from the Central Provinces, Bengal and Bihar. They receive some education. They are taught how to drink whisky, how to play polo and just pick up enough English to be able to say to my friend, Mr. Glancy, "Thank you" when he visits those States. It would be better for these princes if they had clung to their ancient culture and ancient civilisation. Today they are taught some smattering of English, how to brush their moustache at the correct angle and brush their hairs in proper shape and to behave like princelings. This is the result of the so-called education they get in the educational institutions which are under the direct administration of the Political Secretary of the Government of India. I wish the Political Secretary, in his cooler moments, would abolish all these

institutions which do not teach the princes to be real men. Is it not a shame to these institutions that they could only turn out men like the late Maharaja of Bharatpur who was educated in the Ajmer College. In that way, hundreds of these princes are coming out who are unfit to look after themselves, and how can they look after their people? We have been educated in the ordinary schools and colleges. I find that my friend, Sir Hari Singh Gour, the ex-Vice-Chancellor of the Delhi University, is not here, but my friend, Dr. Ziauddin, who is an ex-Vice-Chancellor of the Aligarh University, whose student you, Mr. Deputy President were, would tell us how much percentage of the students that come out of our schools and colleges prove failures. My Honourable friend, Mr. Glancy, cannot boast of these educational institutions for these princes that they turn out anything like the products that British Indian colleges produce. I, who have had the opportunity to visit foreign countries and have visited England, know how the sons of aristocrats are educated there. There the sons of aristocrats are trained differently. There is no difference in the training of the sons of aristocrats and the sons of my Honourable friends, Mr. Glancy or Sir Harry Haig. They are students at Oxford and Cambridge and they go through the same training.

Now, Sir, as we have passed clause 4, I feel that clause 5 is unnecessary. Let the Honourable the Home Member and the Political Secretary realise our difficulty. We are not making these speeches in this hot oven of the Assembly Chamber only to take time. We feel that we are parting away with certain accumulated rights, however small it may be, of these Indian States people. We are also condemning ourselves and parting with our own rights in the matter of showing sympathy to some of these States people. I do hope that Government will accept this motion and allow the deletion of clause 5. I hope they will give us a sympathetic reply to show how these autocrats, who are really democrats in their heart of hearts, feel and how they can provide for the elementary rights of citizenship for the people of the States and how the States people can exercise those rights in practice.

Diwan Bahadur A. Ramaswami Mudaliar: Sir, once more I wish to confine myself strictly to the clause before us and examine the need for this clause and the purpose it is intended to serve. On a perusal of this clause, I find that it is much more onerous than the corresponding section, section 144 of the Criminal Procedure Code. In the first place, I do not understand what is meant by "obstruction to the administration of a State in India". I do not think there is much difference between obstruction and interference. Whether the word is interference, as in the original Bill, or obstruction, as in the Bill amended by the Select Committee, it covers my point. The clause says:

> "Where, in the opinion of a District Magistrate. . . . .there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such magistrate may, by written order, etc., direct any person to abstain from a certain act if such magistrate considers that such direction is likely to prevent or tends to prevent obstruction to the Administration of a State in India or danger to human life or safety or a disturbance of the public tranquillity. . . .".

I should like to have from the Honourable the Home Member an illustration of an act done in British India which would tend to cause obstruction to the administration of an Indian State. Now, under clause 4,

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[Diwan Bahadur A. Ramaswami Mudaliar.]

we are preventing *jathas*, and, under clauses 2 and 3, we are prohibiting certain offences—publications in newspapers, and so on. This refers to individual acts done in British India, and my Honourable friend says that the Magistrate can prevent the doing of any such act if he thinks that it will tend to cause obstruction to the Administration of a State. Now, in the corresponding section 144, the language is quite different:

"Such Magistrate may, by written order, direct any person to abstain from a certain act or to take a certain order if such Magistrate considers that such direction is likely to prevent or tends to prevent obstruction, annoyance or injury or risk of obstruction, annoyance or injury to any person lawfully employed."

Now, I can understand "obstruction to a person lawfully employed in the discharge of certain legitimate duties". Section 144, therefore, is intelligible. An act done by one person may obstruct the discharge of his legitimate duties by another person, but what is meant by "prohibiting a person to do an act which will or may tend to obstruct the Administration of a State"? I really cannot conceive what that effect may be, and if it was necessary, why is it that in section 144, you have not got similar words—why have you not prohibited the doing of an act by an individual which will cause obstruction to the Government of India or to a Local Government? You did not realise that there was any necessity for it; you have not, in spite of all the amendments that have been carried out, realised that there is any necessity to prohibit an act by an individual "which will cause obstruction to a Local Government or to the Government of India".

Now, I venture to think that in this case you have gone far beyond even section 144, and put in words which to me are *unintelligible* and which, I hope, either the Honourable the Home Member or the Honourable the Law Member will explain. My difficulty is this. Under this, every act can be covered, anything may be prohibited. You can prove that an act does not cause obstruction to an individual, that a certain act which you contemplate does not cause annoyance to an individual, or that a certain act you intended to do would not have caused injury to an individual, but how on earth is it possible for a citizen in British India—and I am now concerned only with the citizen in British India whose rights we are here to safeguard, we have no business to speak on behalf of the Indian States nor of the subjects of such Indian States, but I have been elected to safeguard the rights of British Indian subjects, and I ask—how can I prove—where it will be necessary to prove if I want this order to be vacated, or if I want the High Court to revise this order—how can I prove that an act that I intended to do would not cause obstruction to the Administration of a State? Surely, this is going beyond the provisions of section 144 of the Criminal Procedure Code; and if you wanted analogous provisions—"causes obstruction, annoyance or injury to a person in the lawful discharge of his duties" in an Indian State it would be intelligible but "obstruction to the Administration" is something which I am unable to understand. Supposing a person addresses a meeting in which he says that the taxes levied in that State are too heavy. Well, it might be interpreted that it would cause "obstruction to the Administration of an Indian State", because it would make it very difficult for that Indian State to collect taxes at that rate. Anything can be covered by these words. I want the Honourable the Home Member to look into this question and not to expect merely because the Bill is there, that every word of it should

become law. I am aware that we are speaking under a very great handicap, because, in the first place, a large section of this House has not understood this Bill and has not attempted to understand this Bill. Even those who are offering no opposition to some of these provisions have not understood these provisions. That is the initial handicap. In the second place, owing to the prolonged Session, we are certainly very thin on this side of the House. Therefore, all this objection is only for the purpose of pointing out the obvious defects in the legislation, and not because we have any hope of carrying any of these amendments. Let not the Honourable Member think that we are obstructing or trying to prolong the Session. Most of us are anxious to conclude the Session as soon as possible, but we shall be failing to discharge our duties if we do not show that the Government in their anxiety, in their very legitimate anxiety, have overshot the mark and they have made such wide provisions that they are unnecessary and calculated to cause injury and injustice. Then, again, take the concluding words of this section:

"if such Magistrate considers that such direction is likely to prevent or tends to prevent obstruction to the Administration of a State in India or danger to human life or safety or a disturbance of the public tranquillity or a riot or an affray within the said State."

Now, Sir, in section 144, it is certainly said that:

"if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray."

That implies,—and I venture to appeal to the experience of the Honourable the Home Member when he was a District Magistrate, and to the Law Member,—that implies a riot or an affray somewhere near the locality where this person is going to do this act. Section 144, cannot possibly contemplate a case like this: if in Madras I do a certain act and in the Punjab there is going to be a riot, the Chief Presidency Magistrate of Madras cannot give me directions not to do such an act. Here you are postulating exactly the reverse: it is not that a riot or a disturbance of the public tranquillity is apprehended in the locality where the man is going to perform that act, but the riot or affray will happen in some other State, perhaps far away from it, removed by hundreds of miles. That is the language of the Act. I do not know how it is going to be administered. That is the language of the section certainly. I am aware the Local Government's notification is to be published first, and that a specified area is going to be defined, but it does not mean that it is to be any contiguous area. "Public tranquillity will be disturbed"—there is no limitation of that kind, and at times when such apprehension may be seriously entertained, I venture to think that that act done in some place which has no logical connection with the State concerned may still come within the mischief intended to be prevented by this section. Sir, I venture to think that the powers given are very wide; that any public meeting held to ventilate legitimate grievances can be covered by this provision, because it may tend to obstruct the Administration of such and such a State and this provision will positively prevent any ventilation of grievances of any kind. I have a feeling that we are overloading the Statute-book with these offences and providing for too many contingencies and that the result of this Bill may not be as happy as is contemplated, just because instead of stopping

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with two or three specific matters and providing for specific offences, we have widened the area to such a large degree that every possible kind of ventilation of grievances is sought to be covered by this Bill.

Khan Bahadur Mian Abdul Aziz (Punjab: Nominated Official): Sir, I rise to oppose this amendment. It so happens that I have some knowledge of the things that I am talking about, and the House will perhaps appreciate the ever-present risk of people turning away from the discussion of abstract questions, questions of abstract rights, to commit concrete acts when these abstract questions agitate masses of people who have throbbing passions, and violent prejudices and who want to do things actually on the spot.

Sir, an Honourable Member just now said in the House that the word "obstruction" does not occur in section 144 and another speaker immediately read out the very word. Then, my Honourable friend, Diwan Bahadur Ramaswami Mudaliar, said that he could not understand "obstruction of the administration of a State". The words in the Bill, as we have it at present, are "obstruction to the Administration of a State". Now, he said that he could not understand what could be done in British India which would cause an obstruction to the administration of a State. I will give him a very simple instance from my own knowledge.

A few people got together and passed a resolution that the subjects of such and such State should not pay the land revenue and also some other dues to the ruler of the State. I could give any number of similar happenings. For instance, they said that they should not allow certain rules about *Jagirs*. I do not want to give references, so that any State may be identified, but I do want the House to understand what actually happened. I want the House to form a picture of what happens when we are in the midst of an agitation. One day a frantic telegram came saying that a State was being invaded by the British Indian subjects without any rhyme or reason. Inquiries were made immediately, and I found out that there was a small island of British territory consisting of about 13 villages which is surrounded entirely by the territory of a Native State. In that island, in one particular village, people from another Native State entered and collected together to join demonstrations in another State. Of course, we were not concerned with that. But here was a very curious situation. We had no right to use section 144 against any of these people in our territory, because they were not doing anything against us. Also we could not take any action against those people who had come from the other State. And yet here was the making of a first class rumpus, and we had no power to disperse the mischief-makers. We had actually to *hath-joro* and to ask them not to please *badman* our locality. They took pity on us and they diverted their activities.

Mr. N. M. Joshi: That is the right way to do.

Mr. Lalchand Navalrai: That is a much better thing to do.

Mr. S. C. Sen: How will this clause help you?

Khan Bahadur Mian Abdul Aziz: I will explain that just now. Then, there was another situation which became very tense and difficult to handle. It assumed all-India proportions. What happened was that a certain All-India body sent round emissaries to collect people who would go from village to village in order to foment a certain kind of agitation. This All-India body then organised and announced a Conference not in a big town like Delhi, but within a very few miles of the State concerned. I happened to be on the spot both before and after the meeting, and, therefore, I am speaking from personal knowledge. The idea was to hold in that small town, where there are barely 4,000 inhabitants, a monster gathering of 55 to 60 thousand people and the people who were to participate in it were not only from our territory, but also from the adjoining Native State. We did not use section 144. I stood firm—I am not taking any credit for it—as long as it is humanly possible we will not use it. The result was that there was a gathering of 15,000 people. For that small town even a gathering of 15,000 people was too much, and there was a temporary famine. The wheat flour in the morning was being sold at 12 or 13 seers to a rupee, but it went down to 8 seers per rupee in the afternoon. But that is nothing. Just a day before I got an application in writing and a deputation also waited upon me saying that, when this huge crowd comes, the whole town will be looted. This was not a groundless statement, because, in that very place, a few years before, such a thing had actually taken place. Shops were looted and the crowd had become unmanageable. That is why we took the greatest possible precaution not to allow this crowd to swell into 50,000. Out of these 10 to 15 thousand people, 8,000 had come from the two adjoining Native States. Well, Sir, these people were not interested in the very flowery language in which the resolutions were passed. I am not saying anything about the merits of the thing. But I want the House to visualise the picture of what actually happened. This All-India mandate from one particular body had created a sort of All-India heat. The result was, as I will presently show, a very undesirable one. I am not alluding to what happened in the State. Immediately the meeting of this All-India body was over, the town was partially disorganised and the Municipal Committee had no funds whatsoever to put right the dislocation of everything. What happened then? Within a few weeks, owing to the poison that had spread, a certain number of *murtis* (idols in temples) were desecrated, not only on our side of the border at the place where that conference had taken place, but also across the border. I am not going to apportion the blame now. It so happened that we on our side had got information that some thing like this might happen. The intensity of communal hatred was unmentionable and it was with the greatest possible difficulty that we could manage the situation, and yet, even then, we did not introduce either section 144 or any other Ordinance. Immediately afterwards, as if in response to this challenge, another All-India body of another complexion made tremendous efforts to hold at the other end of the district within British territory another monster meeting and we could not say "No" to it. To our good fortune, it so happened that the second monster meeting could not be held, because the promoters could not make certain arrangements. Of course, the Government were suspected that they tried to hold back the people, but that was not the case. What happened was that they could not get the proper place in which to hold a meeting. The House is aware that a number of prominent people sent telegrams to the ruler not only of one State, but

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also of another State volunteering their services to come and settle the differences between the ruler and his people. But my point is this that, in fairness to our own people, we have to protect them against exploiters. Emotions are aroused by outsiders who come and talk in the name of sympathy for the oppressed subjects of a State and throw such a heavy burden on our people that they cannot really call their souls their own. They taxed our people against their will in the name of patriotism, religion, and so on, at a time when that district was suffering from famine. The people were poor and food was scarce. So, Sir, if such circumstances arise, then such a law, as is contained in clause 5 of this Bill, would at least help us in saving our people from the clutches of these unscrupulous people who come and exploit the emotions of our simple villagers. That is what I am after.

One other thing I want to say. There seems to be an impression that Government let District Magistrates in these cases pass orders under section 144 indiscriminately. There is no greater fiction than that. I may say for the information of the House that Government in such cases will issue confidential instructions. They are responsible for it and so are District Magistrates. We never issue an order of this kind under section 144 without having first considered the pros and cons very very carefully, and if there are people who hint that this will be used indiscriminately, there is no remedy for apprehensions of that nature But I say, the House must believe that Indian and European officers alike have their own reputation, their own careers to look after, and it is impossible to think that, except perhaps once in a million cases, not in important cases of this kind, an unjustifiable order may be passed. Otherwise, never, never, never, because Government take very great care even to test the wording, to see the wording beforehand, and, therefore, I submit that the apprehension that indiscriminate orders would be passed is entirely unfounded. In the Select Committee Report, in the Minutes of Dissent, reference was made "for instance, under this clause, if enforced by notification, it would have been open to the Magistrate of Delhi to prohibit the Conference of the States "people". This is a groundless suspicion.

Another Honourable Member in his speech said that this law was going to be used against our own people. I do wish the House to realise that this is not so, and I most respectfully urge that I should not be taken as trying to score a point in the debate, I submit that most certainly this provision is not intended to be used against our people, it is most certainly and most sincerely often to protect our people. It is not that we ask them to abstain from passing a certain resolution against the interests of a State or from something else. I can give scores of instances. I do not want to make any specific reference to any State. But I submit this provision is merely to protect our people from being exploited. It is not that we rob them of any right, it is not that we are preventing them from doing what is right, it is that we want to prevent them from becoming victims of unscrupulous exploitation. That is my answer to what was said by some of my Honourable friends that it will be used against our people. That is the justification for saying that such a law would help us in protecting our people. Of course every right minded man would wish that this law should be passed, but God forbid that this

should be used frequently or unjustifiably. But if it is to be used, it will be to protect our people, we have no concern with what happens to any Indian State, we only want that our people should not be sacrificed at the altar of unscrupulous people who assume big roles as champions of the rights of the subjects of Indian States. (Cheers.)

Sir Abdur Rahim: Mr. Deputy President, I am not at all surprised at the speech made by the Honourable Member opposite who just sat down, because his training throughout has been as an official and he really cannot understand, I am afraid, the political implications of a law like this. Many of us, even on this side of the House, have had considerable experience of the operation and application of section 144, Criminal Procedure Code, on which this clause 5 is based.

[At this stage, Mr. President (The Honourable Sir Shanmukham Chetty) resumed the Chair.]

We know that section 144 is intended to be used in an emergency in order to prevent imminent breach of the peace and disturbance of tranquillity or danger to life of the people in the neighbourhood. We further know that an order of this character under section 144 is intended to operate only within the confines of a certain defined locality. You cannot pass an order, for instance, under section 144 that the public or an individual shall do or abstain from doing a certain act in any place indefinitely. If such an order is passed, it would be beyond the jurisdiction of the Magistrate, beyond the purview of the Criminal Procedure Code, and it would be immediately set aside by the High Court. Now, Sir, what does clause 5 aim at? Clause 5 is not designed to prevent breaches of the peace or danger to life and property within British India within defined limits. No; the real object, the professed object, is to extend the operation of an order under clause 5 beyond the bounds of British India of which a Magistrate in British India cannot be expected to have any cognisance. His jurisdiction does not extend beyond British India, he does not know what are the things happening beyond the borders of British India. His obligation and duty does not extend to that extent. Therefore, to enact a clause like clause 5 is violating all the principles of legislation which we have been observing hitherto. You are saying, as has been pointed out by my Honourable friend, Diwan Bahadur Ramaswami Mudaliar, that if you do a certain thing in Madras, you have to take into consideration what may happen in a certain State in the Punjab, or, say, in Travancore, or Cochin. Surely, Sir, this is not what our Magistrates are expected to do. What is happening or not happening outside the British Indian borders is no concern of our Magistrates, and they cannot be familiar with the facts there. They have no duty or obligation with respect to the people living outside the territories of British India. Therefore, section 144 proceeds upon a principle which does not apply to the condition of things contemplated in clause 5 of this Bill. The real intention is under the guise of the words "obstruction to Indian administration" to include any political meeting with the object of discussing the grievances, for instance, of the subjects of an Indian State and which, in the opinion of any particular Magistrate, may lead to obstruction of that administration in some way or other, or may lead to danger to human life or disturbance of breach of peace or tranquillity in that State. Now, Sir, under clause 3, which we have discussed and passed, freedom of expression of opinion regarding the affair of an Indian State is to be summarily dealt

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with by a Magistrate, that is to say, if the Press publishes statements which a Magistrate may consider to be seditious to an Indian State, then in that case, the press is liable for forfeiture.

The Honourable Sir Harry Haig: My Honourable friend has, I think, forgotten that the provision is that the Local Government passes the order under the Press Act.

Sir Abdur Rahim: Technically my Honourable friend is correct, but it is really through the agency of the Magistrate that the Government act. The Magistrate has to take action in the first instance. I do not think there is any doubt about that.

Therefore, Sir, clause 3 is intended to deal with expressions of public opinion through the Press, and the object of clause 5 apparently is to deal with expressions of public opinion regarding the affairs of a State in political meetings. Now, Sir, the House ought to consider this very carefully that, under section 144, which has been existing in our Code for many a year, it never struck our Government, as has indeed been pointed out, that the operation of the section ought to be extended to political meetings even though such political meetings may, in the opinion of a Magistrate, cause obstruction to the administration here. May I ask the Honourable the Home Member, if this is sound law, if this is good law, with respect to an Indian State? If an Indian State needs protection under provisions like those of section 144, how is it that he does not seek protection for his own administration under section 144? Why does he not amend section 144 and make it applicable to the state of things contemplated under clause 5? I know, as a matter of fact, that section 144 has been applied to political meetings, and the public of British India have strongly protested against it as an illegitimate and illegal application of that section to political meetings. Now, Sir, if a meeting, whether it is called for political or for any other purpose, is held in circumstances which may lead to an imminent and immediate breach of the peace or danger to human life, then the Magistrate, under section 144 of the Criminal Procedure Code, would be empowered to take action and stop the meeting. That is perfectly clear, but that is apparently not considered sufficient, as it is covered already by the language of section 144 which says that the Magistrate may take action or direct action to be taken in order to prevent breaches of the peace or disturbance of tranquillity or danger to human life.

The Honourable Sir Harry Haig: In his own district.

Sir Abdur Rahim: Certainly. I say that is sufficient. But no; the object of clause 5 is not to confine the operation of section 144 to those contingencies, that is to say, where there is imminent danger to public peace and tranquillity. That is not the object. If that were the object, section 144 would be quite enough and you do not want a new clause like this and you do not want a new law at all. The object in asking for a new law of this character apparently is to strike at political meetings, meetings which may not endanger human life or endanger the peace of the district or locality, but meetings which may be perfectly peaceful and carried on in an absolutely constitutional manner. It is to strike at meetings of that character that clause 5 is sought to be inserted. Or, at any rate, there would have been no necessity for clause 5 if it were intended to

confine the action of the Magistrate or of the Local Government to contingencies contemplated and dealt with in section 144. I do say, therefore, that clause 5 will be applied not to cases where a breach of the peace or danger to life is apprehended, but to *bona fide* political meetings which the authorities of the State may not like at all. Naturally they would resent criticisms of their administration; but surely it ought not to be our object to stifle such criticism. Let me give an illustration. Would it not be open to a Magistrate, if he thinks that a certain public meeting will be resented by a certain State, to stop the meeting, though the object of that meeting may be absolutely peaceful and only to give public expression to what the subjects of that State may feel as grievances? I say it would be open to the Magistrate to take action. He may record his reasons, he may take evidence.

Mr. C. S. Ranga Iyer: But the Local Government has first to notify in the local Gazette. The Magistrate is not given a *carte blanche*. The notification is published after the Local Government has considered every aspect of the case.

Sir Abdur Rahim: My answer to my friend, Mr. Ranga Iyer's difficulty is this. I do not consider that a notification by a Local Government that a political meeting within a certain area ought not to be held is a thing which ought to bind us.

Mr. C. S. Ranga Iyer: But in future the Local Governments will have provincial autonomy.

Sir Abdur Rahim: We do hope so, but so far I am not so certain as my Honourable friend may be. If it be so, why not then wait for that future? Then, there might be no difficulty, Even then, supposing I was in opposition, I would strongly object to it, because the so-called responsible Government would be arming itself with powers which will lead to oppression and suppression of the liberties of the people. I have made it clear in another speech in the course of the debate that I do not care what the form of the Government is. I should not like any Government whether a responsible Government or an autocratic Government, an absolute Government or a bureaucratic Government, to take away the rights of the people unless it is proved in a Court of law that those rights have been exceeded or there has been an abuse of those rights. The person enjoying those rights, who is alleged to have abused those rights, must be given an opportunity to show that he has not exceeded his limits. There must be evidence given by the prosecution which ought to be tested by cross-examination. The accused must be given a chance to adduce his defence to show that, as a matter of fact, he was acting entirely within his rights. Then, there must be publicity to the proceedings. There must also be a regular appeal to the High Court. All these things must be gone through before a man's right to hold public meetings and express his views on public affairs is taken away or he can be punished for exceeding those rights. That is my answer to my friend, Mr. Ranga Iyer. Sir, the great danger of this clause is,—and I wish to impress this upon my Honourable friends specially on this side of the House,—that you are really giving a lead to Government, you are really asking Government to apply section 144 to political meetings. You will be stopped from questioning the authority or the propriety on the part of Government to bring forward a Bill, if they so choose, to widen the scope of

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section 144 by adding the words, "to prevent obstruction to the administration of a Local Government or the Government of India". What answer will be there if such an amendment to section 144 is brought forward? I do think that this clause 5, though it looks very modest, is a very dangerous clause and ought not to go on the Statute-book.

Mr. C. S. Ranga Iyer: Sir, I personally would like to have the debate concluded as early as possible, and would have abandoned altogether the idea of intervening in this debate but for, some may say, the unexpected or the unexpectedly warm speech of the Honourable the Leader of the Opposition. I, however, expected him to speak as warmly as he has done: I know he feels it deeply; he fought in the Committee, and though he could not carry with him one of his own colleagues, as the Report shows, Mr. Jagan Nath Aggarwal, a keen and eminent lawyer from the Punjab, although he could not carry conviction to him, I at any rate have to explain as it has been repeatedly put to me why I did not join in signing the dissenting note especially in regard to this clause. It has been put to us on the floor of this House that here is a clause which is going to be applied to political meetings . . . .

Mr. N. M. Joshi: And non-political also.

Mr. C. S. Ranga Iyer: I am answering the Honourable the Leader of the Opposition: he did not refer to non-political meetings. Mr. Joshi says it will be applied to non-political meetings. Probably; but let me first take up the political meetings. This clause, it has been said, will be applied to political meetings as section 144 has been applied; and the application will be more flagrant than the application of section 144. As we have experienced the application and the misapplication of section 144, I do not think that we should very much dread the application of this new clause, for it does not apply to British Indian politics. The Honourable the Leader of the Opposition asked: "Why not, if you feel like it, improve section 144?" I would not have agreed to the widening of the scope of that section, to the application of that section to British Indian subjects for British Indian purposes. This aims at putting down the movements mentioned in the Bill, directed towards the Indian States, and that is where the restricted scope of this clause comes in. Mr. Aggarwal is unfortunately not here today; otherwise he would have explained why he could not conscientiously support this amendment. The whole position is this: it is all well and good to wax eloquent on the rights and liberties of the Indian people in British India being put down; it is all well and good to say that a great menace, a great danger, is coming into existence in this measure and we are no longer going to be allowed to hold even non-political meetings and that this clause will be used against us.

Mr. N. M. Joshi: Yes.

Mr. C. S. Ranga Iyer: Mr. Joshi says "Yes", forgetting that this is a clause and this is a Bill which directly aims at those who are conspiring either openly or secretly, with people in Indian States with a view to bringing about a state of affairs resulting in the obstruction of officials

in the Indian States. It is a very serious situation which is contemplated in this Bill should be prevented, and if this section is not passed, it is just as well that the Bill is thrown into the waste paper basket. (Laughter.) This is the most vital point of the Bill—I admit, that is what the Opposition Members have been asking. Whenever a clause is taken up, the same argument is put forward, but that is not what the Leader of the Opposition has been asking. He has to defend his signature to this dissenting note: he has defended it warmly, I admit, but he has defended it unconvincingly. He has told us that British Indian subjects are in peril, following the lead of his deputy, Mr. Mudaliar. Mr. Mudaliar said "I have got constituents in British India: I have got to represent them; the rights and liberties of my constituents are affected, and, therefore, this must not be passed". But this is aimed certainly at a class of British Indians whose object is to make military marches to the Indian States. We want to put down that class. Let there be no secret about it.

My friend, the Honourable the Leader of the Opposition, said: "If provincial autonomy is coming, why not wait for the future?" How can you wait for the future? You must prepare for the future from now. The future will not dawn upon us, a pleasant and a happy future, if we are not prepared to prepare the road for the future. This is a preparation of the road for the future. The future has been resolved, and there is no, and there can be no, going back upon it as a Free and Federated India. If you want a Free and Federated India, British India must be prepared to discharge her responsibility towards the Indian States. There is no use now saying: "I do not care what will happen. Let the Federation come and let provincial autonomy come, let all these come first, and then I shall see what I shall do". It is like saying "Well, let me first have my motor car; let me get into the motor car and let me drive into the *khud* or the jungle". But a road has to be prepared—a good tarred macadam road, and then you can have your car, you can drive it; we are preparing the road today for the Federation. There is no use saying, postpone things till the future. We have to bring the future to our door, and, therefore, I hope that the misleading arguments of the Honourable the Leader of the Opposition, waxing eloquent on the rights and liberties of the people being curtailed will not cut ice in this House. I have great respect for the Leader of the Opposition, and I do not for a moment say that he does not honestly feel that this is going to be misapplied, and the Government themselves by their misapplication of section 144 have increased his apprehension. I do not for a moment say that . . . .

Maulvi Muhammad Shafee Daoodi: On a point of order: is it again going to be a wrangle between the two Parties?

Mr. C. S. Ranga Iyer: Which Parties?

Maulvi Muhammad Shafee Daoodi: The Independent Party and your Party.

Mr. C. S. Ranga Iyer: I am not speaking for my Party at all. I am exercising my right as a Member of this House and as a member of the Select Committee to show, after the very warm speech of the Honourable the Leader of the Opposition, why I did not join him. I owe it to

[Mr. C. S. Ranga Iyer.]

my people to explain to them why I could not agree with him, because he has taken up a very strong line. He has said: "We are putting a powerful weapon in the hands of the Government to suppress even political meetings". I have to show that that is not so. We are putting certainly a weapon, a necessary weapon in the hands of the Government to prevent movements in British India such as were directed against the Kashmir administration. Supposing, for instance, and history can repeat itself, supposing meetings are held in the neighbourhood of the Punjab, the repercussions of which are heard in Kashmir, the Government of the Punjab must have adequate power to put down those meetings. Again, I am referring to what has happened in regard to the Maharaja of Alwar's administration. The Maharaja is a great and an esteemed friend of mine, and I say that if this particular measure had been in existence, and if the meetings that were held in the neighbourhood of Alwar had been prevented in time, probably the position in the State would not have become so bad as it became, the Hindus and Muslims would not have gone for each other resulting in such communal chaos that the British Government thought it necessary, rightly or wrongly, to interfere in the matter . . . .

Maulvi Muhammad Shafee Daoodi: The Hindus and Muslims fought together against the Alwar State.

Mr. C. S. Ranga Iyer: The Honourable Member is entitled to his opinion, just as I am to mine, but if there were no upheavals of the kind,—I am not condemning the Muslims, I am not condemning the Hindus either,—I am only saying this: For, instance, tomorrow you might have an organization against Bhopal, or when the Berar question is settled, you may have meetings in the neighbourhood of Hyderabad, and I say that, so far as we are concerned, we must live in peace. We have enough troubles in British India. Hindus and Muslims must live in peace. Everbody knows what has happened in regard to these matters in British India, and we must take adequate power in our hands to prevent British India being made the base of operations against these Indian States administrations, whether from a Hindu point of or from a Muslim point of view. If a Hindu movement is started to overthrow a Muslim ruler, whether he is good, bad or indifferent, it will be as bad as a Muslim movement being started in British India to overthrow a Hindu ruler. I will be the last man to cast aspersions on either the Hindu movement or the Muslim movement, but my trouble is this. I do not want these anti-State meetings, whether Hindu or Muslim, in British India, and I hope not political public meetings to which the Leader of the Opposition referred, but I hope that anti-State meetings, the nature of which we have realised from actual experience will not be permitted to be held in British India, and I am glad the Government have taken power after actual experience, and that they will rigorously and mercilessly take action on this, so that the trouble may not brew, so that the mischief may not become greater. We know from actual experience what havoc on life and property has been caused in Kashmir. I want this to be prevented, and that is why I say I could not in Committee agree to this, and I cannot in this House agree to it, and when Members vote upon this matter, I will ask them to think of the recent past, to think of

the movement directed in the recent past, and the communal meetings, terribly offensive and mischievous, leading to diabolical consequences were not prevented by the Government. We want very extensive powers in the hands of the Government, otherwise, Federation will be a phantom of the wilderness, and British India will become a communal base for frequent troubles. Therefore, Sir, from these national and higher considerations, I hope this motion will be rejected.

The Honourable Sir Harry Haig: Sir, I think my Honourable friend, Mr. Ranga Iyer, has dealt firmly with many of the arguments of my Honourable friend, the Leader of the Opposition, but I shall endeavour to add a few words of my own in due course.

Now, Sir, I think there is a certain amount of misapprehension on the Opposite Benches in regard to the scope and the probable operation of this clause. I make no complaint that the clause should be very carefully examined, as my Honourable friend, Diwan Bahadur Mudaliar, has endeavoured to examine it. It is reasonable for the Opposition to scrutinise it carefully. But when, for instance, my Honourable friend, Mr. B. Das, pictures the operation as something like this, that a petty chief approaches the District Magistrate and tells him that a conference will affect his State and then the District Magistrate will apparently feel bound to take action, I think he is forming a completely erroneous picture, It has been mentioned several times in the debate, and I make no excuse for repeating it, because it is really a vital point, that this clause will not come into operation until it has been applied to a particular district by a special notification of the Local Government. Now, Sir, how does a Local Government come to issue such a notification? It will not take such action, we may presume, without consultation on the one hand, with the Government of India in the Political Department who will be closely acquainted with the conditions in the State affected, and on the other hand with its own local officers in the districts in British India affected. I think, Sir, we may assume that this clause will not be applied unless, in the judgment of the Local Government, there is a real emergency. Then, Sir, when such an emergency arises, we really do require extensive powers in order that a conflagration may be averted. We have had within the last few years more than one instance which has brought it home very clearly to the Government what those dangers are. Those events have been referred to by many Honourable Members during the debate, but I think it may have been very illuminating to Honourable Members opposite to get something like an actual first hand picture of what may happen from my friend, Mian Abdul Aziz. The idea of a District Magistrate knowing nothing of what is going on, blindly carrying out some instruction which he receives from a far off authority is extraordinarily unlikely. When conditions of this sort unfortunately develop, they are a ground of the greatest anxiety to the district authorities who see the danger of the people in their district being carried away, who see all those dangers that inevitably arise in times of trouble on a border between British India and a State. It is exceedingly difficult to control movements on a border. My Honourable friend, Diwan Bahadur Mudaliar, gave us to understand that he really could not appreciate what was the kind of obstruction to an Indian State that it might be necessary to put a stop to in British India. Well, Sir, I think it is not difficult to give him an answer from our own recent experience.

[Sir Harry Haig.]

5 P.M. Not very long ago, just on the borders, just within British India, but just on the borders of an Indian State, there was a serious agitation being worked up. Now, the particular feature about that agitation was that as it was being conducted just on the border, it was not confined to the inhabitants of British India, but it attracted large numbers of the inhabitants of the neighbouring State. Now, Sir, can we stand by and allow incitements to these inhabitants of the Indian States to refuse to pay their revenue, or to obstruct or resist the authority of the State? Is not that a development which we are really bound to put a stop to, and is not that a fair answer to my Honourable friend? My Honourable friend, Mr. Ranga Iyer, referred to the fact that among the four signatories to the minute of dissent in the Select Committee, only three opposed this particular clause, and though I have had no conversation with the fourth member, I certainly myself drew the conclusion that he was not prepared to oppose this clause, because he had had some personal experience in his own Province of the dangers against which it is intended to guard. My Honourable friend, the Leader of the Opposition, said that we were extending to Indian States a measure of protection that we did not enjoy in British India. I think my Honourable friend must have momentarily forgotten the armoury of weapons which we do possess in British India.

Sir Abdur Rahim: I was referring to section 144.

The Honourable Sir Harry Haig: They are not by any means confined to section 144 of the Criminal Procedure Code, and at the present moment I think we may consider that we are reasonably equipped for dealing with obstruction to the administration. I do not think, therefore, that my Honourable friend opposite need be under any anxiety that we shall use this as a precedent for demanding further powers for ourselves. Sir, I oppose the amendment.

Mr. President (The Honourable Sir Shanmukham Chetty): The question is:

"That clause 5 of the Bill be omitted."

The Assembly divided:

AYES 31.

Abdoola Haroon, Seth Haji.	Mudaliar, Diwan Bahadur A. Ramaswami.
Abdul Matin Chaudhury, Mr.	Murtuza Saheb Bahadur, Maulvi Sayyid.
Abdur Rahim, Sir.	Neogy, Mr. K. C.
Azhar Ali, Mr. Muhammad.	Parma Nand, Bhai.
Bhuput Sing, Mr.	Patil, Rao Bahadur B. L.
Das, Mr. B.	Reddi, Mr. P. G.
Dutt, Mr. Amar Nath.	Reddi, Mr. T. N. Ramakrishna.
Gour, Sir Hari Singh.	Sen, Mr. S. C.
Jadhav, Mr. B. V.	Shafee Daoodi, Maulvi Muhammad.
Jehangir, Sir Cowasji	Singh, Mr. Gaya Prasad.
Jog, Mr. S. G.	Sitaramaraju, Mr. B.
Joshi, Mr. N. M.	Thampan, Mr. K. P.
Lahiri Chaudhury, Mr. D. K.	Uppi Saheb Bahadur, Mr.
Lalchand Navalrai, Mr.	Ziauddin Ahmad, Dr.
Maswood Ahmad, Mr. M.	
Mitra, Mr. S. C.	
Mody, Mr. H. P.	

NOES 53.

Abdul Aziz, Khan Bahadur Mian.
Ahmad Nawaz Khan, Major Nawab.
Allah Baksh Khan Tiwana, Khan Bahadur Malik.
Anklesaria, Mr. N. N.
Bajpai, Mr. G. S.
Bhore, The Honourable Sir Joseph.
Brij Kishore, Rai Bahadur Lala.
Cox, Mr. A. R.
Dalal, Dr. R. D.
Darwin, Mr. J. H.
DeSouza, Dr. F. X.
Dillon, Mr. W.
Dumasia, Mr. N. M.
Gidney, Lieut.-Colonel Sir Henry.
Glancy, Mr. B. J.
Graham, Sir Lancelot.
Grantham, Mr. S. G.
Haig, The Honourable Sir Harry
Harbans Singh Brar, Sirdar.
Hardy, Mr. G. S.
Hezlett, Mr. J.
Hudson, Sir Leslie.
Irwin, Mr. C. J.
Ismail Ali Khan, Kunwar Hajee.
Ismail Khan, Haji Chaudhury Muhammad
Jawahar Singh, Sardar Bahadur Sardar Sir,
Lindsay, Sir Darcy.
Macmillan, Mr. A. M.
Mitter, The Honourable Sir Brojendra.
Morgan, Mr. G.
Mujumdar, Sardar G. N.
Mukharji, Mr. D. N.
Mukherjee, Rai Bahadur S. C.
Nihal Singh, Sardar.
Noyce, The Honourable Sir Frank.
Pandit, Rao Bahadur S. R.
Rafiuddin Ahmad, Khan Bahadur Maulvi.
Rajah, Rao Bahadur M. C.
Ramakrishna, Mr. V.
Ranga Iyer, Mr. C. S.
Rastogi, Mr. Badri Lal.
Rau, Mr. P. R.
Sarma, Mr. G. K. S.
Sarma, Mr. R. S.
Schuster, The Honourable Sir George.
Scott, Mr. J. Ramsay.
Sher Muhammad Khan Gakhar, Captain.
Singh, Mr. Pradyumna Prashad.
Sloan, Mr. T.
Talib Mehdi Khan, Nawab Major Malik.
Tottenham, Mr. G. R. F.
Varma, Mr. S. P.
Yamin Khan, Mr. Muhammad.

The motion was negatived.

Mr. President (The Honourable Sir Shanmukham Chetty): The question is:

"That clause 5 stand part of the Bill."

The motion was adopted.

Clause 5 was added to the Bill.

Clause 6 was added to the Bill.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 11th April, 1934.