

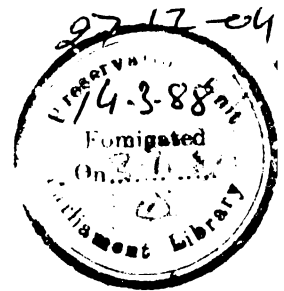
Monday, 25th September, 1939

THE
COUNCIL OF STATE DEBATES

VOLUME II, 1939

(11th September to 27th September, 1939)

SIXTH SESSION
OF THE
FOURTH COUNCIL OF STATE, 1939



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CONTENTS.

	PAGES.
Monday, 11th September, 1939—	
Address by His Excellency the Viceroy to the Members of the Central Legislature	1—4
Tuesday, 12th September, 1939—	
Members Sworn	5
Motion <i>re</i> German aggression against Poland—Adopted	5—20
Motion for Adjournment <i>re</i> Recommendations of the Chatfield Committee—Discussion fixed for Monday, 18th September, 1939	20—22
Statements laid on the table	22—28 and 31—33
Information (promised in reply to questions) laid on the table	28—31 and 33—45
Message from His Excellency the Governor General	45
Committee on Petitions	45—46
Death of Rai Bahadur Lala Nanak Chand	46
Congratulations to recipients of Honours	46—47
Governor General's Assent to Bills	47—48
Bills passed by the Legislative Assembly laid on the table	48—49
Statement of Business	49
Monday, 18th September, 1939—	
Member Sworn	51
Questions and Answers	51—63
Motion for Adjournment <i>re</i> Recommendations of the Chatfield Committee—Negatived	63 and 107—123
Bills passed by the Legislative Assembly laid on table	63—64
Indian Census Bill—Considered and passed	64—73
Indian Salt (Amendment) Bill—Considered and passed	73—74
Code of Civil Procedure (Amendment) Bill—Considered and passed	74—76
Indian Tea Cess (Amendment) Bill—Considered and passed	76
Medical Diplomas Bill—Considered and passed	77—79
Indian Tariff (Fourth Amendment) Bill—Considered and passed	79—80
Commercial Documents Evidence Bill—Considered and passed	80—81
Motion <i>re</i> Report of the Pacific Locomotive Committee—Motion to consider—Adopted	81—107
Wednesday, 20th September, 1939—	
Members Sworn	125
Questions and Answers	125—126
Resolution <i>re</i> Manufacture of locomotives in India—Adopted	126—136
Resolution <i>re</i> Indianization of the Indian Medical Service—Negatived	136—158
Statement of Business	158—160
Friday, 22nd September, 1939—	
Member Sworn	161
Statement laid on the table	161
Bills passed by the Legislative Assembly laid on the table	161—162

Friday, 22nd September, 1939—contd.

Resolution re Amalgamation of British and Indian military hospitals— Withdrawn	162—165
Indian Carriage by Air (Amendment) Bill—Considered and passed	165—166
Indian Rubber Control (Amendment) Bill—Considered and passed	166—168
Indian Railways (Amendment) Bill—Considered and passed	168—169
Repealing and Amending Bill—Considered and passed	169
Statement of Business	170

Monday, 25th September, 1939—

Member Sworn	171
Questions and Answers	171—176
Statement laid on the table	176
Bill passed by the Legislative Assembly laid on the table	177
Defence of India Bill— Motion to consider— <i>To be continued</i>	177—226

Tuesday, 26th September, 1939—

Member Sworn	227
Questions and Answers	227—232
Right of reply in Motions for Adjournment	232
Resolution re Protection to the starch industry—Withdrawn	233—240
Resolution re Improvement in living and working conditions of Indian seamen ashore and afloat—Withdrawn	240—249
Resolution re Development of Civil Aviation—Negatived	249—269
Defence of India Bill— <i>continued</i> — Motion to consider—Adopted	269—276

Wednesday, 27th September, 1939—

Defence of India Bill— <i>concluded</i> — Considered and passed	277—310
Indian Air Force Volunteer Reserve (Discipline) Bill—Considered and passed	310—311
Indian Aircraft (Amendment) Bill—Considered and passed	311—312
Panth Piploda Courts (Amendment) Bill—Considered and passed	312—313
Indian Oaths (Amendment) Bill—Considered and passed	313—314
Motor Vehicles (Amendment) Bill—Considered and passed	314—315
Insurance (Second Amendment) Bill—Considered and passed	315
Workmen's Compensation (Second Amendment) Bill—Considered and passed	315—318
Resolution re Road development—Adopted	318—319

COUNCIL OF STATE.

Monday, 25th September, 1939.

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

MEMBER SWORN :

The Honourable Mr. Leonard John Dean Wakely (Nominated Official).

QUESTIONS AND ANSWERS.

COMPOSITION OF THE WAR SUPPLY BOARD.

35. THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : (a) Will Government state how many members there are in the War Supply Board ? Is any of them Indian ?

(b) What was the salary of each member of the Board before his appointment to the Board and what is it now ?

THE HONOURABLE MR. A. DEC. WILLIAMS : (a) A copy of the Notification setting up the War Supply Board is placed on the table. It will be seen that in the case of four out of the eight members, representation is not *ex officio*, but any representative of the Department concerned may be deputed who may or may not be an Indian.

(b) Membership of the Board as such carries no emoluments, nor has any increase been made in the emoluments of any of the members by reason of the setting up of the Board.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Has the salary of any member of the Board been increased, no matter for what reason ?

THE HONOURABLE MR. A. DEC. WILLIAMS : The salary of the Director General, Mr. Dow, is at present Rs. 5,000 a month, whereas in his previous appointment—Secretary to the Government of India his salary was Rs. 4,000 a month. The salary of the Deputy Director General, Sir James Pitkeathly, which was previously Rs. 3,500 a month is now Rs. 4,000 a month.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Are these the only two persons whose salaries have been increased ?

THE HONOURABLE MR. A. DEC. WILLIAMS : So far as I know, Sir, yes.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Why have their salaries been increased ?

THE HONOURABLE MR. A. DEC. WILLIAMS : Because of additional responsibilities attached to their present appointments.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : That is, they have been given these additional salaries because of their being members of the Supply Board ?

THE HONOURABLE THE PRESIDENT : He said because of " additional responsibilities ".

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU ; Because they shoulder additional responsibilities as members of the Supply Board. Why did the Honourable Member then say that their salaries had not been increased because of their being members of the Board ?

THE HONOURABLE MR. A. DEC. WILLIAMS : I may point out that these appointments were made before the Board was set up.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : In anticipation of the Board being set up ?

THE HONOURABLE MR. A. DEC. WILLIAMS : No, Sir. The intention was that should war break out, the Board would be set up. But at the time when these appointments were made it was by no means certain that war would break out.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : They were given these additional salaries in order to perform those duties which fall within the purview of the members of the Board ?

THE HONOURABLE THE PRESIDENT : That is an argument, not a question.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : That is a very plain question, Sir. I hope that you will give us some latitude. It is a very important question. I think it is very necessary that we should elicit full information from Government.

THE HONOURABLE THE PRESIDENT : I am giving you an enormous amount of latitude.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : I hope on this occasion you will see that we are at a considerable disadvantage in getting precise information from Government.

THE HONOURABLE MR. A. DEC. WILLIAMS : I do not think, Sir, that the Honourable Member is justified in saying that he has experienced the slightest difficulty in obtaining information from the Government. The position is that these two officers were appointed to do certain preparatory and exploratory work. These appointments would have continued for a certain length of time whether the war had come or had not come. When the war did come, these officers were employed on the War Supply Board.

THE HONOURABLE MR. HOSSAIN IMAM : Who are the other two members who do not represent any Department ? The Honourable Member said that there are four members from Government and four other members. Who are they ?

THE HONOURABLE MR. A. DEC. WILLIAMS : That, Sir, will appear from the Notification setting up the Board. The four members are :

1. A representative of the Railway Board.
2. A representative of the Master General of the Ordnance Branch.
3. A representative of the Quarter Master General's Branch.
4. A representative of the Finance Department.

THE HONOURABLE MR. HOSSAIN IMAM : These are the official representatives. Who are the other members ?

THE HONOURABLE MR. A. DEC. WILLIAMS : The other members are the Chief Controller of Stores, the Director of Contracts, and the Director General and Deputy Director General of Supply.

THE HONOURABLE MR. P. N. SAPRU : Is the total number eight or six ?

THE HONOURABLE MR. A. DEC. WILLIAMS : Eight.

THE HONOURABLE MR. P. N. SAPRU : In point of fact, is there any Indian amongst these eight ?

THE HONOURABLE MR. A. DEC. WILLIAMS : Sir, I have already explained in my answer to part (a) of the question that as four of the members are not nominated *ex officio*, it is impossible to say whether they are Indians or not.

THE HONOURABLE MR. P. N. SAPRU : I put a plain question, Sir. As a matter of fact, is there any Indian on the Board ?

THE HONOURABLE MR. A. DEC. WILLIAMS : It is impossible for me to say, Sir, who from day to day attends the meetings of the Board. For all I know, an Indian has attended a Board meeting.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Among those members who are not representatives of departments, is there any Indian ?

THE HONOURABLE MR. A. DEC. WILLIAMS : No, Sir.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Why has not a single Indian been chosen in that category ?

THE HONOURABLE MR. A. DEC. WILLIAMS : I presume that the appointments made were of persons best qualified to discharge the duties attached to the posts.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Is it intended to be conveyed that there was not one man either among the Indian officials or Indian non-officials who was competent to discharge the duties of a member of the Supply Board ?

THE HONOURABLE MR. A. DEC. WILLIAMS : No, Sir.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Why were Indians totally ignored then when the Board was appointed ?

(No answer.)

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Have Government any intention now of modifying the composition of the Board ?

THE HONOURABLE MR. A. DEC. WILLIAMS : No, Sir.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Do they mean to get our support and at the same time go on flouting our wishes like this ?

THE HONOURABLE THE PRESIDENT : You are not supposed to cross-examine the Member of Government. You are supposed to put questions.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : When a Government Member does not give the full information asked for, we are obliged sometimes to cross-examine him.

THE HONOURABLE THE PRESIDENT : From your point of view, you may think that full information has not been given. But I think the Honourable Member has certainly given all the information within his power.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : I most respectfully dissent strongly from this opinion of yours.

THE HONOURABLE THE PRESIDENT : I note that.

GOVERNMENT OF INDIA.
DEPARTMENT OF SUPPLY.

NOTIFICATION.

Simla, the 31st August, 1939.

No. 1/39.—The Governor General in Council is pleased to set up, with effect from the date of this Notification, a War Supply Board, the functions of which will be to take such steps as may be necessary to ensure that supplies of all kinds required for the prosecution of war are available with the utmost expedition, and to co-ordinate the activities of all Departments of the Government of India and of commercial firms or organizations to that end. The Director General of Supply and the Deputy Director General of Supply will be respectively President and Vice-President of the Board, which will be composed as follows :—

1. A representative of the Railway Board.
2. A representative of the Master General of the Ordnance Branch.
3. A representative of the Quartermaster General's Branch.
4. A representative of the Finance Department.
5. The Chief Controller, Indian Stores Department.
6. The Director of Contracts.

(Sd.) H. DOW,

Director General of Supply.

COMPOSITION OF THE DEFENCE CO-ORDINATION DEPARTMENT.

36. THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Is there any Indian on the Defence Co-ordination Committee or among the officers serving under it ?

THE HONOURABLE MR. A. DEC. WILLIAMS : The Honourable Member perhaps intends his question to refer to the Defence Co-ordination Department of the Government of India. There is at present one Indian officer serving under this Department.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Does the Honourable Member mean that there is an Indian in what was formerly known as the Supply Officers Committee ?

THE HONOURABLE MR. A. DEC. WILLIAMS : No, Sir. The Defence Co-ordination Department as at present constituted has no connection with, and contains no officers from, the Principal Supply Officers Committee.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Am I to understand that what was formerly known as the Defence Co-ordination Committee is now known as the Defence Co-ordination Department, or has there been any change in the composition of the Committee ?

THE HONOURABLE MR. A. DEC. WILLIAMS : So far as I know there has never been any Defence Co-ordination Committee. It has always been described as the Defence Co-ordination Department.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Will the Honourable Member tell me who are the members ?

THE HONOURABLE MR. A. DEC. WILLIAMS : There are four officers, one Secretary, one Deputy Secretary, one Under Secretary and one Assistant Secretary.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : What are the names of these officers ? Perhaps the Honourable Member is himself the Chairman of this Committee.

THE HONOURABLE MR. A. DEC. WILLIAMS : I must repeat that it is a Department, not a Committee. The Secretary of the Department is myself ; the Deputy Secretary is Mr. Mason, the Under Secretary is the Honourable Mr. Wakely ; the Assistant Secretary is Rai Bahadur Dube.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : So that among the superior officers here too there is no Indian.

COMPOSITION OF THE INSPECTORATES OF ARMAMENTS AND MECHANICAL TRANSPORT, ETC.

37. **THE HONOURABLE PANDIT HIRDAY NATH KUNZRU :** (a) What is the total number of civilian officers in the (i) Inspectorates of Armaments and Mechanization and (ii) Indian Ordnance and Clothing Factories ?

(b) How many of them in each case are Indians ?

THE HONOURABLE MR. A. DEC. WILLIAMS : (a) (i) Inspectorates of Armaments	..	..	..	..	..	..	11
Inspectorate of Mechanical Transport	..	..	..	..	..	..	Nil
(ii) Ordnance and Clothing Factories	..	..	..	..	..	..	43

(b) There are two Indians in the Ordnance Factories only.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: Is there any restriction on the number of Indians to be employed in these Departments?

THE HONOURABLE MR. A. DEC. WILLIAMS: No, Sir.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: Why is it then that more Indians have not been selected for appointment to these branches?

THE HONOURABLE MR. A. DEC. WILLIAMS: The appointments in these inspectorates are open to individuals holding precise technical qualifications who have had experience over a number of years in munitions manufacture. When those qualifications are held by an Indian gentleman his case is given equal consideration with other applicants.

THE HONOURABLE MR. HOSSAIN IMAM: What about the clothing factories, Sir?

THE HONOURABLE MR. A. DEC. WILLIAMS: In point of fact the two Indian incumbents are in the munitions factories.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: Is there any scheme drawn up by Government for getting men of requisite qualifications just as there is a scheme for the training of the subordinate personnel of these branches?

THE HONOURABLE MR. A. DEC. WILLIAMS: I must have notice of that question, Sir.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: What about the clothing factories? Is there too a very high technical qualification needed?

THE HONOURABLE MR. A. DEC. WILLIAMS: So I am given to understand, Sir.

STATEMENT LAID ON THE TABLE.

THE HONOURABLE MR. E. CONRAN-SMITH (Home Secretary): Sir, I lay on the table a copy of the declaration of exemption under section 6 of the Registration of Foreigners Act, 1939, as published with the Notification of the Government of India in the Home Department No. 21/68/39-Political (W), dated the 21st September, 1939.

GOVERNMENT OF INDIA.

HOME DEPARTMENT.

Simla, the 21st September, 1939.

REGISTRATION OF FOREIGNERS ACT, 1939.

Declaration of Exemption.

No. 21/68/39-Political (W).—In exercise of the powers conferred by section 6 of the Registration of Foreigners Act, 1939 (XVI of 1939), the Central Government is pleased to declare that the provisions of the Registration of Foreigners Rules, 1939, shall not apply to, or in relation to, the Governor General of Portuguese India or the Governor of the French Establishments in India, or to members of their family or staff accompanying them.

(Sd.) H. J. FRAMPTON,

Deputy Secretary to the Government of India.

BILL PASSED BY THE LEGISLATIVE ASSEMBLY LAID ON THE TABLE.

SECRETARY OF THE COUNCIL : Sir, in pursuance of rule 25 of the Indian Legislative Rules, I lay on the table copies of the Bill further to amend the Workmen's Compensation Act, 1923, for a certain purpose which was passed by the Legislative Assembly at its meeting held on Friday, the 22nd September, 1939.

DEFENCE OF INDIA BILL.

THE HONOURABLE MR. A. DEC. WILLIAMS (Nominated Official) : Sir, I move :

"That the Bill to provide for special measures to ensure the public safety and interest and the defence of British India and for the trial of certain offences, as passed by the Legislative Assembly, be taken into consideration."

The proposals contained in the legislation which I have the honour to submit to this Council are unprecedented. So are the circumstances which necessitate those proposals. This Council which has never been found wanting in a sense of its responsibility will, I am convinced, not fail to appreciate its gravity now.

It is the universal rule that in time of war Legislatures entrust enlarged, often unlimited, powers to the executive government. In this war to defeat totalitarian methods very drastic delegations of powers of this character are required.

I assume without question that this Council is unanimous in regard to those principles in defence of which Great Britain has embarked upon this war. They will not, I am sure, criticise this Bill on the ground that the war is unnecessary or objectionable. I further assert, and I challenge contradiction, that, not only must India stand or fall as Great Britain and the Empire stand or fall, but the abrogation of the principles for which Great Britain is now fighting will mean the ruin of the aspirations of every responsible political party in India. I believe therefore that the principle of this Bill, immeasurably wide as its provisions are, is fully accepted by this Council.

The only possible points of difference are its details and the manner in which effect is to be given to its provisions.

As to its details, I may be permitted a personal explanation. For eleven years on and off I have been associated with the work of emergency war legislation. That legislation has been conveniently based on that of the last war. Our procedure has been to examine the legislative measures found necessary in the last war in relation to present circumstances. In this examination current proposals in Great Britain have necessarily had to be examined. I can assure Honourable Members that for all the time that I have been associated with the preparation of this legislation all these proposals have been subjected to the most meticulous scrutiny. Honourable Members will appreciate that certain elements of the Government necessarily tend to press for

[Mr. A. deC. Williams.]

drastic powers. It is the duty of other elements to deal with other considerations, political and so on. It has not been an easy task to arrive at the proposals contained in this Bill. They have been very carefully weighed after prolonged discussion. They are not the ill-considered productions of an inconsiderate bureaucracy.

Further, as to the details of this Bill, Honourable Members have tabled certain amendments. As regards those amendments I will only say this. I hope in the course of my remarks to show that Government have done a very great deal in the Select Committee and in another place to accommodate the provisions of the Bill to the views expressed in the Legislature. Any further amendment in this Council will have to be returned to another place before the Bill becomes law. The time-table of the present session of the Legislature is not immutable; but it is not impossible that, unless this Bill receives its final *imprimatur* here and now, the benefits to be derived from the modifications imposed by it on the existing Ordinances may be delayed for some time. In short, any proposal from Honourable Members of this Council, being liable to delay the passage of the Bill into law, should be, I suggest, confined to matters only of the most serious importance.

I have mentioned the fact that Government have gone far in the direction of accommodation. I will try briefly to indicate the changes accepted by the Select Committee and in the other House.

In clause 2 of the Bill, sub-clause (2) paragraph (iii), which penalises interference with recruiting, an exemption has been provided in the case of advice given in good faith for the benefit of the person advised or of his family. This follows existing legislation on dissuasion from recruitment.

In the same sub-clause, paragraph (iv), sub-paragraph (b), penalises the possession of certain information. An exemption has been provided for unintentional offences. Government appreciate, for instance, that it would be unfair to penalise anyone for possession of a newspaper which might contain information useful to the enemy. In the same sub-clause, paragraph (v) penalises the spreading of false reports. Here again, unintentional offenders are catered for by the insertion of the words "without lawful authority or excuse". Further, an exemption on the lines of the relevant section in the Indian Penal Code has been included as regards promotion of enmity and hatred between different classes of His Majesty's subjects. In the same sub-clause, paragraph (x), the reference to hostile "association" has been omitted as being somewhat vague and open to too wide a construction. In the same sub-clause, paragraph (xx) has been amended so as to include a provision for the maintenance of supplies for the civil population. The original wording made the paragraph apply only to "things which can be used in connection with the conduct of the war" and it was considered that this phraseology was not wide enough to cover provision for the vital necessities of the civil population. Paragraph (xxxi) relates to the control of the use of uniforms, flags and the like. This is now limited only to cases where such use is prejudicial to the conduct of the war, to the public safety and so on.

Then, in clause 8, sub-clause (3), a change has been made in the qualifications for membership of Special Tribunals. It is now provided that a Special Tribunal must contain at least one person qualified for a High Court and one person who is qualified by exclusively judicial experience.

In clause 9, which relates to the jurisdiction of Special Tribunals, that jurisdiction, which before extended to all classes of offences, even to petty offences, is now limited to offences under the Defence of India Rules and offences punishable with seven years' imprisonment or severer sentences.

In clause 10, sub-clause (5), the summary provision for trial in the absence of an absconding accused is now limited to cases only where he first appears and then deliberately absents himself.

Clause 13, sub-clause (2), has, I submit, undergone a most important modification. In the Act of 1915 and in the Bill as introduced in the Assembly there was no appeal from any decision of a Special Tribunal. The Select Committee introduced provision for an appeal from a sentence of death or transportation for life.

Finally, in clause 17, sub-clause (2), the immunity given by the sub-clause to Government against legal proceedings is now limited to acts done in good faith.

In the Report of the Select Committee, a certain Honourable Member of the Committee referred to the attitude of the Government representatives at its meetings and other matters domestic to the Committee. Without prejudice to the accepted principle that such matters should not be disclosed either to the Legislature or to the public—

THE HONOURABLE THE PRESIDENT : It is not usual to refer to what passed in the Select Committee.

THE HONOURABLE MR. A. DEC. WILLIAMS : That is what I am saying, Sir. I submit that the Government in the Select Committee, judged by results, did show a spirit of accommodation. If that be seriously disputed, the further amendments accepted by Government in the other House are enough to belie any accusation of unresponsiveness. In clause 1, sub-clause (3), in the Legislative Assembly Government accepted an amendment in respect of the commencement clause. The change was accepted in deference to the wishes of the Assembly mainly, I take it, having regard to the introduction of the Chapter providing for Special Tribunals. The position now is that the various provisions of the Act can be brought into operation by executive order at different times in different areas.

In various parts of clause 2, at the beginning of sub-clause (2) and in sub-clauses (3), (4) and (5), references to the entrustment of certain powers and to the conferment of certain duties on "persons" has been omitted. It was considered that there was some danger in this. So the reference now is merely to "officers" and "authorities".

In clause 2, sub-clause (3), paragraph (i) the words "or reasonably suspected of contravening" have been omitted. They really do not add very much to the sense of the paragraph.

[Mr. A. deC. Williams.]

In paragraph (vii) of the same sub-clause, which deals with attempts at screening offenders, an exemption has been inserted as regards married persons either of whom screens the other. For this there are precedents in existing legislation.

In clause 10, sub-clause (2), an important change has been made. As a logical consequence of the right of appeal, provision has been made that in appealable cases a Special Tribunal must record the evidence in full.

In sub-clause (7) of clause 10, paragraph (iii) has been omitted. That paragraph gave power to Provincial Governments to over-ride the normal criminal procedure in respect of trials by Special Tribunals. This provision has been deleted.

In clause 13, sub-clause (2), the right of appeal has been further extended to sentences of 10 years in cases where the offence tried was, by reason of section 5 of the Act or the amendments effected by section 6 of the Act, of an enhanced character, extending to death and transportation for life. In a trial of that nature, wherein a sentence of 10 years is awarded, there will now be a right of appeal. As regards recording of the evidence, that will have to be done in any case; as the offence is punishable with death or transportation for life.

Well, Sir, I trust that these changes which I have enumerated suffice to show that Government has not been unresponsive. I now come to the second point—the working of this legislation. I can state categorically that it is the intention of Government only to use these extraordinary powers as and when emergently required and that their officers have been instructed accordingly. I have heard suggestions, based on alleged action alleged to have been taken under the analogous Act of 1915, that the extraordinary powers conferred by this legislation will be employed for political reasons. I would only urge that Honourable Members should study the rules made under the Ordinance which are the best indication of how this legislation will be worked. They will find nothing formidable there. In fact, the great bulk of powers and duties is assigned to the responsible Provincial Governments. This in itself should be a sufficient answer to those who criticise the recent war-time amendment of the Constitution Act.

The Special Tribunals set up under the Bill come in for a good deal of detailed criticism. These Tribunals will only be appointed in very special circumstances. There is no question, Sir, of their being set up wholesale simply to replace the ordinary courts. In any special circumstances in which they may have to be appointed, summary procedure will undoubtedly be justified.

I must again apologise for personal reminiscence. I had some experience of the days of terrorism in Bengal when I myself presided over Special Tribunals. I am not aware of any responsible criticism of the constitution or procedure of those Tribunals. Bad as terrorism in Bengal was, this war is worse. Surely the Council can accept the provisions for these Tribunals.

I would only repeat that, subject to discussion of details and operation, it is imperative that this Bill should have the assent of this Council. In

this emergency the executive Government, however constituted, must be permitted to carry on very largely by itself. The Government of India may not be a responsible Government in the same sense as His Majesty's Government. Nevertheless, as we are placed now, it must be empowered to act for the common safety. As the Minister in charge of the corresponding Bill in Parliament very rightly observed, you are being asked temporarily to give up prized liberties in order to enjoy them permanently for the future.

To Honourable Members who feel any diffidence, I commend the attitude to the like legislation in Great Britain, which passed through both Houses of Parliament in a few hours, of the most consistent opponents of His Majesty's Government as at present constituted—the British Labour Party.

Sir, I move.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU (United Provinces Northern : Non-Muhammadan) : Mr. President, I am sure every Member of this House realizes that we meet today in an atmosphere of complete unreality. Even in the best of circumstances there is not much chance of the views of elected Members being accepted by Government. The constitution of this House is such that they are assured practically of a standing majority on all occasions. But there have been occasions in the past, notwithstanding the strong position occupied by Government here, when suggestions made by us have been accepted by them. On the present occasion, however, the matter is closed, and the Honourable Member who represents Government today has told us with brutal frankness that Government have gone to the utmost length in making concessions in the Select Committee and in the Legislative Assembly and that no more changes can be permitted in the Bill before us. If it is so and Government had to bring this Bill before us only to comply with a legal formality, how can they expect any self-respecting Member of this House to accord his willing support to it? Their own votes are sufficient to enable them to carry any measure on which they have set their heart. Let them carry this Bill also through the House, after enacting the farce through which we are now going.

Sir, it seems futile on such an occasion even to examine the provisions of the Bill, but we must discharge our duties as Members of the Council by pointing out what we consider to be the defects in the Bill even after the modifications accepted by Government in the Legislative Assembly. It is a duty which we owe to the public whose representatives we are and we must discharge it irrespective of the attitude of Government.

Sir, before I deal with the principles underlying the Bill and its general character, I should like to draw the attention of the House to the Preamble of the Bill which says that the Bill is meant to ensure, among other things, the "interest" of British India. My Honourable friend Mr. Williams asked us in his peroration, in spite of the constitutional difference between the position of the Government of India and of His Majesty's Government to give the fullest possible support to the Government of India in carrying out the purpose for which the Bill before us is designed, Sir, the difference to which Mr. Williams referred is not a matter of no importance. That difference goes to the root of the matter. Had the Government here been responsible to the

[Pandit Hirday Nath Kunzru.]

Legislature, it could have been invested with even larger powers without the public feeling that they would be exercised in such a way as to jeopardise its liberties, but the constitutional position of India is very different from that of England. We have consequently to examine the provisions of special laws with considerable care. In order to illustrate the difference that can exist between the spirit of a responsible and an irresponsible Government, I would draw the attention of the House to an order issued recently under the Defence of India Rules restraining male European British subjects between the ages of 16 and 50 from leaving the country except with the permission of certain military authorities. What is the purpose of this order? The order says that young men who are most suitable for the officer ranks of the Army are leaving India for service out of India. It says further that the departure of such men would be a direct loss to the Army in India. It consequently prohibits their departure from India, and it advises them to take temporary Commissions in the Army in India—

THE HONOURABLE THE PRESIDENT : What is your opinion ?

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : I will express my opinion just now. After your experience of me in this House for two and a half years I thought, Sir, that you must be sufficiently acquainted with my opinions. But since there seems to be some doubt about them, I will make them clear, beyond any shadow of doubt, to every Member of this House.

The Army in India which is referred to in the order that I am discussing includes not merely the British forces but also the Indian Army. Now, these Europeans who have been prevented from going out of India if given temporary Commissions in the Indian Army, will naturally be an obstacle to the appointment of qualified Indians in the same positions. It does not appear to me from the order that it applies only to those men who have already received military training and whose employment in a crisis like this may be justified on the ground that it takes times to train a Commissioned officer. They seem to be untrained men. The only thing about them, according to the order, is that they are suitable on general grounds for being appointed as Commissioned officers. If this is all that can be said in favour of these men, I ask whether men with suitable general qualifications cannot be had from among Indians. The question of the appointment of Indians to the higher ranks in the Army is one of the most important questions that has been exercising the minds of Indians since the establishment of the Montagu-Chelmsford Councils, yet, no progress has been made in this respect. And now when a time has come when Indians might be given special opportunities for being employed as officers, European British subjects are prevented from going outside India and are advised to accept temporary Commissions in the Indian Army. If any other example were needed to illustrate the difference between the British Government and the Government of India, I would refer to the answer given by the Honourable Mr. Williams to my questions relating to the composition of the War Supply Board and the Defence Co-ordination Department. Would it have been possible, Sir, for a Government of India, responsible to the people, to have acted in the manner in which the Government of India have done in connection with organizations set up because of the war ? Whether they

were set up in anticipation of the war or immediately after war broke out does not matter at all. One would have thought that the Government of India would not merely recognize the legitimate desire of Indians to be associated with arrangements connected with the defence of their country in a responsible capacity but will also go out of their way in order to assure them that their co-operation was required on a footing of equality. The two illustrations that I have given show that the point of view of the Government of India remains wholly unchanged even in this crisis. We cannot therefore be accused of being unreasonable if we adopt a different attitude in judging the provisions of the Defence of India Bill to that adopted by members of the British House of Commons in considering the Defence of the Realm Bill.

Sir, the Honourable Mr. Williams exhaustively enumerated the changes made in the original Bill during its passage through the Select Committee and the Legislative Assembly and he compared some of the provisions before us with those of the Defence of India Act of 1915 also. There is no doubt that the Bill has been changed for the better since it was introduced in the Legislative Assembly and that it is in some respects an improvement also on the Government of India Act of 1915. But we must recognize that a great deal of water has flowed down the Ganges during the last 25 years and that a measure of the kind passed rapidly through the Imperial Legislative Council in 1915 would not have been acceptable to a popular Legislature constituted as it is now. I feel, Sir, notwithstanding the alterations made in the Bill in the Legislative Assembly that there are certain matters in regard to which we might justifiably feel apprehensive. Take, for instance, the provisions relating to the prohibition of public meetings. Now, I know that a change has been made in the rules framed under the provisions of the Defence of India Ordinance relating to the prohibition of public meetings, which makes it clear that the prohibition or regulation of public meetings will be applicable only in the interests of public safety, maintenance of law and order and proper prosecution of the war. Government have tried to assure the public by making this change that the power to prohibit or regulate public meetings will not be used for political purposes.

THE HONOURABLE SIR A. P. PATRO : These rules will be administered in the provinces by the present popular Governments.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : I will come to that later.

Sir, I am prepared to accept the assurance given in the other House and the assurance given by Mr. Williams that the exceptional powers conferred on Government by this Bill will be used with great care and moderation and that Government officers have been instructed to use them sparingly and only in exceptional circumstances. Yet, Sir, considering the atmosphere now prevailing in the country, it is quite possible that there might on constitutional questions arise the same conflict between the Government and the people which arose while the last war was going on. If this happens it is not merely conceivable but easily believable that the Government might be tempted to take strong measures against persons carrying on agitation for the purpose of advancing India's constitutional status on the ground that their activities

[Pandit Hirday Nath Kunzru.]

would hamper the successful prosecution of the war. I do not think, Sir, that any non-official Member here would in his heart of hearts regard such a fear as fanciful. A fear like this is the natural outcome of the circumstances in which we are placed and the subordinate political position which we occupy in our own country.

Now, Sir, take another question. Government are empowered by item 20 of sub-clause (2) of clause 2 to control any trade or industry for the purpose of regulating or increasing the supply of an article. Government will also have the power to declare any area a protected area. In pursuance of these powers Government may declare an industrial area a protected area in order to regulate the production of particular articles. I have no doubt that in such circumstances they will consult the representatives of the industrialists because they occupy a powerful position. I am not sure however that Government will be equally ready to consult representatives of labour. Let us in this connection cast a glance at what is being done in England. Everything connected with war production is being regulated in consultation with the representatives of Labour. The representatives of Labour are taken into the fullest confidence by Government, so that there may be complete harmony between all those interests on whose co-operation the satisfaction of the needs of the State depends. I referred a little while ago, Sir, to the War Supply Board set up here. In England too a similar Board, called the Council of

12 Noon.

Supply, has been set up. This Board seems to me, judging from the names, to be composed entirely or largely of non-officials, of non-official business-men and an assurance has been given that the question of wages and allied questions would be settled by Government in consultation with the labour interests concerned. What is the situation here? We know what is the constitution of the War Supply Board. If ever there was a Board on which non-official representation was essential, it was this Board. One would have thought that the assistance of non-official men would be welcome in order to provide the troops with all those things that would be needed by them. Yet they have been kept at arm's length and people mostly with no previous experience of business have been made members of this Board. I do not object to the presence of such men, but I object to the exclusion of qualified Indians, particularly of those who are concerned with trade and industry. The position is equally unsatisfactory in regard to questions concerning labour. Many assurances were given in the other House with regard to the manner in which the provisions of the Bill before us will be carried out. Those assurances have been repeated today by Mr. Williams. But nothing has been said to indicate that even though labour is not as well organized in this country as it is in England special steps would be taken by Government to protect their interests. Government can even now rectify this omission and make a satisfactory announcement on the subject. Many special appointments are being made in connection with the war. If a Labour Commissioner were to be appointed at least for the duration of the war from amongst qualified Indians, I think that would be some assurance to the public that the rights of the underdog would not be ignored. The appointment of such an officer will not do away with the need for consultation with labour representatives

themselves, but in view of the incomplete organization of labour here, it is necessary that the Government should appoint persons with special experience of labour who would be able to deal with all labour questions with knowledge and sympathy. I could give other illustrations also to show that we are perfectly justified in being reluctant to concede to Government the extraordinary powers with which this Bill will clothe them. But the examples that I have given are sufficient to indicate my point of view.

Now, let us see what is the procedure prescribed for the trial of offences and what will be the position of the Special Tribunals that might be appointed under the Act. It is true that it is not necessary under the Bill to set up Special Tribunals. They may be established. They will be established presumably only when the ordinary judicial machinery breaks down and their establishment would rest with the Provincial Governments. This is perfectly true, but as the Special Tribunals which would be set up would enjoy extraordinary powers it is necessary for us to see whether the provisions relating to them are of a satisfactory character. It has been laid down in the Bill—and this is one of the modifications introduced by Government in the Assembly—that all sentences of death and transportation and of imprisonment for a term extending to 10 years may be taken in appeal to a High Court. This is certainly a very salutary and welcome provision, but the powers of the Special Tribunals would nevertheless be very large, dangerously large. Sentences of imprisonment for less than 10 years passed by the Special Tribunals would be final. It seems to me, Sir, notwithstanding the emergency created by the war, that such an extraordinary power requires to be justified. I will give another instance to show that the provisions relating to appeals against sentences passed by the Special Tribunals ought to be wider than they are now. Take, for instance, the question of forfeiture. A man may be suspected of contravening the provisions of certain rules and his property which may be very valuable may be confiscated; yet he will not be in a position to take his case before a High Court and to ensure that justice is done to him. He may be reduced from affluence to beggary and yet he will not be entitled to appeal to a higher authority. To say that the provinces will in the last resort be responsible for the manner in which the Special Tribunals will work is to ignore the realities of the present situation. The Provincial Governments backed by powerful majorities have in several cases shown themselves only too willing to make use of the special powers which men belonging to their political persuasion used to condemn two or three years ago. The establishment of autonomous Provincial Governments cannot therefore be regarded as a sufficient guarantee that the working of the Special Tribunals would give satisfaction to the public. Besides, it is necessary on principle that the law itself should provide a safeguard against the abuse of power.

As regards the sentences, I am sure it will be agreed that even sentences involving less than 10 years of imprisonment are sufficiently heavy. Is it not desirable then that the provisions relating to appeals should be widened? If really it is thought that only a small number of cases will be placed before these Special Tribunals, Government need have no hesitation in going a little further than they have already done in order to satisfy the public that its legitimate rights would be in no danger of being violated.

[Pandit Hirday Nath Kunzru.]

Again, Sir, it is quite possible that important questions of law or fact may be involved in a case and that the judgment of the Tribunal may not be unanimous. I am not pleading that for this reason that the minority judgment should be regarded as having greater force than the majority judgment if the former is in favour of the accused. But we have to remember that in many cases the Privy Council has in appeal accepted the validity of the view set forth in the judgments of dissenting judges. This ought to make us pause, therefore, and consider whether it would not be right to provide that at least where certain important questions are at issue, the accused should have the right of appealing to a High Court if the judgment of the Tribunal is not unanimous. Surely, a modification like this will not dangerously weaken the Bill or in any way deprive Government of the powers which in their opinion they need at present. I think, Sir, that in respect of the matters now mentioned by me there is a strong case for the extension of the right of appeal given to the accused in certain cases under clause 3 of the Bill before us.

Now, let us, consider, Sir, the constitution of the Tribunal. This is set forth in clause 8 of the Bill. Its language seems to me to be needlessly complicated. I hope that the draft was not intended to mystify laymen. Under this clause 8 one of the members of a Special Tribunal must be a person qualified for appointment as a judge of the High Court. As regards the remaining two persons, one must be a sessions judge, an additional sessions judge, chief presidency magistrate, or additional presidency magistrate, and one must be a district magistrate or additional district magistrate. Now, let us compare, Sir, the constitution of the Tribunal as provided in this Bill with the constitution of the Tribunal set up by the Defence of India Act, 1915. Section 4 of the Defence of India Act says :

“ All trials under this Act shall be held by three commissioners, of whom at least two shall be persons who have served as sessions judge or additional sessions judges for a period of not less than three years, or are persons qualified under section 2 of the Indian High Courts Act, 1861, for appointment as judges of a High Court, or are advocates of a Chief Court or pleaders of 10 years' standing”.

Now, under this provision, Sir, it was certain that at least two members would be persons who had had judicial experience. Under clause 8 of the present Bill, it does not seem to me that there is any such guarantee. The Tribunal may be composed of three persons one of whom is a person qualified to be a judge of a High Court and the remaining two are executive officers, that is, persons who have exercised the powers of chief presidency magistrates, additional chief presidency magistrates, district magistrates or additional district magistrates. The composition of this Tribunal, therefore, seems to me to be definitely unsatisfactory as compared with the composition prescribed by the Defence of India Act, 1915.

Sir, I trust that the illustrations that I have given will serve to show the legitimate fears that we entertain with regard to the future exercise of the powers which this Bill is intended to confer on Government. It is possible for Government to go substantially further than they have done at the present time without detracting from the value of the Bill. Indeed, they may be able to obtain more co-operation in return for any changes made by them in the direction indicated.

THE HONOURABLE LIEUT.-COLONEL. SIR HISSAMUDDIN BAHADUR
 (Nominated Non-Official) : Mr. President, Sir, the Defence of India Bill which has been passed by the Legislative Assembly and is now before the House is obviously a measure which in the present emergency is a most essential piece of legislation. During the last war a measure of this nature was brought into effect and in other countries engaged in war. In the present struggle legislation on some such lines as the Bill before us has been found necessary and has been enforced. The Bill has been altered in some material respects and greatly improved by the Select Committee of the Legislative Assembly, and still further amendments have been made by the House. All I need say is that this Council should not have the least hesitation in passing the measure and I accord it my full and unstinted support.

But I will not let this opportunity slip without submitting a few suggestions based on my knowledge and experience gained by about four years active service in the last war for the consideration of the Government of India and in particular of His Excellency the Commander-in-Chief.

When our men were engaged on military duties abroad in the last world war, the general complaint was that there was no adequate arrangement for safeguarding their private interests or for looking after their domestic affairs in their absence. Cases of abduction in their families, of encroachment on the rights of their sons and heirs and similar other matters came to notice. This state of affairs caused cases of malingering, discouraged and demoralized the soldiers. In order to counteract such factors I beg to suggest that the shortcomings of arrangements in the Great War should be avoided in this present war. I would strongly suggest that the civil administration should be persuaded to afford actual help in this connection.

The Soldiers Board should be made responsible in every district to represent to the Recruiting Officer and the civil administration the question of safeguarding and care of the dependants and property of the soldiers who are on active service.

During the last war I am aware of the cases where the families of serving soldiers who remitted money by money order were put to inconvenience by postmen who demanded illegal gratification. This request of the latter, if not granted, resulted in the money order being returned with the remarks that "the addressee was not found or known". Special arrangements may kindly be made by the postal authorities that the families of soldiers on active service should be spared all this trouble.

I should also like to draw the attention of the authorities concerned that during the last war arrangements were made for suspending proceedings in civil and revenue courts against soldiers, both combatants and non-combatants, who had proceeded on active service. This concession was much appreciated by the soldiers and I trust that similar arrangements will be made on the present occasion.

It is the moral duty of every Indian to render whole-hearted support in this wicked needless war ; as it is enunciated by one of the greatest statesmen of India, I mean, Sir Sikandar Hayat Khan, Premier of the Punjab. I earnestly hope his advice will be followed, not only by the Panjabis, but throughout the

[Lieut.-Col. Sir Hissamuddin Bahadur.]

length and breadth of the Indian Empire. I have also issued an appeal to my Moslem brothers in the Press to rally round Britain's banner in their hour of trial.

I am not sure whether an amendment incorporating the suggestions I have ventured to make would have been appropriate but in any case such a course would be impracticable, because any amendment that I make in this House must go to the other House, and, as you are well aware, the Assembly has adjourned *sine die*. Sir, I strongly support the Motion for the consideration of the Bill.

"*Dost an bashad keh girad dost-i-dost, Dar pareshan hali-o-dar mandgi*", i. e., "A friend in need is a friend indeed, otherwise he is an enemy".

THE HONOURABLE SIR A. P. PATRO (Nominated Non-Official): Sir, I give my whole-hearted support to the principles of the Bill before the House. I do not want to enter into a consideration of the constitutional issues raised by the Honourable Mr. Kunzru on this Bill which is an emergent measure, designed to meet the conditions arising in India on account of the war. Therefore, it seems to me altogether beside the point to talk of the constitutional position of India, the relation of India with Great Britain and the position of India in the Empire. These are questions altogether beside the point at issue before the House now.

There is another point which the Honourable Mr. Kunzru has raised—not for the first time but perhaps for the tenth time—namely, that this House is composed of persons whom Government can count upon, and therefore Government is always assured of the success of any measure that is brought before the House.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: There are such Members in the other House too.

THE HONOURABLE SIR A. P. PATRO: I wish the Honourable Mr. Kunzru were more careful—I would only say, more careful—in his observations against Members on the opposite side. The constitution is there. He is a constitutionalist and well informed citizen. He knows that according to the composition of this House, there is a majority of elected Members. The elected strength of this Council is more than the nominated strength, and therefore to make any such reflection seems to me to be altogether unjustifiable. If the representatives of the people, who claim to have a monopoly of all wisdom, intelligence and patriotism, are not able to discharge their duties successfully and wisely, if they do not attend the meetings of this Council and in strength oppose Government measures, if they failed to do their duty, then the fault is not with the Government or with the nominated Members but with those who do not discharge their responsibilities. Therefore, it is futile to raise the question that in this House we will not be able to succeed in any non-official measure. The fault is not in the composition of this House. The strength of this House lies in the deliberations which are always carried on with great moderation, great consideration and great patriotism. It is the combined intelligence and the combined experience of both sides of the House which settles any question and not entirely on one side. It is the combination of the official and non-official Members of this House which decides the questions before the House. It is,

therefore, altogether unfair to cast reflections on the composition of the House or on the character of the nominated Members. I do not yield to any one in this House or outside that we are on this side wanting in same patriotic consideration of the questions that come before us. We have often voted against the Government and often remained neutral against the Government. Therefore it is unjust and unfair that any such reflection should be made in regard to the Members of this House. I say if the so-called responsible elected Members discharged their duties properly, attended regularly, mustered their strength and combined together, discussed all the views and reconciled all views and then put forward their united opposition, then Government would find it difficult because it is the elected strength of this House which is predominant.

THE HONOURABLE SIR DAVID DEVADOSS (Nominated Non-Official) : They go by the mandate received.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Our mandates are more flexible than those which nominated Members receive.

THE HONOURABLE SIR DAVID DEVADOSS : No, we do not receive any mandate at all. We are here as reasonable persons and we vote as we think best. It is false to suggest that simply because we are nominated we leave our consciences outside. The Government Members may be under a mandate. So far as nominated Members are concerned, I say that we exercise our discretion and have done so not once but many times.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : To quote Shakespeare, Sir, "Methinks the lady protesteth too much!"

THE HONOURABLE SIR DAVID DEVADOSS : No use of our protesting when you are bent upon saying the same thing over and over again. It is because you are so weak and because you have no case that you abuse the plaintiff's attorney!

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : It is perfectly true!

THE HONOURABLE SIR DAVID DEVADOSS : It is absolutely false!

THE HONOURABLE KUNWAR HAJI ISMAIEL ALI KHAN (Nominated Non-Official) : We have a greater sense of responsibility!

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : I have seen that sense of responsibility during the last three years!

THE HONOURABLE SIR A. P. PATRO : I only raised this question because I do not want to leave the impression that the charge made by the Honourable Member is not capable of an answer. What I do say is this, that patriotism is not the monopoly of any particular individual or any particular sect or any class of persons. It is open to every one to have his own independent judgment on problems. And you should know that there is no party Government and there cannot be any question of Party principles as such. Therefore, I say it is not fair or honest to charge other Members with always supporting the Government and not doing their duty as they see it. The elected Members of this House have never had the statesmanship to consider beforehand any proposals put forward here and to combine their efforts. Not

[Sir A. P. Patro.]

-being able to do that, failing in that fundamental duty of a politician and a public man, it is very easy to charge others with not doing their duty.

THE HONOURABLE THE PRESIDENT: Please speak about the Bill now. This is all irrelevant.

THE HONOURABLE SIR A. P. PATRO: Nor is it necessary on this occasion, as I said, to go into the constitutional question of the relationship between India and Great Britain and India's position in the Empire. This is an emergency law to meet an emergent situation created by the war. If the measure is based upon the provisions of the Act of 1915, it is just and appropriate. The conditions prevailing at the present time have really induced the Government to make certain changes from the Act of 1915 and this Bill contains some new provisions and some modifications of the provisions of the Act of 1915. But it is not a new Bill at all, nor are the principles enunciated in it new to the country. The country is fully aware of the principles of this Bill, and if they are sometimes drastic it is because the present condition of things in the country requires that, and the country necessarily expects the administrative authorities to be more careful in the matter of carrying out the provisions of this Bill. It is a measure which is necessary and desirable in the interests and safety of the country and the people.

Now, I shall show shortly the conditions of things in our country, how enemy influence has been growing from day to day, how Nazi influence has been insidiously working, in the towns and capitals of the provinces and what danger we have to meet. If we do not look into things as they are at present, and if we only stick to the technical principles of procedure then justice will surely fail and people will not have the protection they require. Then I shall show how the procedure for carrying out the provisions of this Bill by the Provincial Governments will not be at all satisfactory and how the Government are simply taking a step in the dark without knowing the danger ahead of them.

Now, Sir, what are the main features in this Bill? We have to consider that. One of the main features is that it will not necessarily be introduced immediately. It is a measure for emergency purposes and it is only when the emergency arises that it will be brought into operation. Then it will not necessarily come into operation in all places. In sub-sections (3) and (4) of section 1 you will find that if and when the danger arises in any particular area, and if the Central Government are satisfied that there is necessity for the application of this measure, they will then declare the area and the time in which and when this measure will be introduced. Therefore, it is a limited measure. Though it is applicable to the whole of India it is not to be immediately brought into operation except in such areas as Government is satisfied there is need for the application of this Act.

Then it has also to be considered that most of these provisions and the rules framed under clause 3 will be applied and enforced by the Provincial Governments to whom powers are delegated to create Tribunals and for the taking of other necessary steps under this Act. Now, how are the Provincial Governments working today? Under provincial autonomy they are independent and they are popular Governments representative of the people. Therefore,

it is claimed from the press and platforms that they are the people's Governments. So democracy prevails in the Provincial Governments, administering law and justice impartially and independently without regard to the Central Government. Therefore, since they are responsible Governments by whom these powers will be exercised why should there be any apprehensions about the exercise of those powers ?

Another feature of this Bill as against the Act of 1915 is that the old provisions have been modified and under this Bill an appeal will lie in case of sentences of death or transportation for 10 years or more. But since it is said an appeal is provided in such cases under the ordinary law what is the necessity for this special measure ? The same question was asked in 1915. The answer is to be found in the Criminal Law Amendment Act and there exists the same justification for bringing in this measure now. A new emergency situation has arisen and it requires emergent treatment. We cannot afford to apply the ordinary procedure of the Criminal Procedure Code to an accused who commits an offence punishable under the provisions of this Act. Therefore, you have to over-ride the procedure in the Criminal Procedure Code and take such measures as would dispose of the case immediately and readily. We are accustomed to read in the newspapers summary disposals like saying, "Bring the man and shoot him" or "Put him in the cells". If that is the kind of justice to be done in war time, perhaps it will satisfy a section of the people, but the British standard of justice is different from that. The British standard of justice wants to give the man a trial, to give him a chance of defending himself—to show that he is innocent, and if he fails to show that he is innocent, then to take emergent action in order to dispose of the case. I do not think that there is any question of the ordinary law being applicable to cases arising out of war conditions.

These are the main features of the Bill. The provisions of the Bill, as I said, have to be carried out by Provincial Governments. What is the position today ? We are indebted to a very illuminating article that appeared in the *Statesman* some time back in May, 1939. We have a summary of events that are taking place in the country through the activities of the Nazi propaganda in India. Many Honourable Members may not be aware of the serious propaganda, underground work, that is being carried on in the country which is very dangerous at present. In the beginning of last year the Nazi Government determined that they should make a drive of propaganda in India, that an anti-British campaign should be carried on. The organization has spread to a surprising extent, its ramifications are there in every province, and especially in the two headquarters, Bombay and Calcutta, they have been disseminating from that source as well as from Berlin—anti-British propaganda in this country. There is also an organization in Delhi called the Indo-German News Exchange which has got many Indian members and these help in carrying on the propaganda on behalf of the Nazis. In Calcutta there is the Indo-German Cultural Association started by the Academy in Germany ; German funds are contributed and cultural association goes on everywhere. Then you have heard recently how Nazi funds were captured by the C.I.D. in Bombay recently. In Madras there is also an organization, the members of some of these organizations are Indians, and they carry on. What is most surprising is that in an Indian

[Sir A. P. Patro.]

University, there is an association which receives anti-British literature and it spreads pro-Nazi information and anti-British throughout the student population. The student population should not be contaminated with this kind of propaganda and therefore we have no hesitation in believing that the student unrest within the last two years has taken an intensive form may be due to this pro-Nazi propaganda.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Which is the University that you are referring to ?

THE HONOURABLE MR. P. N. SAPRU : The University of imagination !

THE HONOURABLE SIR A. P. PATRO : Possibly you will know it when it comes nearer home to you. Better wait and see. Some Indian newspapers also are being subsidized. How they are subsidized can be spotted easily. Advertisements by German agents by German funds. Hence you find that a pro-Nazi propaganda is carried on through newspapers, through organizations, associations, and we also find a large crowd of political missionaries ; about 25,000 of them have been created for the purpose of carrying on anti-British propaganda and spreading the Nazi cult. I would not go further than point out what appeared in the leading columns of an independent newspaper like the *Statesman*. This was on the 18th May :

“ German official wireless has bluntly stated that Bose and his followers in India are supporting Hitler ”.

This is the German official wireless ; it cannot make mistakes ; it cannot be doubted for a moment, because it is the official statement coming from German source. Could you doubt it ? There it is.

“ German official wireless has bluntly stated that Bose and his followers in India are supporting Hitler and Gandhi is a tool of the Jew ”.

THE HONOURABLE HAJI SYED MUHAMMAD HUSAIN : Is it the German lie or the real truth ?

THE HONOURABLE SIR A. P. PATRO : This is a piece of news I am giving and it is for you to see.

“ and Gandhi is a tool of the Jew ”.

Therefore, you have propaganda carried on here. I have said how propaganda is carried on. The worst thing is to create the contact between students and politicians. I have also referred to political missionaries, and I have told you how they try to approach politicians and Congressmen and how some are not amenable to their solicitations. The Hitler party is doing its worst in India with a view to undermine British authority and British power and prejudice the Indian mind.

THE HONOURABLE MR. HOSSAIN IMAM : Is the Honourable Member right in reading from a newspaper ?

THE HONOURABLE THE PRESIDENT : You can see that he is not reading from a newspaper.

THE HONOURABLE SIR A. P. PATRO : The second aspect of the case is this. Anti-British work is carried on and the British administration is represented in its worst colours and it is said that the British are the enemies of the Muslims. One of their chief planks is that the British are the enemies of Islam. Therefore, I say that this kind of false and mischievous dissemination of information excites the masses, excites the students and if there is unrest among some sections of the people, it is due to this kind of propaganda, to this kind of mischief that is being done by Nazi clubs, Nazi societies and Nazi people. Agents are there in every city, in every town; paid agents are there. Don't you know? (*An Honourable Member*: "I do not know".) I am glad you do not know. Now at least you will make inquiries and satisfy yourself that this kind of propaganda is being carried on in the country and hence it is necessary that this should be stopped. A measure like this one before us is necessary so that greater mischief may not be done, that is the object of this Bill, to have some measure handy for the purpose of enforcing these measures vigorously against offenders of the kind that I have read to you—

THE HONOURABLE SAIED MOHAMED PADSHAH SAHIB BAHADUR : Is it a separate propaganda or the communist propaganda?

THE HONOURABLE SIR A. P. PATRO : The other point which I wish to place before the House is that this Bill entrusts the administration of the Bill to Provincial Governments. All the rules that are to be framed under clause 2 of this Bill are to be administered by the Provincial Governments. The Provincial Governments are composed today of the vast majorities in every province.

THE HONOURABLE THE PRESIDENT : You have said that before.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : But you have no confidence in these Governments, as you have repeatedly said.

THE HONOURABLE SIR A. P. PATRO : Wait and see how I am going to express myself.

These Provincial Governments are composed of huge majorities. I describe them as a Juggernath Car passing over any Bill or any measure that is introduced in the popular Assembly. My friend has said with reference to this House that any Bill the Government can pass. I agree. But one thing I would ask him, that as a public man and politician he should visit one of the popular assemblies or democratic assemblies in the provinces. He will find how the very important measures that are placed before the House are summarily carried through in the name of the province, in the name of India. Therefore, he need not be ashamed to be a Member of this House, nor be very critical of the processes that are adopted in this House. What I do say is this. These popular Assemblies are administered by Ministers. I will give, Sir, some practical instances of how similar provisions have been carried through in the Provincial Assemblies. You know the Criminal Law Amendment Act. It is an emergency measure. It was the first measure which the Congress Party wanted to delete, to eliminate altogether. And what was done? It was made applicable to innocent people in the country, people who differ from them in their views in particular matters and have opposed the Government. The

[Sir A. P. Patro.]

popular Government; the popular Ministers, are such that no ordinary laws in the Statute-book could not be applied in such cases but the Criminal Law Amendment Act must be applied, and this tyranny prevails in what is regarded as one of the well governed Presidencies by Europeans though not by Indians! The opinion among European officials is that this province is so well governed that they need not care if it has perpetrated one of the most dastardly acts of the Government, namely, the application of the Criminal Law Amendment Act to people who only differ from them in matters of opinion and agitate. The Government imposed upon them compulsorily a certain form of education—

THE HONOURABLE THE PRESIDENT: I am afraid you are digressing too much. Will you please confine yourself to the Motion before the House.

THE HONOURABLE SIR A. P. PATRO: I beg your pardon, Sir. This is a point which I must emphasise because we are dealing with emergency powers which are to be administered by Provincial Governments and I wish to say how distrustful we are of the present Provincial Governments and to give expression to our genuine apprehension that these principles may not be applied rightly, correctly. That is one point.

But there is another thing, Sir, which I will give an instance to show how these Provincial Governments are administered,—the issue of Ordinances. Every politician knows that Ordinances could be issued under very exceptional circumstances, but to the popular Government that is no bar. These people apply Ordinances. Why? Because a certain section is opposing forcibly an Act of the Government and litigation was pending in the courts. When a suit has been filed with a view to prevent Government from taking action the courts of justice established by these Governments, were in possession of a particular suit, extraordinary powers are invoked and a convenient and accommodating Governor accepts it. And what happens, Sir?

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD (Leader of the House): I think, Sir, the Honourable Member is not in order in making references to Provincial Governors. It does not seem fair to attack Provincial Governments when they are not here to defend themselves. I must strongly object, Sir, to his references to the Governor of Madras. I hope he will withdraw his remark.

THE HONOURABLE THE PRESIDENT: Will you please refrain from making any references to the Governor? If you want to say, speak about the system of Government.

THE HONOURABLE SIR A. P. PATRO: Well, Sir, this Government issued an Ordinance with the consent of the Governor because no Ordinance may be issued without the approval of the Governor. And what does this Ordinance do? It has checked the freedom of action, the personal liberty, and the liberty to defend its own property, of people, and this is an Ordinance which the Provincial Government has issued under this Act, you want to make your instruments for carrying out the provisions of this Act. That is why I want to suggest that these Provincial Governments are irresponsible and cannot be controlled by the Central Government and therefore it is necessary that some safeguards should be made in this Act with a view to safeguard the interests of the people.

My friend the Honourable Mr. Kunzru referred to one instance, namely, the holding of public meetings and the making of public speeches. There are many other things which liberty and freedom demands. The Provincial Governments—not only in one province but in most of the major provinces—are carrying out measures which curtail the liberty of the people. If a person opposes or criticizes a measure they issue *hookums* that the newspapers shall not criticize the Government or that paper shall not criticize the Government. And if they criticize—gone! And in the United Provinces, what happens today? There have been 26 occasions when the military had to be called out ready for the maintenance of law and order in the United Provinces. (*An Honourable Member*: “How many occasions”?) 24 or 25. You will find it in the latest circular. Therefore, I say that law and order is so well maintained in the United Provinces that the military had to be sent for and on about 12 occasions they were actually used. Therefore, I submit that these instances will show that the Provincial Governments are not responsible governments at present and the Car of Juggernath is only carried in the Legislative Assembly and anything they bring forward in the Assembly is carried through. Therefore, the second aspect of the thing is that in entrusting these powers to the Provincial Governments, we should bear in mind that they are differently constituted to the Local Governments who were affected by the Act of 1915, and greater care and caution is necessary. Therefore, it is necessary, in the light of these facts I have suggested about the Nazi activities in this country and in view of the behaviour and the conduct of the Provincial Governments in administering law and order in the provinces, it is very necessary that greater care and caution should be exercised in entrusting these drastic powers to the Provincial Governments and I whole-heartedly and without any reservation support the principles of this Bill.

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

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

THE HONOURABLE KUMAR NRIPENDRA NARAYAN SINHA (West Bengal: Non-Muhammadan): Sir, I am glad to find that some improvements have been made by the Select Committee as well as by the other House, but I think more could have been done if the Congress Party would have cared to be present in the other House. No doubt, extremely wide powers have been conferred on the Defence of India Bill. The drastic nature of the provisions of the present Bill is due to the fact that this is a very critical time which requires drastic measures and so we cannot help it. Sir, I must say here that we should stand united with the rest of the British Empire and should render all possible help to them in this hour of national crisis.

Sir, as for Bengal, it is really an irony of fate to class us as non-martial but past history shows that we, Bengalees, are as bold and brave soldiers as other martial classes of India. Sir, in this hour of catastrophe, I am bold to say that Bengalees are prepared to come in their thousands to fight for their mother country and for the King if they are called to the colours.

In conclusion, I appeal to the Government that the greatest amount of care should be taken both by the Central and Provincial Governments in framing rules and taking action under the Bill.

THE HONOURABLE RAJA CHARANJIT SINGH (Nominated Non-Official): Sir, times of emergency require special measures. In the crisis which has overtaken the world, we all stand in common peril. I am confident it must be the desire of every one in India to help the Government in bringing this great conflagration and conflict to a successful end.

During the last war also, the Defence of India Bill was passed, with the unanimous vote of the Legislative Council of which you, Sir, were a distinguished member. This Bill is on similar lines with some modifications as explained by my Honourable friend Sir Zafrulla Khan, in the Statement of Objects and Reasons, to suit the changed circumstances, and in order to bring it on the lines of the War Regulations which exist in the United Kingdom. I submit that this is only a precautionary measure and it is better to be forewarned and forearmed, and thus prevent the fair name of India being besmirched. Secondly, no one need fear any undue hardship from this Bill unless he does something which would imperil public safety. Thirdly, this Bill will come into force only when and where required and will remain in force only for the duration of the war, and for a period of six months after the war. It is therefore clear that it is not a permanent measure but only a war measure.

As regards the control of trade and industry and other emergency powers enumerated in Chapter II, the great and small of the land have already placed their services and resources at the King Emperor's disposal. Therefore, this Act only supplements our own wishes and declarations in this respect and seeks to confer legal sanction upon such acts as the exigencies of war demand.

The passing of this Bill does not therefore cast a slur on the people, whose heart, I have not the least doubt, is sound, and whose loyalty to His Imperial Majesty and his Government is unsurpassed.

With these words, Sir, I support the Bill and I do hope it will be passed without any dissentient voice.

THE HONOURABLE KHAN BAHADUR SHAMS-UD-DIN HAIDER (Nominated Non-Official): Sir, I have neither the eloquence of my Honourable friend Pandit Kunzru to place my views before the House nor am I possessed of the rich vocabulary of pungent and caustic words of my Honourable friend Sir A. P. Patro to express my disagreement with my other Honourable colleagues. Sir, I regret that both these Honourable Members are not present in the House. I mean no disparagement to the latter but it is only a confession of my own inefficiency. I shall, therefore, for the confessions made above, try to place in simple and unheated but nevertheless pointed and earnest words my true opinion about this Bill. In the first place, it must be recognized that this is an emergency measure to be passed into law—for a short period of course—to meet the grave situation created by the war. It is clear from clause 1, sub-clause (4) of the Bill that it shall remain in force during the present war and for six months thereafter. As such, it is a temporary law designed to meet present requirements and none of us should, therefore, object to its passage. Some Members of the other House characterized the Bill as a most drastic measure, and one other Member of the same House thought that the Bill ought not to have been brought before the Legislature immediately after the outbreak of the war. Sir, special measures designed to ensure the public safety and defence of a country have to provide for special rules and procedure to secure

speedy action and disposal. It would, therefore, be wrong to say that this Bill, which has as its aim nothing but the public safety and the defence of India, is a most drastic measure. The other argument that the Bill should not have come before us so soon after the outbreak of the war does not commend itself to me as sound. The whole object of the Bill, Sir, is preventive and our Acts which aim at prevention must forestal and deter certain designing disturbers of the general tranquillity in a few small parts of the country.

Sir, if we take the Bill clause by clause, we will find that a good deal of change has been made in the clauses of the Bill as passed by the Legislative Assembly from what was put in the original draft. I do not like to take up the time of the House by referring to the changes, clause by clause. I shall only deal with some of the important concessions that have been made. Clause 13—*Sentences of Special Tribunals*—has been materially altered and the right of appeal to the High Court has been given from the sentences of the Special Tribunal, not only in sentences of death or transportation for life but in sentences of imprisonment extending up to 10 years. Sir, I could not get a copy of the Bill of 1915, but to the best of my recollection, the right of appeal as embodied in clause 13 of the present Bill did not exist in the last Act. The other important changes are the addition of sub-clause (3) to clause 8, Chapter III, and of sub-clauses (a) and (b) to clause 9, item (iii) to sub-clause (7) of clause 10 has been altogether omitted.

In conclusion, Sir, I can only say that the apprehensions, if any, of my Honourable friends opposite with regard to the misuse of any of the provisions of the Bill are not real and well founded. During the years 1914 to 1917 I was in Patna and to the best of my recollection no case under the special Act of 1915 came within my cognizance, though I was vested with certain special powers. Sir, I earnestly hope that the good sense and loyal spirit already displayed by a great majority of the peoples of India will make the exercise of the provisions of this Bill unnecessary.

Sir, I support the Motion.

THE HONOURABLE SARDAR BUTA SINGH (Punjab : Sikh) : Sir, it would be idle for me to go into the details of the Bill, as it has been fully discussed in the Assembly and by Members of this House who have spoken before me. I give my whole-hearted support to the Bill. I, however, wish to observe that it is not only that special laws are required to meet unexpected contingencies that may arise out of the war, but we need other preparations also to meet the perils which may at any moment overtake our country. In the first place we need an organization of our man-power. We then need a fully equipped army, as the western countries have. We need trained men who should be familiar with the methods of modern warfare. In our case no doubt a fairly long time would be needed to turn our men into modern soldiers, capable of withstanding the attack of a mechanized army.

I wish to draw the attention of the Government to the need of raising a Dominion army to guard our extensive land and sea frontiers. Then again there is need for mobilizing our industries. Modern warfare calls for modern industrial production to supply the needs of the fighting forces. On the industrial and commercial side also there is great need of having a directive

[Sardar Buta Singh.]

and constructive policy. Government has constituted a Supply Board to control the prices. May I point out that the Supply Board will not command the confidence of the people if in its working agricultural, industrial and commercial interests are not directly associated.

THE HONOURABLE MR. R. H. PARKER (Bombay Chamber of Commerce) : Sir, I and those for whom I speak always desire the least interference by Government and the greatest freedom for those who are governed, and it is because we value that freedom so highly that we support the restrictions now proposed to be placed upon us by the Government. What is in times of peace reasonable liberty becomes in time of war very often license which is undesirable. I welcome what the Honourable Mr. Williams said this morning that Government will take the necessary steps to see that the powers which they are now taking are properly and wisely and judicially used. The Honourable Mr. Sapru this morning threw some doubt on a statement made by the Honourable Member on my left. (*An Honourable Member* : "He has not spoken".) I know but he shook his head negating the suggestion that there was a certain amount of propaganda from the totalitarian nations among the students of Universities in India. Well, I do not actually know much about that particular fact, but the Honourable Mr. Sapru and I have a joint source of information which definitely indicated that there were Indian students in the totalitarian States who were being suborned from their duty to India and their duty to everybody else.

THE HONOURABLE HAJI SYED MUHAMMAD HUSAIN (United Provinces West : Muhammadan) : Mr. President, it is the very nature of the Bill which has to provide most wide powers for the executive, which the Government considers necessary for an emergency like this. I do not think it will serve any useful purpose either on one side to criticize every provision or, on the other, to defend these as being not drastic or improper. What we really have to see is the present condition, and whether it comes within the definition of such an emergency as would require such drastic and wide measures. First of all I think we have to give our verdict whether an emergency of that kind has arisen and whether it has arisen in India also. So far as that is concerned, we are in the middle of a terrible war which threatens the civilization of the whole world. It is no good discussing what prompted the declaration of war, whether it is a war of Imperialism—

THE HONOURABLE THE PRESIDENT : You cannot go into that question at all. It is His Majesty's Government's decision and you cannot go into the question whether the war is justified or not.

THE HONOURABLE HAJI SYED MUHAMMAD HUSAIN : That is exactly what I am saying. Whether it is a war of aggression or not, is not the point for discussion. It is quite sufficient for us that we are in the middle of a terrible war and we need not go into that question at all. The news that we hear from hour to hour shows that it is a war which has set fire to the whole structure of European civilization. The conflagration may spread through the whole world. From hour to hour we hear that thousands and thousands of children have become orphans, women widows and people homeless. There is not an individual within the war zone who is sitting as peacefully and as

comfortably as we are sitting in this House today. It is true that India has not felt the pinch of the war yet. It is only for a couple of days or so that the prices went high and we know what a hue and cry was raised in the newspapers. But we cannot say that India will remain, or even now is, free from all those dangers which one has to face in war. India must consider whether she is strong enough to defend herself from outside aggression. What I say is that India is certainly strong enough, if it unanimously presents its demand to dictate its terms to the British Government, but India is not strong enough to defend herself from outside aggression. She has not those resources. She has no navy worth the name. In short, India must depend for her protection on somebody against outside aggression. And who that somebody is that India looks to? There cannot be the least doubt about it that at the present moment it is the British Government to whom India looks for her protection. It seems to me really very surprising that when you look for your own protection to a particular power and when you along with that power are in danger, you hesitate to co-operate or to give such support as is necessary in time of such emergency. Experience has proved that it is found necessary always in every country that during war time such powers must be exercised by the executive; and yet you criticize, you hesitate, to grant that power willingly to the executive. It is true that there has been mutual mistrust between the Government and the public. India is not content and satisfied with British rule; it is not satisfied with the Government of India Act. In fact every party criticized the Government of India Act. India has its grievances; it has made demands; it has made it quite clear that unless those demands are met, India will not be satisfied with anything less than freedom. The demands have not yet been fulfilled and there is, as I said, mutual mistrust between the public and the Government. But, as I said once before in this House, these things must stand over until the war is finished. Supposing India decides that it is not going to co-operate with the British Government or ask for British protection and is left to herself, what happens in case India is attacked by an enemy? We do not know how the parties to the war in future will be arrayed. No Indian desires to go from the frying pan into the fire. Therefore, India must at this juncture support the British Government to which it looks for its protection, and my principle is that when it is necessary to do a thing, do it whole-heartedly. It is no good doing a thing half-heartedly. It pleases nobody. It is also essential in the interests of India itself that these things must stand over. When Russia can make a pact with Germany as an ally and march side by side regardless of any principle, forgetting the enmity which existed between the two, I do not know how India, being a part and parcel of the British Empire at least at this moment and looking to the British Government for its protection, can possibly refuse co-operation, participation and whole-hearted support in all the measures which are necessary for the prosecution of the war. We must face the realities and we must act according to necessity. Under the present circumstances, considering India's own weakness and inability to defend itself and its being part and parcel of the British Empire, to my mind India has no other choice to make except co-operation and full participation in the war.

Now, I have just said that a state of emergency exists not only in Europe but also in India. The danger is not confined to Europe alone. India is

[Haji Syed Muhammad Husain.]

not free from danger and that India at the present moment realizes its weakness, and its inability to defend itself against outside aggression. It has looked in the past and will look in the future also to the power and arms of the British for protection, it is quite obvious that there is only one course open to India and it is to join with the British Government in the prosecution of the war and carry it to a successful end. When we know that such an emergency exists, then what is our duty? Our duty is to give all such powers which are necessary for the successful prosecution of the war to those who are responsible for that policy. My Honourable colleague Mr. Kunzru said in the beginning of his speech that had the Government been responsible to the Legislature, he would not have hesitated, not only to give these powers but some more to the Government. Therefore, from his point of view also in case of an emergency like this it is essential that power should be given to the executive. Why he objects, I believe, is due to the mistrust which had existed and not that the powers are too drastic. However, the executive—whether it is good, bad or indifferent—is not responsible to the Legislature but is responsible to defend India and therefore under the circumstances it is necessary that those powers ought to be given to this Government which might have been given to a Government which is responsible to the Legislature. But there is no doubt one very important thing to which I wish to draw the attention particularly of the

3 P. M.

Honourable Members on the other side. In an emergency like this, which is a very, very serious one, they have appealed to the whole country to come forward, co-operate and help them. They expect that every person living in India would do best to defend this country as well as help the British Government in the prosecution of the war and give all the assistance necessary. The passage of the Bill in the other House and the passage of the Bill in this House will prove that the representatives of the people have given their support. They have agreed to co-operate with the Government. They have not only agreed but unanimously adopted and given the executive powers which are too drastic. In normal times it is not possible to give such powers even to a Government which was responsible to the Legislature. And the people of India have once more trusted the British Government and have not tried to put conditions and obstacles in the way of the prosecution of the war. And now it is for the Government, Sir, to show to what extent they can put their confidence in the people whom they did not trust until yesterday, but who have come forward to give their support to it, and to show how much the Government can trust them by associating those people with themselves in the prosecution of the war policy and take the non-officials, the representatives of the public to whom the Government not only appealed but whose assistance Government considers essential for the prosecution of the war and to what extent Government can take them into their confidence. I hope that the Government would consider it desirable and proper at the present juncture. With the passage of the Bill, as I said, Government has the support of the representatives of the people. If the Government associates such people in the prosecution of the war policy, the Government ought not to have any fear of obstacles or any obstruction in the prosecution of that policy because, if that had been the intention, it would have been difficult for the Bill to have been passed so easily as it was in the Lower House and will be passed in this

House. On the one hand, it will have no fear of obstruction and on the other hand it will take the public into confidence and will have the backing of the public behind it.

Now, Sir, coming to the Bill itself, as I said before, no power is too drastic for the emergency which has arisen. Yet I would like to draw the attention of the Honourable Mover to one or two provisions, particularly in connection with the establishment of a Tribunal. In this I find that it is only the Provincial Government which has power to appoint a Tribunal and there is no power at least under this Act for the Central Government to do so anywhere if the Provincial Government refuses to appoint a Tribunal. And another thing is that it is left to the Provincial Government to declare by Notification to what offences and to what areas this Act will apply. This Act is absolutely silent as to how the initiation of the proceedings in the Tribunal will take place. There are certain offences in the ordinary Code for which either the previous sanction of a certain authority is necessary or the machinery of the law can only be moved by a certain individual who is primarily affected by it. We do not know how before this Special Tribunal, after the Provincial Government have invested it with special powers in certain areas, the individual offences will be brought, whether they will be brought by the Provincial Government alone or if the offence falls under the category mentioned in this Act anybody can file a complaint and move this Tribunal. Now, why I say that it is essential is that if we look to section 9, we will find that the Provincial Government has the power by general or special order to direct that a Special Tribunal shall try any offence (a) under any rule made under section 2—that means the 35 items that have been mentioned under (a). Well, this in fact limits (a) to such offences as are committed in connection with these items. But then clause (b) is general and runs, "Or punish with death or transportation or imprisonment for a term which may extend to seven years". There is no qualification here. Every offence, whether it is connected with any of the items under clause (a) or not, comes within the purview of (b). An ordinary dacoity which has nothing to do with war measures might come within the purview of that clause. Even a rape case may come within the purview of clause (b) which has absolutely nothing to do with any measures for which this legislation is intended. So it is necessary to clarify this point.

And then there is the power of the Provincial Governments and the Central Government in connection with the establishment of the tribunals—these are the two things which have to be looked into. Now, I belong to the United Provinces and personally I have no hesitation in saying that I have no faith in the United Provinces Government. It is quite possible there may be other Governments—the people of that place may not be satisfied with it. Supposing the Provincial Government acts in a manner which is against the interests of those classes of people who are not satisfied and have no confidence in such Government, has the Central Legislature under this Act any power? As I said before, supposing a Provincial Government refuses to appoint a Tribunal and it considers, whether rightly or wrongly, that the ordinary judicial machinery will be quite sufficient, what is going to happen? There are these important omissions. I have not brought forward any amendments, because this is an emergency Bill, and the state of emergency exists very seriously, and I have

[Haji Syed Muhammad Husain.]

no desire to hamper the authorities in getting this Bill passed. There is the Ordinance, no doubt, and it can work. But we have a certain other course open and while we extend our co-operation and expect the confidence of Government also, we can by discussion, if the Government agree, bring forward in the next session, or as soon as we can, a certain supplementary Bill, and until that Bill is passed, there can be another Ordinance if desired. Therefore, I do not propose to put forward any amendments. But these are the important points which I consider ought to be borne in mind.

In the end I wish to say one thing. India is not happy and contented under the present administration. But, as I have already said, it is in the interests of India itself that it must co-operate, and co-operate whole-heartedly, with the British Government. But I say to those friends of mine who have indicated that this is the proper time for bargaining that it is not the proper time for it, because you ought to visualize what is happening in England and London itself. Even if those people who sympathise with India want to fulfil our demands to some extent, this is not the time when they can do it in England.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Then why does the Muslim League want it ?

THE HONOURABLE HAJI SYED MUHAMMAD HUSAIN : The Muslim League has not laid down any condition. If its resolution is read not with a biased mind, the real interpretation will be found to be this. The Muslim League has expressed its grievances. We lay no conditions. In fact, the Muslim League has said that no change in the Government of India Act should be brought about without consultation and consent of the Muslim League. That is not a thing which can happen during the war. The Muslim League has laid down no condition during war time. The Muslim League has only expressed the expectations in respect of its grievances which can be looked into and removed. It is an indication of the change of policy which can be adopted under the Government of India Act. It is quite wrong to say that the Muslim League is putting any condition or proviso to extend its help to the British Government. That is how I understood it and being a member of the Party, I am expressing my opinion as a member of that Party. I refer my Honourable friend to the statement of Mr. Fazl-ul-Huq published in the *Statesman* of today. Certain interested persons appear to try to misconstrue the Muslim League resolution and he has clarified the position to a very, very great extent. The Muslim League does not put forward any condition. It leaves the whole thing to the time when the war will be over. What I was saying to those friends I repeat now, that it would be better to leave those questions—of putting down conditions or bargaining which may amount at the present moment to blackmailing—to a time when there will be peace. We have got a good many lawyers in this House. They know what a contract or a promise obtained by undue influence means.

THE HONOURABLE SIR A. P. PATRO : Duress.

THE HONOURABLE HAJI SYED MUHAMMAD HUSAIN : We see in the world solemn agreements between powerful countries, who say that they follow the principles of justice and good conscience, have been torn like scraps of

paper. These are the days of war. We hear time after time that everything is fair in love and war. If you want a declaration of the kind that you demand, it will be quite easy to say, as Germany is saying today, that the conditions imposed by the treaties were brought about unjustly by undue influence. It is no good at present to try to bargain and put provisions here and there when you find a person in trouble, and take advantage of his position. I consider it mean. I want to say to the Government and to the people of India that although we are weak so far as the strength and power to defend ourselves from outside aggression is concerned, we are not weak to dictate our terms to the British Government. It is only the misfortune of the communal tension which is really hampering our advance. If in this war we get together side by side, it may bring about an atmosphere in which the two great communities which are at war today may settle their differences and if the British Government does not fulfil their demands after the war may unanimously press to get their demands fulfilled.

With these words, Sir, I support the Bill.

THE HONOURABLE MR. V. V. KALIKAR (Central Provinces : General) : Sir, the Bill before us contains provisions more drastic than those contained in the old Act of 1915. This Bill curtails the liberties of people to a very great extent. It creates new offences, lays down provisions for the creation of new Tribunals and does away with the normal procedure to be followed in trials. If I may say so, Sir, it curtails the liberties of people in every sphere of human activity. I quite realize that an emergency legislation is necessary when an emergency has arisen. But there ought to be proper safeguards in the Statute so that the provisions may not be abused. I cannot compare the present Central Legislature with the British Parliament. The Indian Legislature has no power over the executive. The Central executive is not responsible to us, while in Britain the executive is responsible to the Parliament. So, according to me, there cannot be any comparison between the two executives. Sir, as I said just now, in this legislation we find that the normal procedure hitherto followed in trials has been taken away. I have a very great faith in the British judicature and the British High Courts. I am therefore unwilling to lend my support to a provision which takes away the powers of the High Courts. You may require emergency legislation. I admit that, but you must also make proper safeguards to ensure that the liberties of the ordinary citizen are not curtailed and his rights safeguarded. I do not want to make a distinction between a white bureaucracy and a brown bureaucracy. We know, Sir, that even responsible Governments have made mistakes and very great mistakes in the provinces, but ultimately we find that the High Courts were responsible for correcting those mistakes. My Honourable friend Mr. Williams told us today that we need not be apprehensive about the misuse of these powers as they have been delegated under this Bill to the Provincial Governments. We have also heard a long story from our Honourable friend Sir A. P. Patro about the doings of the Provincial Governments. But the point is that whenever we find the Provincial Governments doing certain things which really curtail the liberties of citizens, the safeguard provided by the normal course of law comes in by way of appeal or revision to the High Court. Sir, instances have been quoted by my Honourable friend

[Mr. V. V. Kalikar.]

as to how the Provincial Governments used their powers. I know from my own experience in my province how the Provincial Government can and do misuse their powers ; but ultimately the High Court comes in and the misuse of that power was set aside. In Bombay the Provincial Government passed the Property Tax Act and they wanted to curtail the agitation that was being carried on there, but the High Court set aside the proceedings of the Presidency Magistrate. Therefore, I submit that the powers that have been taken away from the High Courts in this Bill do really make me apprehensive whether the powers that have been delegated either to the Provincial or to the Central executive would be properly used or not.

The next question that strikes me is this. This Bill admittedly consists of very drastic powers. I want to know from the Government whether the Provincial Governments were consulted before this Bill was framed and whether they agreed that they and the Central executive should be armed with such drastic powers ? So far as reports go, I understand that the Provincial Governments did not agree to arm the executive with such drastic powers and so the provisions in this Bill giving them these powers will be useless.

Then, Sir, it has been suggested this morning that certain amendments were accepted in the Lower House and in the Select Committee which to some extent have toned down the drastic nature of this legislation. I agree that some amendments have been accepted, but I submit, nay, I appeal to the Government, to accept the amendments that are going to be moved from this side of the House by my Honourable friend Mr. Sapru, so that the proper functioning of this Act will ensure a great amount of success. At the same time the public in India will not think that their rights and their liberties will be curtailed. Sir, they have made provisions for creating a Special Tribunal. This Tribunal is to consist of only one High Court judge. (*An Honourable Member* : " No, only one who is eligible to be a High Court judge ".) Yes. Therefore, I say that the appointment of one gentleman who is eligible to be a High Court judge, does not necessarily solve the difficulty. My attack is against the appointment of district magistrates and additional district magistrates on the Tribunal.

THE HONOURABLE SIR A. P. PATRO : Sessions judge.

THE HONOURABLE MR. V. V. KALIKAR : One sessions judge may be appointed, but if you read the section you will find that an additional district magistrate or a district magistrate is to be appointed on the Tribunal. Now, Sir, these additional district magistrates and district magistrates depend for their very existence on the sweet will of the executive. They depend for their prospects upon the sweet will of the executive Government. I therefore submit that if they want to appoint an additional district magistrate or a district magistrate as one of the members of the Tribunal, it is quite natural for the public to think that they would not get a fair trial at the hands of this Tribunal. I think personally there was no need of creating a Special Tribunal for conducting the trial under these provisions, unless the judiciary broke down. They

can appoint additional ordinary courts and they can also give proper and legitimate help to the accused to get his case defended; also they should not have removed the ordinary jurisdiction of the High Court. If the normal procedure had been kept, people in this country would not have been as apprehensive as they are now owing to the drastic provisions contained in the Bill. Sir, Lord Hewart once said :

“ We cannot really prefer the executive jurisdiction to the jurisdiction of courts, and our faith in courts is not a mere fetish. It is based on certain fundamental reasons. The work of a court involves many important ingredients, as for example the judge is identified and is responsible for his decision, the case is conducted in public. The result is governed by impartial application of principles. All parties to the controversy are fully and fairly heard. All these elements are absent from executive decisions”.

I therefore, submit, Sir, that if you require emergency legislation, you must at the same time take proper precautions that you do not by giving powers to the executive curtail the liberties and interfere with the ordinary avocations of the public. This Bill, Sir, contains so many provisions and such drastic provisions that if the executive want to misuse them, they can on any pretext, on any excuse, try to misuse these powers and curtail the liberties of the people. I therefore suggest to the Government to tone down the rigours of this Bill by accepting some of the amendments that are likely to be moved on this side of the House.

THE HONOURABLE MR. P. N. SAPRU (United Provinces Southern : Non-Muhammadan) : Sir, I should like first of all to say that I consider it a pity that we are meeting after the Legislative Assembly has been adjourned *sine die*. I say it is a pity because I think the fate of my amendments has been sealed by the decision to adjourn the Legislative Assembly *sine die*. Nevertheless, one has to discharge one's duty and I shall move, when the time comes, the amendments that stand in my name. The Honourable Mr. Williams in asking us to take this Bill into consideration said that the proposals embodied in this Bill were unprecedented in their nature. He went on to say that the circumstances under which this Bill was being introduced were also unprecedented in their character and he expressed the hope that the Council would not fail him. Constituted as this Council is, he may rest assured that the Council will not fail him. Now, Sir, the measure before us has been necessitated by war in large parts of Europe. India, on account of her connection with Britain, is also at war and therefore it cannot be denied that there is an emergency which we have to take into consideration. The Bill, if we come to examine it, is one of extraordinary severity. There can be no doubt about that. I do not think even Mr. Williams, who is much more humane and much more just than some of his supporters over there—my respected friend, for example, Sir A. P. Patro—even he will not deny that the Bill is of extraordinary severity.

THE HONOURABLE SIR A. P. PATRO : Meaning of words !

THE HONOURABLE MR. P. N. SAPRU : I think that is one of the professions you might have taken to ! You mistook your vocation in life ! When I was hearing Sir A. P. Patro's remarks about the Criminal Investigation Department and the Nazi propaganda among students—(I know something about students, I come into touch with them and I know how anti-Nazi they

[Mr. P. N. Saprú.]

are in sentiment and thought)—when I heard his remarks about Nazi propaganda among students, I was just wondering why Government had not done something for him, why they had not given Sir John Ewart a good deputy. I think Sir A. P. Patro mistook his vocation; he would have been an excellent officer of the C.I.D.!

The Bill gives almost unlimited powers to the executive in almost every aspect of national life, controls and regulates all our activities, introduces new principles into our jurisprudence, changes the procedure followed in judicial trials and prescribes punishments for certain new offences which it creates. Now, Sir, a glance at section 2 (1) and section 2 (2) will show how extensive these powers are. In section 2 we have got a number of powers. I think they extend to (xxxv) enumerated powers, but all these powers are in addition to the generality of the powers of the Central Government to make such rules as may appear to it to be necessary or expedient for securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of war, or for maintaining supplies and services essential to the life of the community. Now, Sir, wider powers than those contemplated by the Bill it is difficult to conceive. And if it were not that we were in an actual state of war with Germany, the proper course for this Council would have been to refuse to consider the Bill on its merits. *But we dare not.* And I emphasize these words. We dare not ignore the fact that we are in a state of actual war, even though hostilities have not occurred or are occurring in any part of the country. Therefore, Sir, it is to be earnestly hoped that, if and when this Bill becomes law, the executive Government will not rush into putting it into force—that they will put it into force on various dates—and will not rush into putting this Bill into force all over the country at once, and that they will exercise the discretion which this Bill gives them with wisdom, judgment and with due regard for the rights and liberties of the citizens affected by it. It is, Sir, rather strange that, while we are fighting totalitarian States, we are in this transitory period towards a better social order adopting totalitarian methods ourselves.

Sir, the Honourable Mr. Williams said that the Bill was very much similar in principle to that which had been passed by the House of Commons almost in a couple of hours. Similar Bills had been passed in the Dominion Legislatures also. Now, Sir, our reluctance—and I must admit that I am reluctant to support the Bill, I hesitate to support the Bill, our reluctance to support the Bill is due to the fact that there is in this country unfortunately no harmony between the executive and legislative organs of Government. In England you have a Government which is responsible to the people of England. Here you have a Government which is not responsible to the people of this country, which is not under the control of the people of this country, which is not even amenable to any effective influence on the part of the people of this country and that makes a big difference. It is unfortunate that the war has come at a time when we have no responsible government in the country. If we had responsible government, naturally our response to the Bill would have been different because we could have then trusted that executive more whole-heartedly than we can trust the present executive.

There is another difficulty that stands in the way of our supporting the measure in its present form and that is our past experience of the old Defence of India Act. Now, that old Defence of India Act, Sir, was used not only against those who were siding with the enemy but it was used also against those who were fighting for the freedom of their country. It was used against that venerated old lady who rendered great services to India—Mrs. Annie Besant. I do not think any Member of the Government would call Mrs. Besant a friend of Germany. She was just as loyal to the British connection as Sir Ramaswami Mudaliar or as Sir Jagdish Prasad is or as the Honourable Mr. Williams is. But she was a keen Home-ruler and I suppose our distinguished friend Sir Ramaswami Mudaliar, whom we are glad to welcome here in this Chamber—I hope he will visit us more often and we would like to have opportunities of listening to his eloquence—shares our aspirations for self-government with us. Well, she was just as loyal as any member of the Government. If he was free to express himself, he would probably express himself just in the way in which we express ourselves. Therefore, we cannot overlook the fact that the constitution of the executive Government in this country is vastly different from that of the executive Government in the Dominions and in England and that makes a difference. That makes a difference in our psychology. That makes us hesitate, that makes us reluctant to support a measure which we regard as essential for the safety of India, which probably is essential for the safety of India. We do not know how this measure will be used. And if you want, therefore, the whole-hearted co-operation of the people of India, you must try and change their angle of vision, you must try and change their psychology, and this psychology you cannot change by any Defence of India Bill. This psychology you can only change by bold and comprehensive measures of political and social reform.

Sir, I have indicated that I am proposing to move a number of amendments to the Bill. But perhaps, Sir, you will allow me to indicate what I conceive to be some of the more objectionable features of the Bill from our point of view. I will deal first of all with the question of the constitution of a Special Tribunal. Now, so far as the constitution of a Special Tribunal is concerned, the first objection that I have to the Special Tribunal is that its composition is not satisfactory. It is going to have three members. One of them will have to be a person who is qualified to be a High Court judge. He need not be a High Court judge. Now, a person qualified to be a High Court judge—I think any one who has practised for over 10 years as an advocate is qualified to be a High Court judge. Anyone who has exercised the powers of a sessions judge or a civil judge for a certain number of years is qualified to be a High Court judge—is not the same as a High Court judge. There is a difference between a High Court judge and a person qualified to be a High Court judge. Then, so far as other members are concerned, they may be either a sessions judge or an additional sessions judge or a chief presidency magistrate or an additional chief presidency magistrate or a district magistrate or an additional district magistrate. Now, Sir, I have no objection to sessions judges and additional sessions judges. But I would not class chief presidency magistrates, additional chief presidency magistrates, district magistrates and additional district magistrates with sessions judges and High Court judges. After all, a district magistrate has a subconscious executive bias.

[Mr. P. N. Sapru.]

He cannot help the constitution of his mind. He is accustomed to executive work and he does not approach judicial questions from a judicial point of view. He cannot escape this subconscious bias. Secondly, Sir, one's experience of our district magistrates is that they have not the same experience of law and procedure, they have not the same regard for law and procedure that our sessions judges and High Court judges or our barrister judges or our advocate judges have. Therefore, Sir, frankly I think a Tribunal like that is not likely to inspire the confidence of those who are tried before it. I think, Sir, it is not enough that justice is done. It is further necessary that there should be a feeling that justice has been done. You remember, Sir, that the greatest gift that Britain has given to civilization is the rule of law. We know what this rule of law is. We remember the famous case of Wolfe Tone, the
 4 P. M. Irish rebel. There was a war going on between England and France. Wolfe Tone fought with France against England but was captured, and then he was tried by a court-martial and ordered to be hanged. Then an application for a writ of *habeas corpus* was moved before the Irish High Court and the King's Bench Division issued that writ. When you remember, Sir, the circumstances under which Wolfe Tone was tried, you will have admiration for those judges who issued the writ and ordered Wolfe Tone to be released. It has been the proud boast of England that it has given to countries which are under its sway the rule of law and therefore I think—

THE HONOURABLE THE PRESIDENT: Why go so far? We have distinguished judges in India too.

THE HONOURABLE MR. P. N. SAPRU: I never denied that, Sir. I know we have very, very great judges in India. With all the respect I have for our Indian judges, I would say that even these Indian judges have borrowed their ideas of jurisprudence from British judges. So, perhaps you will not contest that we have derived these ideas from British jurisprudence—

THE HONOURABLE THE PRESIDENT: And the Britains have borrowed from the Romans! (Laughter.)

THE HONOURABLE MR. P. N. SAPRU: That is probably true. But I cannot trace the ancestry further back than the Romans. What I was saying is that it is essential that there should be a feeling that justice was being done, and if you have a constitution like this for your Tribunal, you are not likely to have that feeling among those who are going to be convicted by this Tribunal. Therefore, I would very strongly urge that the constitution of this Special Tribunal should be revised.

There are certain other objections to certain specific provisions in this part of the Bill. I find, for example, that under clause 10(2), it shall not be necessary for evidence to be taken at length in writing. It will be possible for a Tribunal to proceed with the trial of the accused in the absence of one of the members of the Tribunal. Suppose I am serving on the Tribunal. I will just imagine myself to be a member of this Special Tribunal—

THE HONOURABLE SIR DAVID DEVADOSS: I hope you will be!

THE HONOURABLE MR. P. N. SAPRU: I do not know. Not if my Provincial Government can help it. I will imagine myself to be a member of this Special Tribunal. The accused is before this Special Tribunal. I attend the Special Tribunal for two or three days consecutively and then on the fourth day I get an attack of dysentery and I am disabled from attending the Tribunal for two or three or four days and then I come on the seventh day of the trial to the Tribunal. What do I find? I find that evidence has been recorded in my absence and I have not had an opportunity of watching the demeanour of the witnesses during the three or four days that I have been away. I find that I am only supplied with a summary of the evidence, and not the entire evidence. On a summary of the evidence you cannot convict a man for perjury. You expect me on that summary to come to a definite conclusion and definitely say whether the man is guilty or not. I would say to myself, "Two of my colleagues have found him guilty. They have had an opportunity of watching the demeanour of these men. I think I had better agree with my two colleagues. I will vote with them?" Can you, under those circumstances, get a really good trial? I think, therefore, that it is necessary to insist that the evidence should be taken down in full. What will be the difficulty in your taking down the notes in full? If you give your Tribunal good shorthand reporters—you can import them if you like, or you can export them if you like from the Government of India—if you give your Special Tribunal good shorthand reporters, there ought not to be much difficulty in taking down the evidence in writing. I look upon this as very necessary, that there should be a proper record of the evidence tendered before the Special Tribunal.

There is another provision to which I cannot, I confess, reconcile myself, and that is the provision in regard to appeals. The position as I visualize it is this. A man who has been sentenced to death will have a right of appeal to the High Court. A man who has been sentenced to transportation for life will have a right of appeal to the High Court. A man who has been sentenced to rigorous imprisonment for a period of 10 years will have a right of appeal to the High Court. But a man who has been sentenced to anything less than 10 years will have no right of appeal to the High Court. What may happen is this. You may have a dishonest Tribunal; you may have an unscrupulous Tribunal; you may have an unprincipled Tribunal. They may say to themselves, "We do not want our judgment to be reversed or revised by the High Court. We can just escape this appeal if we will sentence this man to 9 years and 11 months, or 9 years, 11 months and 29 days—"

THE HONOURABLE THE PRESIDENT: You have got a very poor opinion of our judges.

THE HONOURABLE MR. P. N. SAPRU: Human nature being what it is, one has got to go by one's experience. I know, Sir, civil judges and criminal judges who know how to manipulate records also, who can make a record safe against appeal to the High Court. There you are. Therefore, Sir, having admitted the principle of appeal, you ought really to have gone further and allowed an appeal in all cases. But, even if you are not prepared to allow an appeal in all cases, there is one circumstance in which, I think, in any event you ought to allow an appeal. It may just happen that there may be a difference of opinion in the Tribunal. Two of the members of the Tribunal may

[Mr. P. N. Sapru.]

think that the man before them is guilty, while the third member may think that he is not guilty, and the conviction may be only by a majority of the Tribunal. Even if there is one member of the Tribunal who thinks that the accused is not guilty, then the accused ought to have a further chance of appealing to the High Court, because you cannot then say that there is no reasonable doubt as to the guilt of the accused. Very often it happens that there is a difference of opinion between two judges. You remember, Sir, section 429 of the Criminal Procedure Code. If there is a difference of opinion among the judges in a criminal appeal, then under section 429 of the Criminal Procedure Code, that appeal has got to go before a third judge. Here, there is a reasonable doubt as to the guilt or innocence of the accused and he ought to be given a further chance of going to the High Court. If the High Court agrees with the majority, he will get convicted; if the High Court does not agree with the majority, he gets acquitted. You have a Tribunal of three. It may just happen that the dissentient judge is the most distinguished of the three members. Suppose you have a High Court judge on the Tribunal and he finds himself in a minority of one and the two district magistrates with their experience only of summons and warrant cases come to the conclusion that the accused is guilty, while the High Court judge with his larger vision and outlook and less executive bias may have come to the conclusion that he is not guilty. In that case because the two men of inferior quality have found him guilty he must be held to be guilty and be convicted. I submit therefore that this provision as it stands under section 11 is open to grave objection and requires drastic revision.

Then I should like to say a few words about the provisions regarding regulation of public meetings. So far as that is concerned I do not see why you need any change in the law? You have very wide powers under section 144, and Congress Governments have been rather inclined to interpret section 144 very liberally. For instance, we had a curfew order for 48 hours in Benares under section 144. Then why do you want a clause for regulating public meetings? You have that power already.

Then I should like to make one or two observations about labour in which I am interested. Now, Sir, as the war develops prices are bound to go up and we know that wages will not always keep pace with prices and there is bound to be some labour unrest. I should not like these powers to be used against *bona fide* trade union disputes. I should like to have a very clear assurance from Government that something will be done to control prices, that something will be done to regulate wages and that the powers which are going to be vested with under this Act will not be used against *bona fide* labour disputes. I think the Ordinance is being used in the Digboi strike. I do not want to say anything about that.

THE HONOURABLE THE PRESIDENT: You don't think labour goes in for profiteering?

THE HONOURABLE MR. P. N. SAPRU: Sir, if he sometimes profiteers I connive at his profiteering but I will not connive at the profiteering of those who are going to make fortunes out of this war or those who will get fat salaries.

because there is a war in progress in Europe. My sympathies are, I confess, with the underdog, because I believe in a more just social order, in a social order which will enable the common man to have a living wage, and I do not think that in all these disputes between labour and capital that labour is necessarily in the wrong. I think often labour is in the right. I know that there is some red propaganda, but I do not see red everywhere, just as I do not find Nazi influence among the students with whom I come into contact. I think therefore that an assurance on this point is needed.

Well, Sir, I have tried to invite the attention of the House to what I conceive to be some of the more objectionable features of this Bill and I have tried to explain why we find it difficult to support the Bill in its present form. Our hesitation is not due to a lack of realization of the perils with which we are confronted. It is not due to a lack of sympathy with the cause for which the democracies are fighting; but it is due to our experience of the way in which the Defence of India Act was administered and our mistrust of the executive which happens to be in control of the destinies of this country at the Centre. Sir, the Honourable Lala Ram Saran Das will be able to speak on this point more fully than I. The people of the Punjab had experience of Special Tribunals under martial law regime and of how they were prostituted by Sir Michael O'Dwyer for certain purposes is well known. We do not want a repetition of Amritsars and we do not want to have Colonel Johnsons and Brigadier Dyers. I know that in the Punjab that have got a popular Government in power, but my Honourable friend Haji Muhammad Husain has not much confidence in the United Provinces Government. I am told by some of my Hindu friends that they have not much confidence in the Government of Sir Sikandar Hayat Khan. Therefore, I can say nothing and do not know anything about the Punjab Government. I know something about my own Government. (*An Honourable Member*: "Have you got confidence in your own Provincial Government"?) Yes. There may be points on which I may not agree with my Provincial Government but I think it means well. I may not agree with all their policies but I do not look upon them as a rabid body of communalists and I do not look upon them as a rabid body of communists. I do not suffer from a communist phœbia.

Well, Sir, I have explained why we find it difficult to lend our support to the Bill in its present form. I have explained our reluctance and our hesitation to give our support to the Bill in its present form.

THE HONOURABLE THE PRESIDENT: Honourable Members, I propose at this stage to call upon the Honourable Sir Ramaswami Mudaliar to address the House. Mr. Williams will reply and wind up the debate later on after some Honourable Members have spoken who had not the opportunity up till now of speaking. I am sure we all feel very pleased to see our old and distinguished colleague back in this House. (Applause.) We are proud of him. During the years 1929 and 1930 he was a distinguished and prominent Member of this House and much respected both by officials and non-officials. Subsequently he joined the Legislative Assembly and there distinguished himself more than he even distinguished himself here. He has always been a great statesman and politician. (Applause.) We are very gratified that he has come back to the scene of his old labours and a great many things

[Mr. President.]

are expected of him. I congratulate you, Sir, on your appointment on behalf of the Council and we hope you will have a very distinguished career as Commerce Member. (Applause.)

THE HONOURABLE SIR RAMASWAMI MUDALIAR (Commerce Member): Mr. President, you have made me virtually speechless by the remarks that you have addressed me and the congratulations that you have extended to me. It is in keeping with your good nature and with the extraordinary kindness that you have always extended to your colleagues when we were colleagues in the House and to all Members of the House since you have become President.

I feel somewhat like Rip Van Winkle, visiting this House after nearly a decade; when I listened to the speeches from the other Benches as I did this morning, when I found that the Council of State was sitting after lunch also, when I found that after several hours of debate Consideration stage of this Bill is still on, I felt very much that old times are changed, old manners gone and a genial President occupies the Moncrieff-Smith Chair.

Mr. President, I wish to have the indulgence of the House for a few minutes only to make a few observations on this measure and I should like first of all to make a preliminary observation regarding the course that is to be adopted in this House with reference to the amendments. My Honourable friend Mr. Kunzru and my Honourable friend Mr. Sapru expressed their discontent at the fact that the other House had been adjourned *sine die* and that therefore any amendments that may be moved in this House were predestined to be lost. My Honourable friend Mr. Kunzru went so far as to suggest that it was a farce that was being enacted here. I confess that I did not understand the Mover's speech in the sense in which it has been understood by the two Honourable gentlemen opposite. My Honourable friend Mr. Williams said that the other House had been adjourned, that amendments would be taken up for consideration, but that in the consideration of these amendments the House would naturally realize that if any amendments were to be accepted, it would mean that this Bill would have to be postponed to the next session of the Assembly in January and therefore he adjured the House to take into consideration only such important and vital amendments which the House felt absolutely necessary to adopt. He in fact suggested that if any other amendment was to be accepted, the benefit that would accrue from the amended legislation by the other House would be delayed; the Ordinance would then be in full effect for the next few months and that this benefit would only come into effect after the Assembly had met in January and considered these amendments. From that, I venture to submit, it is somewhat unfair to suggest that the whole of this session of the Council which is now considering this Bill is a farcical session and that everyone of us has closed his mind to any amendments even though they could be shown to be vital and absolutely necessary for the proper conduct of affairs in connection with this Bill.

Now, Sir, in commenting on the substance of the complaints that have been put forward by the other side, I am somewhat at a disadvantage. Let

me take one or two preliminary observations that have been addressed. My Honourable friend Mr. Kunzru illustrated the point that this was an irresponsible Government conducting its affairs in an irresponsible way by giving the constitution of the War Supply Board. I hope that when I have explained the constitution and the composition of the War Supply Board he will not find himself in the same position as he did this morning and will not have the same complaints about that Board, and the exclusion of any Indian personnel on that Board. Now, it has to be remembered that the President or the Member in charge of the War Supply Board is himself an Indian; the Supply Member is our esteemed friend Sir Muhammad Zafrulla and the War Supply Board functions under his direction. There is also a Defence Supply Council composed of four members of the Government, two of whom are Indian members of the Government and two are non-Indian members. But apart from that it has to be remembered that the War Supply Board itself does not carry out executive functions of a very large order, that it functions through various Departments of Government, that in these Departments of Government there is Indian personnel, secretaries, joint secretaries, deputy secretaries, not to mention those below that rank; so that I think it is not quite a fair suggestion, that a technical body has been constituted for the conduct of this war, and for purposes connected with the conduct of the war which has practically excluded and, if I might venture to read the minds of my Honourable friends, deliberately excluded Indian personnel from that organization. Sir, it is no secret that from the head of the Government downwards there is no intention whatsoever in the prosecution of this war, in constituting various bodies connected with the prosecution of the war, to exclude Indian personnel of any kind—

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: What about these organizations that you have mentioned?

THE HONOURABLE SIR RAMASWAMI MUDALIAR: These organizations are in close collaboration with other organizations in which there is Indian personnel, even if in the organization which the Honourable Member has isolated there is no Indian member.

Then, a suggestion has been made from various parts of the House that leaders of industries, representatives of labour, the president and other office bearers of trade unions should be taken into consultation in connection with this war effort. I think it was my Honourable friend Mr. Kunzru who suggested on the analogy of similar boards in England that non-official gentlemen should be taken into consultation in connection with this work. I venture to think that he has somewhat misread the analogy of the English Board. The English Board, if my recollection is right, consists of a number of industrialists in connection with war supply, particularly munitions, and for a very good purpose. There is a vital distinction between this country and Great Britain so far as the supply of munitions is concerned. Honourable Members are aware that the munitions industry, the most vital industry for war purposes, the industry *primus* without *secundus*, is in the hands of private industrialists in Great Britain, that it is not a State monopoly, that the State does not itself manufacture except quite recently and to a very limited extent, munitions

[Sir Ramaswami Mudaliar.]

required for war purposes. Therefore, any Munitions Board must necessarily have representatives of the industry concerned, to expedite the manufacture of these munitions, to enlarge the scope of such munition factories and to see to it that deliveries are prompt. Fortunately in this country—I say fortunately advisedly because I am one of those who agree with the recent Report of the Committee which considered the question of munition industries by private individuals—fortunately in this country the supply of munitions and the manufacture of munitions is a State monopoly, so that to that extent and in that direction the co-operation of industrialists in this country stands on a different footing from similar co-operation in England. But, apart from that, at no stage has it been suggested that the War Supply Board or any other organization which deals with the supply of materials necessary for the prosecution of the war desires to work except with the co-operation of various industrialists and indeed of various labour organizations. During the past few weeks—if newspapers have been read aright, and very often they seem to know things which are still below the horizon and not within the cognizance of members of the Government—if newspapers have been read aright, Honourable Members must be aware that industrialists from all parts of the country have been invited to Simla and there has been close consultation and collaboration with various industries engaged in different matters.

Sir, Honourable Members have also stated that labour interests should be taken into consideration. I have no doubt that Government in the prosecution of this war and in getting the supplies necessary for the prosecution of the war wants the utmost co-operation from all interests concerned. We want the co-operation of industrialists and we want the co-operation of labour organizations at the same time. So far as labour is concerned, primarily it is the concern of Provincial Governments. If there are strikes, if there is the holding out of labour for the purpose of wage increases, the Provincial Government is first and foremost in charge of these matters and Provincial Governments are discharging these functions to the satisfaction of some at least of the Honourable Members of this House. A secondary stage may come when the Central Government, *vis-a-vis* the responsibility for labour in the concurrent field of legislation and sometimes of executive action, may have to deal with these matters. And if it is necessary for me to give an assurance as Member in charge of Labour, I do give this assurance that I shall as far as possible, and my Department will in every way practicable, deal with this question in the most sympathetic manner and try to get as much co-operation from trade unions and labour organizations as is possible.

My Honourable friend Mr. Sapru talked of the underdog. I have every sympathy with the underdog. It is a phrase which I myself used in days past. It is a statement which it is very hard to controvert. But sometimes we have to realize that the underdog may try to become top dog also and I have only one caveat to enter, one warning to give, one suggestion to make,—that, even as Government is most anxious to get the co-operation of labour unions and of trade unions and other organizations of labour, even as they are most anxious to see that their legitimate grievances are satisfied, that they are not exploited unnecessarily, that their activities are not cribbed,

cabined and confined, even so may I venture to hope that in this time of stress and of acute difficulties in every field, trade leaders also will take the fact into consideration that a heavier responsibility rests on them today than in normal times, that it is very easy with the ignorant and very often misguided labour population to so accentuate their grievances, real or imaginary, that you can fan the flame but you will find it very difficult afterwards to put down the conflagration. I venture to make an appeal through this House to all trade unions, that just as the Government of India and the Provincial Governments are most anxious to see that in no way are legitimate trade union activities curtailed, that in no way are the grievances of labour minimized, they also in their turn will not (to use a word which fell from your lips, Mr. President) profiteer on this occasion. It is a double-edged weapon even as it is a dual responsibility.

With reference to industrialists and capitalists generally, Honourable Members are aware that Government have taken steps to see that there is no profiteering whatever with reference to necessaries of life and in fact, while the House was still considering the measure, thanks to the Ordinance which was promulgated by His Excellency the Viceroy, the Government of India was in a position to respond to the appeals, and sometimes very frantic appeals, that were addressed to them by Provincial Governments and issue rules whereby profiteering was stopped at a very early stage so far as essential necessaries of life are concerned. The one consideration that I had in mind when I made myself responsible for these rules was not the economic consideration. In the first days of a war there was bound to be an increase in prices, but these prices were soon bound to come down, as communications are normal in this country and supplies as large as they are. Those were not the considerations that I had in mind, though economically they were the right considerations. The consideration which weighed with the Government of India was the consideration which Mr. Sapru mentioned, consideration for the underdog, for the labourer whose wages could not be increased, consideration for the fact that the wage-earner has to get his supplies from day to day and could not wait for the fortnight or three weeks which our economic advisers assured me would bring down the prices, but that they had to get their supplies from day to day and that the prices had to be checked to that extent.

Now, Sir, let me go to one aspect of this Bill which has been referred to by most Honourable Members and it is not with any pleasure that I refer to that aspect. Honourable Members all concentrated their energies and their criticism on the provisions relating to the Special Tribunal. They said that drastic powers were given, that Special Tribunals were constituted to try these cases and therefore this Bill which gave such drastic powers was not acceptable to some of them. Honourable Members, besides my esteemed friend Pandit Hirday Nath Kunzru and Mr. P. N. Sapru in particular, said that it would be quite legitimate if a Legislature and a Government constituted in relation to each other on the basis of the British Parliament and the British Government had taken these powers or had asked the Legislature to give them these powers, but that under the present constitution with an irresponsible Government and with a Legislature which was not in a position to control the activities of that Government, it was somewhat risky. One

[Sir Ramaswami Mudaliar.]

Honourable Member even went further and said that it was much too dangerous to confer this power on that Government. Having addressed a similar argument from the other side of this House myself, I thought in the first instance that it was an argument that I could not meet, that there was a great deal of force in it, and that the Government of India should sit in sackcloth and ashes and admit the charge as legitimate. But I was astounded when Honourable Members proceeded to develop that argument, and when they came to the later portions of their speeches, I found they had given themselves a complete and cogent and logical and, I would say, Sir, a much better reply than I could give from my position in the House to that argument. When it was pointed out that these provisions were to be exercised by Provincial Governments on most occasions, that those Provincial Governments were responsible Governments, that they were bound by the mandates of their Legislature, that they were not like us who may not toil and certainly do not spin but they were carrying out the behests of a responsible Legislature, Honourable Members turned round and said in so many words (I am not quoting them) that these responsible Provincial Governments are much worse than the irresponsible Central Government. Sir, I hope I am not misrepresenting the case or putting it too strongly when I say that the unfortunate effect of many of the statements made by Honourable Members opposite was that an elected Legislature controlling a representative Government in the democratic sense of the word was not even as reliable or as trustworthy as this irresponsible Government with the constitution that it has at present. I venture to state that that is an argument of despair. Even if it would suit me very well, on this day and in this place, to accept this argument, I would not do so. For, what does it come to? So far as I can see, it takes the whole ground from under my feet. We are fighting this war to establish democratic principles. We are siding with democracies against totalitarian States. We are trying to see that democratic institutions all over the world flourish, that aggression is not the feature of the day, that totalitarian States, Nazism and Fascism do not establish themselves in the world and that the privileges which have been earned by decades and centuries of strife and struggle by the peoples of the democratic countries are not lost in this colossal and unfortunate war. Honourable Members, on the other hand, hope that even during this war, or at any rate immediately afterwards, this country would have all the benefits of such democratic institutions. And today, in this House, and the other day, in another place, it was my misfortune to hear speeches which suggested that democratic institutions did not have the faith that they deserved of Honourable Members in either House of the Central Legislature. I again repeat that that is an argument of despair. I do not want to minimize the fact that Honourable Members coming from various provinces may have grievances, may be deeply dissatisfied at some one act or another of the Ministry and may have legitimate feelings of despair even if the Car of Juggernath is rolling on, and not all the words of wisdom, and not all the words of criticism that have been addressed to these various Ministries have been able to stop the progress of that Car of Juggernath. But, Sir, having had for years my own training and belief in democratic institutions, I venture to think that we may pause and consider

whether, after all, we have not taken too serious a view of the situation, or have not come to our judgment too hastily. There are majorities and minorities in every province, and minorities will always have a sense of grievance. But it is my belief that the only way in which we can establish our faith in democratic institutions and justify our demand for progressive democratic institutions is to believe that the time will come when the wheel of fortune will change and the minority will become a majority, that institutions like human beings are under the control of the law of change, and that what may be happening today may well be reversed on another sunny day. That is my hope, and if that hope is lost, the very fundamentals of constitutional change in this country, the very fundamentals for which every political party is aspiring, will be lost for ever. With the expressions that have been voiced in this House, one set of Members suggesting that particular provinces are not carrying out their duties properly and another set of Members suggesting that other provinces are equally guilty, while some are impartially unjust to all provinces, if I may say so, that state of things will not continue long.

My Honourable friend Mr. Sapru and some other Honourable Members were very critical of the provision for Special Tribunals. Why they should have been so critical, what their apprehensions are and how a Special Tribunal is going to be a particularly vicious institution in connection with this Act, I honestly have not been able to see.

THE HONOURABLE MR. P. N. SAPRU: On a point of explanation, Sir. I did not criticize the principle of the Special Tribunal. I criticized the constitution of the Special Tribunal.

THE HONOURABLE SIR RAMASWAMI MUDALIAR: I was coming to the constitution of these Special Tribunals. My Honourable friend suggested that district magistrates should not have a place in the Tribunal, that their previous experience as executive officers biased them in favour of a certain way of looking at questions and that therefore their judgments would not be as fair and impartial as those of civilian judges. I do not wish to argue on that subject. But when my Honourable friend went further and spoke of civilian judges who manipulated records, I wondered whether a district magistrate with a bias for the executive was more dangerous than a civilian judge with a bias for manipulating records. No, Sir. It is a case of faith again, faith in our own men who will be called upon to discharge these duties of judges of Special Tribunals. There is no virtue in a gentleman who can aspire to be a High Court judge, nor is there necessarily any vice in a gentleman who acts the part of a district magistrate, and, in the present case, with provincial autonomous Governments, with the staff whether on the judicial or on the executive side equally under their control, and according to some friends under the influence of the executive Government I personally do not think that there is any more difference than between Tweedledum and Tweedledee, whether the officer is a sessions judge or a district magistrate. And, after all, the selection of these officers is vested in the Provincial Government. But, Sir, that is not the point. In the first place, it is not proposed to give power to Provincial Governments to constitute Special Tribunals straightaway. It is a power in reserve, meant to be used only when the

[Sir Ramaswami Madaliar.]

state of legal work becomes so acute in any particular provinces or a particular class of crimes like terrorism breaks out that nothing but the constitution of Special Tribunals could relieve the position. In the second place, surely, responsible Provincial Ministers will go through the proceedings of this House—I take it that they will be as courteous as that—and I am perfectly certain that the criticisms that have been addressed will be borne in mind by the Provincial Governments in constituting such Special Tribunals. Sir, my Honourable friend Mr. Sapru, talking as a lawyer—and naturally so—spoke of differences of opinion between judges, and made great point of the fact that while a person who was condemned to 10 years' imprisonment had a right of appeal, a person who was condemned to 9 years, 11 months and 30 days, if it is an odd month, would not have that right of appeal. But wherever you set the limits, that sort of anomaly is bound to arise. It does arise now under the Penal Code and under the Criminal Procedure Code. Magistrates who sentence to six months' imprisonment do not give the accused a right of appeal. It is so with various other sentences. So that, it seems to me that it is rather a weak argument to suggest that only a particular sentence is appealable, and therefore there will be grave injustice if sentences below that are not appealable to a High Court. The fact is this. Does the Honourable Member think that it is any encroachment on the rights of the accused, if I might use the term, when he is placed before a Special Tribunal of three judges and not a single magistrate, and therefore the limit of appeal to a High Court is a larger and heavier sentence than would be given by a single magistrate? In the High Courts my Honourable friend knows that if a single judge is sitting in sessions there is a right of appeal under the Letters Patent if the Advocate General certifies. But if a Special Tribunal is constituted perhaps that right of appeal is taken away. The guarantee for the person lies in the fact that it is not a single judge who tries him but a panel of judges, three in fact, who try him, and it is because of that enhanced right which he gets at the trial stage that some right with reference to appeal has been curtailed.

Sir, I do not think I will be justified in detaining the House any longer, but I venture to say a final word. There is no doubt that we are living in extraordinary circumstances. There is no doubt also that extraordinary powers have to be utilized. If I know anything of the Government of India—my Honourable friends put it as a disadvantage to them that this Government is constituted in an irresponsible way—but if I know anything of the Government of India, and I have had sufficient time during the last four months to know something of it, it is that very irresponsibility that makes it more attentive to public opinion. A popular Government with a majority safe behind it can afford to take risks and can afford to embark on policies which an irresponsible Government, whatever it may do at other times, in these times of critical anxiety, of strife and struggle, with the need for getting the largest amount of goodwill and co-operation from all sides cannot do. I say very definitely, not merely in India but in every country and more particularly in India, an irresponsible Government will try to adjust itself more in consonance with public opinion and with public wishes. And I am giving no secret away when I say that every member of this Government

and its head are day after day trying to get into touch with public opinion, to follow the public mind, and if only the public can utter its opinion in clear and unambiguous language and not in language which mystifies every one and does not help the solution of any problem, I venture to state that nobody will be readier than the Government of India to meet the wishes of the public and thereby get their co-operation. (Applause.)

THE HONOURABLE MR. HOSSAIN IMAM (Bihar and Orissa : Muham-madan) : Mr. President, after the eloquent speech of the Honourable Commerce Member it is rather difficult to say much in criticism of this measure. Sir, realizing fully the gravity of the situation in which this Bill has been brought forward before us, we are prepared to concede that ordinary day to day rules cannot be applied to this measure. The calamity of a war which confronts His Majesty's Government has thrown its shadow on us as well. Living under the ægis of the British Empire we cannot escape the consequences of the general conflagration that is taking place in Europe. We are prepared to give special consideration to this measure, and it is due to that spirit, that the Government has found it possible for the Assembly to deal with this measure in such a short time. If that spirit of co-operation was not forthcoming it would have been impossible to get this Bill through. The Indian Members whether of this House or of the other place have not refused to consider this measure as they would have been justified in doing if this had come at any other time. We are here as trustees of the electorate who have sent us to this place. Legislative power is not a private property of our own which we can give to any one we desire to. When we are dealing with the liberty of the electorate it is necessary that we should act as trustees and do everything for the betterment of their interests, and it is only on that one condition that we can possibly hand over our powers to the executive, whether they be a responsible or an irresponsible executive. Sir, this Bill in short is an abdication of the Legislature in favour of the executive. Our Honourable colleague Mr. Williams has accepted the proposition that it is almost a blank cheque. But I say that it is in another way a restriction on the power of the executive, as under the Government of India Act the executive could have brought forward an Ordinance embodying anything they liked. They could have continued it, as we found them doing when we had this non-co-operation movement of 1929—1931. Ordinances were then issued and continued, so that we had a regime of executive laws for quite a long period. With regard to this measure, just as the Government of India Act has given power to the Governor General to issue Ordinances, here the executive Government comes to us and gets our sanction to issue Ordinances in the shape of rules. The rules are the material part of this legislation and the Bill itself is only a framework. It is on the rules that we have to concentrate our attention. In this connection I should like to deal with the progress of this measure in the other place. The measure was brought forward as soon as there was a state of war between His Majesty's Government and Germany. At that time the elected Members of the Assembly found themselves in great difficulty because their colleagues of the Congress were not present. They had left their post of duty at a time when the danger was the greatest. They were not in the Legislature in their own personal capacity ; they were there as representatives of the electorate, consequently their duty was primarily at the post of danger and not in their homes. Whatever sense there may have been in their

[Mr. Hossain Imam.]

decision to abstain from attending the Legislature at the time they made it, after the declaration of war the situation changed immensely. The Working Committee of the Congress was in session at the time and met on the 8th, and if they had any sense of responsibility and any regard for the interests to which they always pay lip service, they would have hastened to the post of duty and not left it to save their own skins. They were not able to decide for themselves what to do, whether to support the Government or to obstruct it or to play a game and sit on the fence; and therefore they decided to remain where they were and not come up and help us to shape this Bill in a better manner. Sir, it is not as members of the Congress Party that I claim this from them; I claim it from them as representatives of a section of India. If they thought that they could not co-operate with the Government, their duty was to resign and let others take their places. Whatever we have been able to get from the Government we have got through Government's benevolence, as a concession, and I do not want to belittle that which the Government has given to us. The Government have gone to the extreme limit to which they could; we had nothing to force them. The Legislature in the other place was for once helpless, as helpless as we are every day in this House. I wish our Leader of the House will be as reasonable as the Leader of the House was in the other place, and accept the amendments placed non-violently, as the Leader of the other House has done. The Leader of the other House has placed complete faith in Mahatma Gandhi's theory of non-violence. He was not forced to do anything, because there was no force behind. He was reasonable not only in Select Committee but also in the Legislative Assembly. It goes a long way to restore confidence to find that sometimes even an irresponsible Government is amenable to arguments. Our Honourable Commerce Member tried to twit us with the way in which we have dealt with Provincial Governments. Mr. President, it is a reality that some Provincial Governments are more often than not of the same stamp as the irresponsible Government in the Council of State. They have the same intoxication of power which in this House we see—because of the absolute inability of the Opposition to register anything or to be able to defeat the Government. That is the real trouble of our present democratic system. Democracy is a success in England only when the Opposition is strong. The weakness of the Opposition is always reflected in the deterioration of the Government of the day. When we formed democracy here, we did not realize this difficulty which we would have to face. Democracy has been tried and found successful in certain countries; in others it has failed. The system of government in France is based so much on personal party basis that it cannot be compared with the basic system which prevails in England. The English system too cannot be compared with the Indian system, where majorities and minorities are not factors of time, but perpetuals. The minority question is not directly concerned with this measure, I am sorry not to find my Honourable friend Mr. Sapru here, because I wish to quote to him from his past speeches against his present attitude towards the irresponsible executive. Speaking in this House on the 23rd of September, 1935, on the Criminal Law Amendment Bill, my Honourable colleague said:

“ There is danger that these powers may be misused by Government in the future. I would rather trust the present executive than an Indian executive of vested interests in dealing with these dangers ”.

He was very clear in his mind on that day, that even the present bureaucratic and irresponsible executive of the Centre could be trusted to use drastic laws more mercifully than you could trust a Party Government which would try to use the powers in the interests of the Party Government and against the interest of those whose misfortune it is to differ from them.

Mr. President, I shall come to the Bill itself. The present Bill as has been described by Mr. Williams is somewhat different from what it was when it was originally introduced. Improvements have been made not only in the Select Committee but in the Legislative Assembly as well. But, as I said, we have not a complete picture to form an opinion, because the essential details which could only be supplied by the Rules are not present before us. There are certain provisions in this Bill which everybody can see are required for the exigencies of war. For instance, provisions enumerated in sub-clause (2) of clause 2 like items (iv), (viii), (x) and (xx). All these arise directly out of the war. But there are other provisions too which do not directly arise out of the war and on which there might be some difference of opinion whether they are essential for the prosecution of war. There are questions about the adequacy of the provisions which you have made. I am glad that the Honourable the Commerce Member described to us how he brought into action the provisions relating to profiteering. I should like to know a little more and in detail how they have worked? Does the experience that you have gained in these days show that they are sufficient, do you think it is too drastic or too lenient? While I am prepared to concede the necessity, it is mainly from the rules to be framed under this Act that you can come to a clear judgment whether there is too much power given or just sufficient. The Honourable the Commerce Member before he sat down said that it was the desire of the Government of India to get the support of public opinion. I am prepared to accept, Sir, that it is a genuine desire on the part of the Government. But I wish to see its results in a more concrete form.

I now wish to state certain conditions which, if fulfilled, would go a long way to give confidence. The first assurance that we want is that the widespread powers will not be used for furthering party motives but will be used solely for the successful prosecution of war and the maintenance of tranquillity of the civil population. Secondly, we want that the provisions of this Bill be extended to those areas only where there is necessity. And it will not be generally applicable, the rules will not be generally applicable to all parts of India. Thirdly, Sir, we want that the Government should consult the party leaders of the two Houses and consider sympathetically in the manner in which they have done at this stage the suggestions about alterations to the rules. As I say, the rules are the material portion. It is about the rules that I want an assurance that the Government will consult the Party leaders at the time of the Assembly session, if not earlier, and modify those rules to which the general opinion of the leaders might be against and be more lenient, and in other ways secure their support. Fourthly, Sir, I wish that the Government should lay down on the table of the House a statement of proceedings taken under this Act and the effect of these proceedings. It will be a general analysis because it is only in action that you can

[Mr. Hossain Imam.]

judge whether a thing is being fairly used or is being misused. If these conditions are acceptable to the Government, I think a great deal of suspicion which is prevalent at the moment would be removed.

Further, Sir, I would like the Honourable Mr. Williams to enlighten me on certain points which were obscure to me. Who will initiate the prosecutions under the Act? Whether the sanctioning authority will be the Provincial Governments or the Central Government?

THE HONOURABLE MR. A. DEC. WILLIAMS : I can tell the Honourable Member straightaway. If he looks at the Defence of India Rules, he will find it in rule 130.

THE HONOURABLE MR. HOSSAIN IMAM : Where the Provincial Government refuses to take action, who will take action then? As regards the powers given to the Provincial Governments, are they to be used by the Governor acting in his discretion or the Governor acting in his individual judgment or on the advice of his Ministers?

I would also like the Honourable Member to enlighten us why the other Ordinances which have been passed by the Governor General have not been consolidated in the form of a Bill. A measure to which some reference was made by my colleague the Honourable Haji Muhammad Husain also requires to be elucidated—whether the Provincial Governments can over-ride the ordinary Criminal Procedure Code and refer cases of offences not arising out of this Bill to the Special Tribunal—I mean ordinary criminal jurisdiction can be abrogated and Special Tribunals substituted for the ordinary conduct of justice. For, if that is the case, Sir, it goes too far. Then, Sir, a reference was made by my Honourable colleague Mr. P. N. Sapru to the fact that the Punjab Government has not the confidence of the Hindu population of that place.

THE HONOURABLE MR. P. N. SAPRU : On a point of explanation, Sir, I did not say that the Punjab Government hadn't the confidence of the Hindus. I said some Hindus say that it has not. I did not associate myself one way or the other with that criticism.

THE HONOURABLE MR. HOSSAIN IMAM : Then I need not bother about it. I only gave my mind to it because it came from you. If it does not come from a responsible person, I do not think it is worth replying to.

Now, Sir, having indicated the lines on which we want some assurance, I think the Government, if it is really willing to secure our co-operation, would take some concrete steps to have the active association of the non-officials in its prosecution of the war, rather than indulge in mere statements that it is willing to do so. I am quite prepared, Sir, to concede that it is not timely for us to ask for any great changes in the constitution of the country, but changes which can be brought about within the framework of the old Government of India Act by greater association of non-officials should not be delayed. The empty excuse that our energies are diverted towards war and we cannot allow it to go to any other side should not be brought out. Our troubles, Sir, are great. Not only the minorities, but others as well, are suffering and minorities need not be necessarily a religious minority. We have the experience of the Central Provinces

Congress Government in which a regional minority is being over-ridden and persecuted by a regional majority. We have also an ideological minority in the shape of Mr. Subash Bose and his party which is being tyrannized over by certain people who, though they may appear and pose as democrats, are in reality totalitarians.

THE HONOURABLE THE PRESIDENT : I would advise you not to bring up these extraneous subjects.

THE HONOURABLE MR. HOSSAIN IMAM : Sir, this arises because a provision in this Act exists—I am referring, Sir, to item (v) of sub-clause (2) of clause 2 of this Bill—which says :

“ to promote feelings of enmity and hatred between different classes of His Majesty’s subjects ”,

and an Explanation has been added :

“ To point out, without malicious intention and with an honest view to their removal, matters which are producing, or have a tendency to produce, feelings of enmity or hatred between different classes of His Majesty’s subjects does not amount to promoting such feelings within the meaning of this clause ”.

THE HONOURABLE THE PRESIDENT : That is quite plain and intelligible.

THE HONOURABLE MR. HOSSAIN IMAM : Sir, that is what I am saying, that in spite of that safeguard, which has been put in by the Government, there is still the danger that in interpreting it the magistracy—about whose being under the thumb of the executive there has been an open admission in this House on all sides (*Cries of “ Question ”, “ Certainly not ”*) may not be just.

THE HONOURABLE THE PRESIDENT : What do you do against so many misinterpretations that are made by judges in the courts ?

THE HONOURABLE MR. HOSSAIN IMAM : Sir, misinterpretations are made and in appeal courts they are corrected until we go to the Privy Council and get a final dictum as to the real meaning. The constitution has provided, in the shape of the Federal Court, a machinery for the correct interpretation of the Statute. We have in the Law Department of the Government of India also a machinery of this nature. But here, Sir, our position is that you do not allow cases to go to a court of appeal. The Honourable the Commerce Member considers it sufficient that you have in place of a court of appeal a decision by a court consisting of three judges. But will that be a consolation, Sir, when all the judges are biassed ? It is only in cases where we have a right of appeal to the High Court that we feel some security. Attacks have been made on the magistrates as well as civil judges, but nothing has been said so far against the High Court. I hope that High Courts will continue to be outside the influence of the Provincial Governments, whether it be in the Punjab, the United Provinces, Madras or Bihar for that matter. The High Court has been described by a very responsible Congressman as the last stronghold where British Imperialism flourishes, this slur is hurled because it is not amenable to Congress or to any other Government influence. It has earned a name for impartiality, it has created a tradition in these years

[Mr. Hossain Imam.]

for its independence; it is for these reasons that so much stress has been laid on the right of appeal to the High Court, because no one, no matter what province he comes from, has lost faith in that body, and that body alone stands out in entire India. It may not be the last refuge of British Imperialism, but it is the last hope of those who have the misfortune to differ from the Government and are unjustly accused of high-handed actions. In these circumstances, I appeal to the Government that as they began, they should end. They have begun by co-operation and by accommodation, and they should carry on this policy of accommodation and conciliation as far as they can go and then India will not have reason to oppose this measure.

THE HONOURABLE SAIYED MOHAMED PADSHAH SAHIB BAHADUR (Madras: Muhammadan): Sir, after the outburst of eloquence we have had from the Honourable the Commerce Member, it is indeed difficult, as my Honourable friend Mr. Hossain Imam observed, to try to criticize the Bill. I feel that it is not only difficult to criticize it but it is difficult also to say anything about the matter by way of making a substantial contribution inasmuch as my Honourable friend Sir Ramaswami Mudaliar, while he proceeded with his cogent and powerful arguments to demolish the case put up in opposition, he has, with his characteristic thoroughness, stated almost everything that can at this stage be usefully urged in support of his case. Therefore, I feel that I am at a very great disadvantage in trying to address the House at this moment. Anyway, Sir, I will try to do my duty.

Sir, as has been observed by previous speakers—and the Government too have not made secret of the fact—the powers which are proposed to be given to the executive by this measure are indeed very wide and extensive. They are indeed of a character that they could never have been allowed to be given to the executive in ordinary and normal times. But we are all aware that we are not legislating for normal times or for any ordinary contingencies. We are now legislating for exceptionally abnormal times and for an emergency—a very serious emergency the like of which never before confronted our country or the countries which stand for democracy and for the protection and preservation of civil liberties and rights of humanity. Sir, as has been admitted by almost every speaker, the very existence of democracies is threatened and in this grim struggle to save democracies, to save civil liberties and rights so dear to the human heart, to save these from utter and total extinction, it is no undue sacrifice to suffer temporary restriction or curtailment of those rights and liberties. It was, therefore, in view of this fact and in view of the seriousness of the situation that the people's representatives in the other House gave their support to this Bill.

Again, Sir, we are glad to find that this measure is very much different from that which was originally introduced in the other House, and this fact is due to the many and important changes that were made in the Select Committee. It was very wise on the part of the Government in the other House to have listened to the suggestion of the non-official section in that House to refer this Bill to a Select Committee and since the Select Committee was able to make very substantial improvements in the measure; it

was possible for this Bill to have had a smooth passage in the other House. I am glad to find that most of the amendments that were proposed by the Muslim League were carried out in the Select Committee and that consequently, the Muslim League in the other House gave their full and unstinted support to this measure. Again, Sir, even in the second reading of the Bill, a few more amendments were carried out, which also were of a very important nature, the most notable among them being in regard to the recording of evidence in cases in which the offence alleged is punishable with death or transportation for life. Therefore, we feel that both the Government and the people's representatives did co-operate in an honest endeavour to make this measure as unobjectionable as possible. Sir, despite all that, we feel that there are still flaws in the Bill, and that there is still much room for improvement, and I wish that something had been done to set right these flaws and in spite of what has been urged by the Honourable the Commerce Member, I feel that things would have been different if the Government had tried to bring this measure before this House at a time when the Legislative Assembly was in session, for then there would have been at least some possibility of having some of the suggestions here being carried into effect, if we had been successful in convincing the Government of the justness and the reasonableness of our suggestions, it would have been quite possible for us to have persuaded Government to accept those suggestions and change this measure for the better. But now that course is altogether denied to us. There are a number of defects in the Bill. I would cite only one or two of them. As regards the recording of evidence, as I have just said, there had been this change made that in case the sentence is one of death or of transportation for life, evidence has to be recorded *in extenso*. But I feel that this provision should have been extended even to the other cases where the offence was punishable with 10 years' imprisonment, because it is useless to allow any appeal to be made to any court unless that court is in possession of the full evidence that was deposed to in the lower court. It is impossible for any appellate court to come to any judgment on evidence of which only the substance was recorded in the lower court. If we wish that the appellate court should come to a proper judgment, we should furnish the appellate court with full evidence that was deposed to in the lower court. I feel that provision regarding the recording of evidence should have been changed in these instances also. I also wish that appeal should have been allowed in many more cases than those that have been allowed under section 13. Of course, I feel that a limit has got to be put somewhere, but I do not think that 10 years is just the point at which the line should have been drawn. It should have been much less, and at least in the case of a man getting seven years or more imprisonment he should have been allowed an appeal to the High Court,

Again, Sir, there has been an exception made in the case of either a husband or wife screening the whereabouts of the other who may be an accused. I say this exception should also have extended to a parent, a father or mother. In India at least we know that the relationship between the mother and her children is of a very peculiar character. It is a sacred relationship. We may imagine the case of a widow who is a mother with an only son and her anxiety to save her boy. Therefore, such exception should have been made in the case of parents, and also of daughters, etc.

[Saiyed Mohamed Padshah Sahib Bahadur.]

Well, Sir, there are a number of other things in which improvement could have been effected, but we feel that there was such a short time at the disposal of the Government that it may not have been possible for them to have given the amount of attention that a Bill of this kind requires. But, on the whole, in spite of these defects, we feel that the result has been of quite a satisfactory character, that on the whole both the Government and the people's representatives in the Legislature have succeeded in devising a measure which is really useful and is calculated to help the efficient prosecution of the war and to ensure the object for which it is intended. It is but natural that in matters like this there should be differences of opinion, but we are glad to find that in spite of differences of opinion on detail there is practical unanimity not only in the Legislature but also in the country at large as to the duty of our country to assist in the successful prosecution of the war, to see that the cause of democracy emerges victorious out of the struggle, so that the civil liberties and rights of humanity may be permanently ensured. As some of my Honourable friends have observed, even though India is not actively engaged in the struggle, it is wrong to think that we ought to be inactive until hostilities begin nearer home. As has been observed, the defence of India is not distinguishable from the defence of the British Empire, and even of those countries which are now engaged in the struggle in Europe. The danger threatens not only the countries actually engaged in the struggle in Europe but all the nations which stand for democracy and which are anxious to protect and preserve the fundamental rights of humanity and those who care for those rights, for the natural heritage of man, should combine in a supreme effort to resist the present danger.

Just one word more about the caution necessary in using these powers. I am glad that an assurance was given in the other House and that here also an assurance was given to us by the Honourable the Commerce Member to the effect that every consideration would be given to public opinion and that Government was anxious to know what the public mind was and ready to try and satisfy public feeling if the Government was persuaded that the public was right. We are glad that this assurance has been given and we hope that the Government will take very great care that these powers so drastic in their nature are used with due caution and circumspection by those who are invested with them.

THE HONOURABLE THE PRESIDENT : I will now adjourn the House till 10-30 A.M. tomorrow, when we will first proceed with the non-official business and after the non-official business is concluded the debate on the Defence of India Bill will be resumed.

The Council then adjourned till Half Past Ten of the Clock on Tuesday, the 26th September, 1939.
