THE
LEGISLATIVE ASSEMBLY DEBATES

(OFFICIAL REPORT)

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FOURTH SESSION

OF THE

FOURTH LEGISLATIVE ASSEMBLY,

1932

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LEGISLATIVE ASSEMBLY.

Tuesday, 29th November, 1932.

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

QUESTIONS AND ANSWERS.

POLICY *RE* GRANT OF PENSIONS TO THE HEIRS OF SEPOYS KILLED IN WAR AND OF INDIAN SEPOYS DISABLED IN THE GREAT WAR.

1498. ***Pandit Satyendra Nath Sen** (on behalf of Mr. S. G. Jog): (*a*) Will Government please state if there is a change in their general policy in respect of the grant of pensions to (*i*) heirs of sepoys killed in or died of war diseases, and (*ii*) Indian sepoys disabled in the Great War?

(*b*) If the reply to part (*a*) above be in the negative, will Government please state if they have issued an Army Instruction lately in 1931, according to which the Controller of Military Pensions is to grant only three years arrears of family pensions and in no case more than five years' arrears in all claims in which pensions had not been granted for some reason or other?

(*c*) Is it also a fact that the aforesaid Army Instruction, mentioned in part (*b*) above, is being very strictly observed even in cases of children allowance? Is it a fact that such claims should have been initiated on the death of the sepoys by the Officer Commanding? Is it a fact that according to para. 44 of Financial Regulations for the Army in India, Part I, the Officer Commanding is considered to be the claimant on behalf of Indian military pensioners, especially of illiterate widows and of minor heirs? Are Government aware that claims of the latter according to civil law do not go time-barred till after three years of their attaining majority?

(*d*) Will Government please state if there is any limitation fixed for the submission of claims to family pensions and children allowance? Is there any rule or law to show that such claims preferred after a certain time are time-barred?

(*e*) Will Government please also state whether Army Instruction (India) 87 of 1931, restricting arrears of family pensions up to a limit of three years is to come into operation from the date of its issue or whether it will have also retrospective effect in the sense that it will be applicable to persons who became entitled to family pension before the issue of this Instruction?

(*f*) Is it also a fact that certain Indian ranks, who sustained disability on field and foreign service, were sent back to India for treatment and died in Indian military hospitals as the result of that disability, but their heirs have been considered ineligible for family pensions and medical boards have certified their deaths as not attributable to field or foreign service, nor to drinks and drugs or self-aggrandisement?

(*g*) Is it not a fact that in case of death occurring on field service the presumption warranted by the appendix to Army Instruction (India), 288 of 1921

(approved by the Secretary of State for India) is that such death must be presumed as attributable to field service?

(*h*) Will Government please state if there are different rules or regulations in respect of the attributability of such deaths as mentioned in part (*f*) above? Is there anything to show that such cases are excluded from the presumption referred to in part (*g*) above?

(*i*) Does the term "military service" include field and foreign service also? If not, why do the Indian Medical Boards use the expression "Not attributable to field, foreign or ordinary military service" in their findings?

Mr. G. R. F. Tottenham: (*a*) No, Sir.

(*b*) Yes, but the Controller only possesses these powers when the claimant has been unable to give a satisfactory explanation of the delay in submitting the claim.

(*c*) The facts are generally as stated, but the Indian Limitation Act does not apply to the entertainment of pensionary claims by Government, and, as mentioned in the statement laid on the table on the 15th September in reply to Sardar Sant Singh's question No. 299, claimants, as well as Commanding Officers, are responsible for the prompt initiation of their claims.

(*d*) No.

(*e*) Claims initiated on and after the date of the Instruction, and claims outstanding on that date, are disposed of in the manner prescribed by the Instruction.

(*f*) Government are not aware of any such cases. I may add, Sir, that Government have never heard of anyone actually dying from self-aggrandisement.

(*g*) Yes, but the Army Instruction was reconstructed, also with the approval of the Secretary of State, in Army Instruction (India) No. 1058 of 1922 in which the presumption referred to was omitted.

(*h*) Does not arise in view of the replies to (*f*) and (*g*).

(*i*) The answer to the first part of the question is in the affirmative. The expression referred to by the Honourable Member is not now used by Medical Boards.

GOVERNING BODY OF THE LADY HARDINGE MEDICAL COLLEGE, DELHI.

1499. ***Pandit Satyendra Nath Sen** (on behalf of Mr. S. G. Jog): (*a*) Is it not a fact that the constitution of the Lady Hardinge Medical College, Delhi, provides that there should be on the Governing Body one prominent gentleman of Delhi and one prominent businessman of Delhi?

(*b*) Will Government please state who are the present nominees and since how long they are there?

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

(*b*) Khan Bahadur Maulvi Abdur Rahman, Advocate, Delhi.
Mr. G. R. Seton, Agent, Imperial Bank, Delhi.

STRIKE IN THE LADY HARDINGE MEDICAL COLLEGE, DELHI.

1500. ***Dr. Ziauddin Ahmad** (on behalf of Mr. S. G. Jog): Is it a fact that there was a strike recently in the Lady Hardinge College, and will Government state as to what the grievances were and whether they have been considered and settled? If so, how?

Mr. G. S. Bajpai: There was a strike. The students asked:

(1) that the main electric switch to the Hostels should not be put off at all;

(2) that the 4th and 5th year Medical students be allowed to keep on the light every night till 11 P.M.;

(3) that students be allowed to visit sick students in Hospital any time between 5 P.M. and 7 P.M.; and

(4) that the Stewardess should visit their rooms on a certain fixed day once a month only.

These requests have been substantially granted.

HINDU AND MUSLIM CLERKS IN THE LADY HARDINGE MEDICAL COLLEGE, DELHI.

1501. ***Dr. Ziauddin Ahmad** (on behalf of Mr. S. G. Jog): Will Government state how many Hindu and how many Muhammadan clerks are there in the staff of the Lady Hardinge Medical College? What are their names, qualifications and their pay?

Mr. G. S. Bajpai: There are two Hindu and two Muhammadan clerks on the staff of the Lady Hardinge Medical College. A statement showing their names, qualifications and pay is laid on the table.

Statement.

Name and designation.	Qualifications.	Pay.
		Rs.
1. Mr. Shambu Nath (Hindu), Accountant.	M. A. (Commerce), G. D. A.	250 p. m.
2. Mr. K. P. Bhatnagar (Hindu), Assistant Accounts Clerk.	Bachelor of Commerce, G. D. A.	75—5—100 p. m.
3. Mr. G. S. S. Allam (Mohammedan), Stenographer to the Principal.	He served as a Head Clerk with the rank of Subedar during the War in South Persia and later in the 3rd Afghan War in 1919 and afterwards on the North-West Frontier.	150 p. m.
4. Mr. Masha Alla Khan (Mohammedan).	School Leaving Certificate, with 8 years' experience of office work.	75—5—100 p. m.

APPLICATIONS FOR VACANCIES IN THE TRAINING RESERVE OF THE WOMEN'S MEDICAL SERVICE FOR INDIA.

1502. ***Mr. S. G. Jog:** (*a*) Is it a fact that the Central Dufferin's Fund Office had invited applications in August, 1932, for vacancies in the *Training Reserve* of the Women's Medical Service for India? If so, how many applications in all have been received, and how many lady doctor graduates have been admitted to the Training Reserve by the Executive Committee?

(*b*) Who are the members of the Executive Committee of the Women's Medical Service for India? How many members of the Executive Committee were present at the Interview Board, and how are selections made of the Indian lady graduate doctors? Is there any Indian doctor on the Executive Committee or on the Interview Board? If not, why not?

(*c*) Will Government please lay on the table a complete list of the lady doctors who have been deputed to the United Kingdom for training from year to year and for obtaining British minimum medical qualifications; and what amounts have been contributed to their training in the United Kingdom? What are the names of other lady doctors (other than Indians) who have been directly recruited to the Women's Medical Service for India in senior grades and higher status?

Mr. G. S. Bajpai: (*a*) Yes. 24 applications were received and four graduates were admitted to the Training Reserve.

(*b*) A statement showing the names of the members of the Executive Committee of the Women's Medical Service for India and the names of the members of the Selection Committee is laid on the table. The Selection Committee consists of the medical members of the Executive Committee. The recent selections to the training reserve were made after circulation of papers to the members of the Selection Committee. Applications are circulated to members of the Selection Committee at the time when vacancies occur. Candidates are selected according to merit. The Selection Committee takes into account academic qualifications and experience possessed by a candidate, for example, post-graduate experience as a resident medical officer.

There is at present no doctor of Indian race on the Executive Committee or the Selection Committee. The Honourable Member's suggestion will be brought to the notice of the authorities concerned.

(*c*) A statement containing the information asked for by the Honourable Member for the last five years is laid on the table.

Statement showing the names of the members of the Executive Committee of the Women's Medical Service for India and the names of the Members of the Selection Committee.

(1) List of members of the Executive Committee of the Women's Medical Service for India.

Her Excellency the Countess of Willingdon, C.I., G.B.E., *President.*

The Honourable Sir Henry Moncrieff-Smith, Kt., C.I.E., I.C.S., *Chairman.*

The Hon'ble Major General J. W. D. Megaw, C.I.E., K.H.P., I.M.S., Director General, Indian Medical Service, *Vice-Chairman.*

Sir Ernest Burdon, Kt., C.S.I., C.I.E., I.C.S., *Honorary Treasurer.*

Lady Bhore, M.B.E.

Major F. M. Collins, R.A.M.C., *Honorary Joint Secretary.*

Dr. M. V. Webb, Chief Medical Officer, Women's Medical Service, *Secretary.*

(2) List of members of the Selection Committee.

The Director General, Indian Medical Service—The Honourable Major General J. W. D. Megaw, C.I.E., K.H.P., I.M.S.

Lady Bhore, M.B.E.

Major F. M. Collins, R.A.M.C.

The Chief Medical Officer of the Women's Medical Service, Dr. M. V. Webb.

List of lady doctors who have been deputed to the United Kingdom for post-graduate study during the period 1928 to 1932.

Year in which deputed to United Kingdom for post-graduate study.	Name.	Diploma or Course of study for which deputed.	Nationality.	Amount contributed for training.
				Rs.
1928	Dr. Bali .	M.R.C.S., L.R.C.P. (London).	Indian . .	3,778
1928	Dr. Wiseham .	Do. .	Anglo-Burmese	3,700
1929	Dr. Lakshmi Devi	Do. .	Indian . .	4,406
1930	Dr. Brooks . .	Do. .	Anglo-Indian .	4,172
1930	Dr. Matthew .	Do. .	Indian . .	4,064
1930	Dr. Rekhi . .	Diploma in Radiology.	Indian . .	*Nil* (Dr. Rekhi was trained at the expense of the Rockefeller Foundation).
1931	Dr. d'Monte .	M.R.C.S., L.R.C.P.	Indian .	4,038
1931	Dr. Shrikande .	Diploma in Bacteriology.	Indian . .	4,016
1931	Dr. Jiwan Lata .	Special study in maternity and child welfare.	Indian . .	4,024
1932	Dr. Patil .	Diploma in Bacteriology.	Indian . .	4,020
1932	Dr. Senjit . .	Diploma in Ophthalmology, also M. R. C. S., L. R. C. P.	Indian . .	4,016

List of lady doctors (other than Indians) who have been directly recruited to the Women's Medical Service for India during the period 1928 to 1932 (excluding those who are no longer in the Women's Medical Service).

Dr. L. Torrance, M.D., Ch.B. (Glasgow) . . Recruited in India.

Dr. Proctor Sims, L.R.C.P., M.R.C.S. (Lond.) . Recruited in India.

Dr. Callender, M.A. (Cantab.), M.B., B.S. (Lond.), L.R.C.P., M.R.C.S. . . . . Recruited from England for general work.

Dr. Orkney, M.B., Ch.B. (St. Andrews), D.H.P. (Manchester), Specialist . . . . . Recruited from England.

Dr. J. Thomson, L.R.C.P., M.R.C.S., M.B., B.S. (Lond.), M. D. (Lond.) . . . . . Admitted temporarily in India.

Dr. Herbert, M.B., B.S., M.R.C.S., L.R.C.P. (Lond.) . . . . . Admitted temporarily in India.

NUMBER AND NATIONALITY OF PROFESSORS OF THE LADY HARDINGE MEDICAL COLLEGE, DELHI.

1503. *Mr. S. G. Jog: How many Professors are there in the Lady Hardinge Medical College and of what nationality are they?

Mr. G. S. Bajpai: Nine—three Indians including an Anglo-Indian, and six Europeans.

FUNCTIONS OF CHIEF MEDICAL OFFICER, WOMEN'S MEDICAL SERVICE.

1504. *Mr. S. G. Jog: (*a*) Will Government state what are the functions of the Chief Medical Officer, Women's Medical Service?

(*b*) Will Government state whether she does any actual medical work? If not, why not?

Mr. G. S. Bajpai: (*a*) A statement of the duties of the Chief Medical Officer, Women's Medical Service is laid on the table.

(*b*) The Chief Medical Officer is primarily an administrative officer and like other administrative officers of medical departments is debarred from doing ordinary medical work. She has, however, been allowed to act as Honorary Consulting Surgeon to the Lady Reading Hospital, Simla, so as to enlarge the facilities available at this Hospital which is of great value to the female population of Simla and the neighbouring hills.

Statement.

The Chief Medical Officer is responsible, under the Council and the Executive Committee, for the recruitment, postings and discipline of the Women's Medical Service and its training reserve. She investigates and lays before the Executive Committee applications for grants-in-aid for the medical relief of women, the founding and improvement of women's hospitals, and the education of doctors, nurses and midwives. She visits the hospitals staffed by officers of the Women's Medical Service and also inspects such other Women's hospitals as are not directly under the control of Provincial Governments. She serves on the Committee of the Maternity and Child Welfare Bureau of the Indian Red Cross Society, the Executive Committee and the Governing Body of the Lady Hardinge Medical College, and the Committee of the Lady Reading Health School, Delhi. She is also Honorary Secretary of the Lady Reading Hospital, Simla.

ABOLITION OF THE BOMBAY-KARACHI SEA POST OFFICE.

1505. *Mr. Lalchand Navalrai: (*a*) Is it a fact that the Bombay-Karachi Sea Post Office has been abolished and that the work is now being done at the Karachi General Post Office?

(*b*) If so, when was this done and what is the amount of saving effected thereby?

Mr. T. Ryan: (*a*) Yes.

(*b*) In April, 1932. The saving is Rs. 841 a month.

OVERTIME ALLOWANCE TO THE KARACHI GENERAL POST OFFICE STAFF FOR DISPOSAL OF WORK IN CONNECTION WITH THE INWARD ENGLISH MAIL.

1506. *Mr. Lalchand Navalrai: (*a*) Is it a fact that no extra staff has been given to the Karachi General Post Office for the disposal of the work in connection with the Inward English Mail which was formerly done

by the Bombay-Karachi Sea Post Office and that the work is being done on payment of overtime allowance?

(*b*) If so, what are the rates of overtime allowance sanctioned for the work and how do they compare with the rates of overtime allowance granted to the employees at Bombay and Calcutta?

(*c*) If the overtime allowance has not been sanctioned yet, what is the cause of delay and what rates are proposed to be sanctioned and how do they compare with those paid to the employees at Bombay and Calcutta?

(*d*) If the rates paid at Bombay and Calcutta are higher, what are the reasons for the difference?

Mr. T. Ryan: (*a*) Yes. No additional staff was required as on account of the heavy fall in postal traffic during the last two years, the staff originally sanctioned for the larger offices like Karachi was found to be in excess of actual requirements. A small portion of the permanent staff of the Karachi head post office, which is required to perform extra hours of duty in connection with the inward foreign mails is given overtime pay.

(*b*) A statement giving the required information is laid on the table.

(*c*) Does not arise.

(*d*) Overtime allowances are based partly on the pay of the posts to which they are attached and partly on the nature and duration of the overtime duty performed. The time-scale of pay for the clerical cadre in Karachi is lower than similar scales at Bombay and Calcutta and the hours of overtime performed by the Karachi staff are less. Hence overtime pay is granted to the Karachi clerical staff at a lower rate than to the corresponding staff in Calcutta and Bombay.

Statement showing the rates of overtime pay sanctioned for the permanent staff at Karachi, Bombay and Calcutta, who are employed on overtime duty in connection with the disposal of inward foreign mails.

Designation of officials.	Rate at Karachi admissible for each mail.	Rate at Bombay and Calcutta admissible for each mail.	
		For duty between 6 A.M. and 11 P.M.	For duty at any other time.
	Rs.	Rs.	Rs.
Supervising Officer (Assistant Postmaster).	5	12	14
Supervisor (Head Clerk) . . .	3	6	7
Ordinary time-scale clerk . . .	2	4	5
Sorting or Overseer Postman . .	1	3	3-8-0
Packer and other inferior servant .	0-8-0	1	1-4-0

Mr. Lalchand Navalrai: Do they not do as much overtime work as in Bombay and Calcutta which entitles them to the same overtime allowance?

Mr. T. Ryan: They work overtime, but not generally to the same extent. As I have just stated, the time-scale of pay in Karachi is lower and the hours of overtime performed at Karachi are less.

RATES OF OVERTIME ALLOWANCES IN THE KARACHI GENERAL POST OFFICE.

1507. ***Mr. Lalchand Navalrai:** (*a*) Is it a fact that the rates of overtime allowance granted to the staff of the Karachi General Post Office are the same for night as well as day work, while at Bombay they are different? If so, why?

(*b*) Is it a fact that the staff at Karachi General Post Office have to put in six to eight hours of overtime duty during the Christmas season? If so, why are they not paid the same allowance as is paid to the staff at Bombay?

(*c*) Is it a fact that the Karachi Customs staff also have got different rates of allowance for night and day overtime work?

(*d*) Is it contemplated to revise the rates of overtime allowance granted to the staff of the Karachi General Post Office? If so, when? If not, why not?

Mr. T. Ryan: (*a*) Yes. The question of removing the anomaly referred to by the Honourable Member is under examination.

(*b*) As regards the first part, it may be that in times of great pressure such as the Christmas Season, overtime duty has to be performed by the Karachi General Post Office staff for such periods as mentioned by the Honourable Member. As regards the second part, the Honourable Member is referred to the reply just given to part (*d*) of his question No. 1506.

(*c*) Yes.

(*d*) Attention is invited to the reply to part (*a*). I may add that the Government of India do not consider that the case for a general enhancement of these overtime allowances at Karachi is sufficiently strong to justify such an enhancement in the present state of the departmental and general finances.

QUARTERS IN NEW DELHI FOR THE INFERIOR SERVANTS OF THE GOVERNMENT OF INDIA.

1508. ***Mr. Lalchand Navalrai:** (*a*) Is it a fact that the Government of India obtained the concurrence of the Standing Finance Committee on the 7th August, 1926, to a grant of Rs. 6,00,000 for the construction of quarters in New Delhi for the duftaries, record sorters and other inferior servants employed in the Government of India?

(*b*) Has the programme been fully completed?

(*c*) If so, how many of the inferior staff, particularly record sorters and duftaries, have been provided with residential accommodation, and what is their percentage to the total staff employed?

(*d*) Do Government propose to provide for the residential accommodation of the remaining staff of record sorters, duftaries and others?

(e) If not, why has the provision made not been utilised for the use of the inferior staff? Are Government aware that they find it impossible to rent private accommodation in New Delhi?

The Honourable Sir Frank Noyce: The information asked for by the Honourable Member is being collected and will be laid on the table of the House in due course.

HOUSE RENT ALLOWANCE OF THE INFERIOR STAFF OF THE GOVERNMENT OF INDIA.

1509. ***Mr. Lalchand Navalrai:** Is it a fact that the inferior staff of the Government of India get a monthly allowance for house rent at Re. 1 in Simla and Rs. 1-8-0 in Delhi while the rent fixed for peons' quarters by the Estate Office is Rs. 3 and that of a duftary Rs. 8? Why do not Government pay house rent allowance on the same scale to those of the inferior staff who have not been allotted quarters?

The Honourable Mr. H. G. Haig: Both at Simla and Delhi inferior servants in the Government of India and its attached offices are entitled to rent-free quarters or house-rent allowance in lieu thereof. Such of them as cannot be provided with free quarters make their own arrangements for accommodation and are given a house-rent allowance of Re. 1 per mensem at Simla and Rs. 1-8-0 per mensem at Delhi. The principle on which the amount of this allowance is fixed is that it should be such as to enable inferior servants to secure suitable private accommodation. This bears no relation to the theoretical standard rent of rent-free quarters which is based on the capital cost of buildings.

DUFTARIES' QUARTERS IN NEW DELHI.

1510. ***Mr. Lalchand Navalrai:** Is it a fact that the duftaries' quarters were built only for the duftaries employed in the Secretariat and the Attached Offices? If so, why are these quarters allotted to the staff of local offices when the requirements of the Secretariat and the Attached Offices are not met?

The Honourable Sir Frank Noyce: The daftaries' quarters were built for the daftaries in the employ of the Secretariats of the Government of India and in all attached or subordinate offices, including the Local Administration, who are compelled to reside on duty with the Government of India in New Delhi, and they are allotted accordingly.

ABSENCE OF ROADS NEAR THE PEONS' QUARTERS IN NEW DELHI.

1511. ***Mr. Lalchand Navalrai:** *Is it a fact that big drains have been constructed all around peons' quarters and no roads have been constructed for taking tongas and other vehicles to the peons' quarters? Are Government aware that this causes considerable inconvenience? If so, what do Government propose to do in the matter?*

Mr. G. S. Bajpai: My information is, Sir, that none of these blocks of quarters, of which there are several, is adorned with an obstructive periphery of drains, and that access is possible to each block from a road within easy reach.

Mr. Lalchand Navalrai: Can carts go there? Are there any roads for them?

Mr. G. S. Bajpai: Yes; there are roads alongside of them.

GOVERNMENT QUARTERS IN NEW DELHI FOR THE MEMBERS OF THE CENTRAL LEGISLATURE.

1512. *Mr. Nabakumar Sing Dudhoria: Will Government be pleased to state:

(a) whether it is not a fact that the Government quarters intended for the occupation of members of the Central Legislature afford different kinds of equipments and conveniences in different types;

(b) whether it is not a fact that though orthodox officers' bungalows on Firoz Shah Road and Electric and Canning Lanes contain more accommodation as regards rooms and lavatories than Queensway and Windsor Place quarters, yet the rent charged therefor is less than those for the latter;

(c) whether it is not a fact that Windsor Place quarters contain only one privy in such quarters although intended for a member and his family;

(d) whether it is not a fact that the room in which the privy has been constructed in the Windsor Place quarters is big enough to be made into a decent bed-room;

(e) whether Government have considered that such a big room could be so divided up as to afford space for the construction of two privies, one having its entrance from the attached bath-room and the other from outside the inner courtyard;

(f) whether it is not a fact that some habitable rooms in some of the quarters and some privies in others are devoid of electric light points altogether;

(g) whether it is not a fact that in some of the Firoz Shah Road quarters there is no water-tap either in the courtyard or outside the quarters compound as there exist in Windsor Place quarters;

(h) whether it is not a fact that each of the privies in Firoz Shah Road quarters has a water-tap attached to it which cannot be used for any other purpose but for that of the lavatory; and

(i) on how many occasions during the last four Delhi Sessions the Executive Engineer, Public Works Department, Central, or his Deputy, or his Assistant has visited the Members' places either to see how they had been accommodated, or to find out what inconveniences they suffered from or to take suggestions from them as to how to improve existing accommodation?

The Honourable Sir Frank Noyce: (a) Yes. The equipment and conveniences vary according to the designs of the buildings.

(b) Yes, but this is because the capital cost of the building forms the basis of rent.

(*c*) Yes.

(*d*) No. In any case its situation renders it unsuitable for conversion into a bed room.

(*e*) This could be done and Government will be glad to consider the matter as soon as financial conditions permit.

(*f*) All the bed rooms have been provided with electric light points, some of them very recently. Some of the servants' rooms and privies are not provided with light points. This will be done as rapidly as funds permit.

(*g*) and (*h*). Yes. I should however explain that there are taps inside the quarters in Ferozeshah Road but not in the courtyards there.

(*i*) The Executive Engineer and his Assistants are constantly in touch with the work on these buildings and can be called upon by the Honourable Members to see to any work that needs attention.

Mr. S. G. Jog: Is it not a fact that the Ferozeshah Road quarters, known as Bungalows, have got more accommodation and the occupants pay less rent whereas in other quarters there is less accommodation and more rent?

The Honourable Sir Frank Noyce: Yes: I have explained why that is so: the reason is that the capital cost of the building forms the basis of rent, and, for some reason of which I am not aware, the buildings in the one case cost more than those in the other. The rent is based on that fact.

Mr. S. G. Jog: May I know how the house rent has got anything to do with the cost of the building? The whole matter can be adjusted without incurring any loss by the Government by providing that those who have got more accommodation should pay more rent and those who have less accommodation should pay less. Government need not be concerned with the capital cost of buildings.

The Honourable Sir Frank Noyce: Government are concerned with it and the rent is levied in accordance with their rules regarding it.

Mr. S. G. Jog: That rule seems to be inequitable.

FREE QUARTERS TO THE BOY PEONS OF THE CENTRAL TELEGRAPH OFFICE, NEW DELHI.

1513. ***Mr. Muhammad Anwar-ul-Azim:** (*a*) Is it a fact that the peons, jemadars, overseers, daftries and record lifters of the Government of India and their Attached Offices, drawing salaries up to Rs. 40 are entitled to free quarters?

(*b*) Are Government aware that the boy peons of the Central Telegraph Office, New Delhi, drawing a pay of Rs. 10 to 12 have to forfeit their house rent allowance of Rs. 2 each and pay ten per cent. extra rent, *viz.*, a total of about 30 per cent. for occupying quarters?

(*c*) If the reply to the above be in the affirmative, do Government intend to allot them free quarters?

(*d*) Has Government's attention been drawn to resolution No. 30 on the same subject appearing on page 23 of the *Postal Advocate* of April 1932, passed at the Annual Conference of the Indian Posts and Telegraphs Muslim Union? If so, what action have Government taken in the matter?

Mr. T. Ryan: (*a*) Yes.

(*b*) and (*c*). The grant of free quarters or house rent allowance in lieu thereof is not a recognised condition of service for boy peons. No question of forfeiture of house rent allowance therefore arises. Some of these boy peons were however for a time allowed the concession by a mistake,—and this has been stopped.

(*d*) Government have seen the resolution. The last part of the question does not arise in view of the reply to parts (*b*) and (*c*) above.

POSTS OF TELEPHONE MISTRIES AND OPERATORS.

1514. ***Mr. Muhammad Anwar-ul-Azim:** (*a*) Is it a fact that, under the Government of India, Department of Industries and Labour, Posts and Telegraphs Branch letter No. 844-Est. A./28, dated New Delhi, the 4th March, 1929, from the Assistant Secretary to the Government of India to the Director General of Posts and Telegraphs, the telephone mistries and operators were informed that the matter of converting their posts as permanent and pensionable or whether they will be granted the benefits of a contributory provident fund was under consideration?

(*b*) If the reply be in the affirmative, have Government come to any decision yet?

(*c*) If no decision has been made yet, what will be their position after being retrenched under the retrenchment rules?

(*d*) Do Government intend to do something in their favour?

Mr. T. Ryan: (*a*) Yes.

(*b*) No; the matter has not been pursued owing to the unfavourable financial conditions.

(*c*) The Honourable Member's attention is invited to section C of the Director General's Special General Circular No. 4, dated the 30th April, 1932, in which are reprinted the retrenchment concessions for which the officials referred to by the Honourable Member are eligible. A copy of this circular has been placed in the Library of the House.

(*d*) Government are not prepared to extend to these officials concessions in excess of those laid down in the circular referred to in the reply to part (*c*) above.

PAY AND PROSPECTS OF TELEGRAPH EMPLOYEES AT SIMLA AND NEW DELHI.

1515. ***Mr. Muhammad Anwar-ul-Azim:** (*a*) Has the attention of Government been drawn to resolution No. 36 (appearing on page 24 of the *Postal Advocate* of April, 1932) passed at the annual conference of the Indian Posts and Telegraphs Muslim Union?

(*b*) If the reply be in the affirmative, what steps have Government taken to bring them in keeping with the pay and prospects of similar establishment in other telegraph offices in India, *viz.*, Bombay, Calcutta, Rangoon, etc.?

Mr. T. Ryan: (*a*) Government have seen the resolution.

(*b*) Government do not consider that the pay and prospects of the staff in question, at Simla and New Delhi, must necessarily correspond with those of staff in much larger towns.

ROTATION OF DUTIES IN TELEGRAPH OFFICES.

1516. ***Mr. Muhammad Anwar-ul-Azim:** (*a*) Are Government aware that the Director General's communication No. Est.-A./29, dated 15th October, 1929, regarding fair rotation of duties is violated in many telegraph offices?

(*b*) If not, will Government please lay on the table a statement showing the period every clerk is attached in the administrative branch in the Central Telegraph Office, New Delhi and Delhi?

Mr. T. Ryan: (*a*) and (*b*). As Government have no reason to believe that the facts are as stated by the Honourable Member, they do not consider that any useful purpose would be served by the preparation of the statements which he suggests. A copy of the question is, however, being sent to the Postmaster General, Punjab.

EMPLOYMENT OF MUSLIMS IN THE ESTABLISHMENT AND ACCOUNTS BRANCHES IN THE CENTRAL TELEGRAPH OFFICE, NEW DELHI AND DELHI.

1517. ***Mr. Muhammad Anwar-ul-Azim:** Will Government be pleased to state if any Muslims have ever been given any chance to work in the administrative branch especially in the establishment and accounts branches in the Central Telegraph Office, New Delhi and Delhi? If not, why not?

The Honourable Sir Frank Noyce: Government have no information and do not propose to call for it as postings of officials in the different branches of a telegraph office are not made on the basis of communal representation.

EMPLOYMENT OF MUSLIMS IN THE ESTABLISHMENT AND ACCOUNTS BRANCHES IN THE CENTRAL TELEGRAPH OFFICE, NEW DELHI AND DELHI.

1518. ***Mr. Muhammad Anwar-ul-Azim:** (*a*) Is it a fact that in the Central Telegraph Office, Simla—New Delhi, Muslim clerks, though senior, have never been employed in the administrative branch, whereas their juniors have had the chances?

(*b*) Will Government please state as to how the second grade clerks will get experience of the establishment and accounts branches unless they are attached to the said branches?

(*c*) What action are Government going to take in the matter, with reference to the Director General, Posts and Telegraphs, Communication No. Est.-A./29, dated the 15th October, 1929?

Mr. T. Ryan: (*a*) Government have no information. The postings of clerks are made by the Head of the office.

(*b*) By 'Second grade clerks' the Honourable Member presumably refers to the lower division clerks who are meant for work of a routine nature and are not required to take up establishment or accounts work.

(*c*) None, as the orders referred to apply only to ordinary time-scale or upper division clerks.

GRANT OF LEAVE TO MUSLIM EMPLOYEES OF THE CENTRAL TELEGRAPH OFFICE, NEW DELHI, FOR *JUMA* PRAYERS.

1519. ***Mr. Muhammad Anwar-ul-Azim:** (*a*) Is it a fact that the Director General, Posts and Telegraphs, in his Circular No. 13, dated the 2nd July, 1913, issued an order for the grant of one hour's leave to Muslim employees of the Posts and Telegraphs Department for *Juma* prayers on Fridays?

(*b*) If so, will Government please state whether the above order was violated on the 26th August, 1932, in the Central Telegraph Office, New Delhi? If so, why?

(*c*) Do Government propose to renew the order referred to at part (*a*) above?

The Honourable Sir Frank Noyce: (*a*) Yes, but the circular was subsequently modified by instructions issued in Part V of the Director General's Circular No. 20, dated the 28th August, 1913, to the effect that in offices other than those of Heads of Circles and Superintendents of Post Offices, the concession should be allowed as far as possible subject to the condition that the arrangement did not interfere with public business or cause extra expense to Government.

(*b*) No. There was no violation of the Circular as subsequently modified.

(*c*) I understand that the circular orders referred to in (*a*) above, are not always preserved indefinitely and it is possible that they have in some instances been lost sight of. The Director General has undertaken a review of the existing instructions bearing on this subject after which, with any modifications which may be found necessary, they will again be circulated and will also be embodied in the standing orders of the Department.

PRINCIPLE OF ALLOTMENT OF QUARTERS TO THE SUBORDINATE STAFF OF THE CENTRAL TELEGRAPH OFFICE, NEW DELHI.

1520. ***Mr. Muhammad Anwar-ul-Azim:** (*a*) Will Government please state what principle is adopted in allotting quarters to the subordinate staff of the Central Telegraph Office, New Delhi?

(*b*) Is it a fact that the Director, Telegraph Engineering, decided that the clerks who have got their own house at Delhi and the clerks of the administrative branch who have got only day duty have no prior claims to that of the migratory staff and other establishment who were attached to the Instrument room and have got revolving duties including the station scale telegraphists who have got similar duties and are expected to attend the office any time during the day and night?

(*c*) If the reply be in the affirmative, will Government please state why the clerk, B. Kanhyalall, who belongs to Delhi and resides in his own house at Delhi, has sublet his quarter to one Mr. Daleepsingh, clerk of D. A. G.'s office, and the clerks, Messrs. Moolchand, Ramsaroop, Parashar, and other clerks attached to the administrative branch have been allowed to retain their quarters, whereas the clerks, Messrs. Mohd. Ilyas, Sagarmul, Ramsingh and Musa Khan, attached to the Instrument room and some of whom belong to the migratory staff, have not yet been allotted any quarters?

(*d*) Will Government please state whether they are aware that the station scale telegraphists of New Delhi are threatened that severe action will be taken against them, if they do not vacate their quarters? if so, why? Are they not supposed to be on duty any time during day and night?

(*e*) Do Government propose to take immediate steps in the matter?

Mr. T. Ryan: (*a*) to (*e*). Government have no information on the points raised by the Honourable Member all of which are within the competence of the Head of the Circle. If, however, as the Honourable Member suggests in part (*d*) of this question, it is a fact that quarters have not been allotted to certain officials who are entitled to them, it is open to them to represent their grievances through the proper official channel.

MUSLIM AND NON-MUSLIM TIME-KEEPERS IN THE PUNJAB AND NORTH-WEST FRONTIER POSTAL CIRCLE.

1521. ***Mr. Muhammad Anwar-ul-Azim:** Will Government please state the number of Muslims and non-Muslims recruited in the cadre of time-keepers in the Punjab and North-West Frontier Postal Circle since 1927?

The Honourable Sir Frank Noyce: In all eight persons have been appointed as Time-keepers in the Punjab and North-West Frontier Circle since 1927. Of these, six were Hindus, one was a Muslim and one a Sikh.

THE CRIMINAL LAW AMENDMENT BILL—*contd.*

Mr. N. N. Anklesaria (Bombay Northern Division: Non-Muhammadan Rural): Sir, I move:

"That in sub-clause (*l*) of clause 5 of the Bill, after the word 'force' the words 'knowing or having reason to believe that such copies have been so declared to be forfeited' be inserted."

After the insertion of these words, the clause will read as follows:

"Whoever publishes, circulates or repeats in public any passage from a newspaper, book or other document copies whereof have been declared to be forfeited to His Majesty under any law for the time being in force, *knowing or having reason to believe that such copies have been so declared to be forfeited,* shall be punished," etc., etc.

Those who have had the misfortune or good fortune to appear in such scurrilous and seditious publications as *"The Congress Bulletin"*. and those who realise the enormous mischief which such unauthorised publications have been doing throughout the country, especially in my province of Guzerat, will vividly realise the necessity for legislation like that embodied in this clause, and it is a matter of gratification to me that the House has by such a large majority rejected the amendment for its deletion. However, if you read the clause, you find that it is too extensive in its ambit and I am afraid, as it is worded at present, it will bring in its meshes perfectly innocent persons. I think it will be agreed on all sides of the House that we must frame our laws in such a manner that while, if possible, no guilty man should escape, no innocent man should suffer.

Sir, I am moving this amendment with the greater conviction, because all reference to the Indian Penal Code has been done away with in this

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Bill. Had this clause been a part of the Indian Penal Code, then the general exceptions which are in favour of protecting the innocent would have certainly applied. I know that the High Court of Bombay has ruled that the general exceptions in the Penal Code do apply to special laws, but, on the other hand, the High Court of Madras has ruled to the contrary and, in this state of conflicting authorities, I think a provision ought to be made for the protection of really inadvertent and, therefore, really innocent publications. The Select Committee felt pressed with this consideration of providing protection for inadvertent and innocent publications, but the remedy suggested was, as I had the honour to tell the House yesterday, both inadequate and, as I said yesterday, sub-clause (2) far from serving as a protection to the innocent, was likely to prove a trap to the unwary and would be a source of embarrassment to Government by leading to a conflict of authorities. I shall not dilate on this point today, but I may straightaway state my most serious objection against this clause, and it is this, that it fails to protect that large class of cases in which a person repeats an objectionable and offending passage inadvertently and in total ignorance of the fact that the passage or the document in which that passage occurs has been proscribed by some Local Government or other. To repeat a passage is a perfectly innocent act in ordinary circumstances. School masters repeat passages for their literary merit; religious teachers repeat passages for religious instruction. I say, in ordinary circumstances repetition or publication of a document or a passage is a perfectly innocent act. I will cite the instance of a publication called *Kansa Vadha*, execution of *Kansa*. It is a story from the Bhagwat, the religious scriptures of the Hindus, and it treats of the summary execution of a tyrant. I say, if you read that pamphlet in public in ordinary circumstances, that reading would be perfectly edifying, but, in the present circumstances of the country, I think the pamphlet could be proscribed with perfect propriety. Take another instance of a certain propagandist pamphlet, which is being circulated among my friends, about the Ottawa Agreement. That document is a perfectly misleading document, because it is based not on facts, but on pure imagination. Now, a Governor, Mussolini minded, may choose to proscribe that document, though, as I said, in ordinary circumstances it would be perfectly innocent to read, or repeat or publish that pamphlet.

Now, Sir, this clause, as I said, seeks to make penal an act which would be perfectly innocent in ordinary circumstances. I say, the circumstances of the country do require such legislation, but, I ask, what becomes of the man who repeats or publishes a document in total ignorance of the particular circumstances in which that document becomes objectionable from the point of view of law, and the ignorance, I further presume, is not the result of any fault of the man who repeats or publishes the document. In short, the clause, as it is worded at present, not only does not require a guilty intention in the accused, but also it does not require any knowledge of the circumstances which is absolutely requisite to make the act penal, and, I say, in this failure to embody the requisite knowledge in the accused person, the clause offends against one of the primary principles of criminal jurisprudence. I think the Honourable the Law Member will agree that every definition of a crime really so-called, known to law, must and does contain a proposition as to a state of mind in the accused person. That state of mind may be an intention, may be knowledge, may be malice,

may be rashness, and if I may commit an Irishism, may be negligence. And, indeed, Sir, leaving aside for a moment the theory of "wrongs of absolute liability" to which I shall refer later on, I think it will be agreed on all sides that in every crime the principle is that some psychological element which I have described must enter in order to make the act criminal. That is a principle which is described in very great detail in the leading case of Tolson decided in 1889 and reported in 1889, 23, Q. B. D., page 168. My Honourable friend, the Law Member, will find the relevant remarks at page 187 of the Report. That same principle was emphatically reasserted and re-affirmed in the case of *Sherras* vs. *De Rutsen* six years later, as reported in 1895, 1. Queen's Bench, page 918. That same principle is embodied in our own Indian Penal Code which has served as a model criminal code to many civilised countries of the world. And those who heard the incisive speeches of the Honourable the Home Member in the present debates could not possibly forget the insistence with which he brought to the notice of the House the fact that the offences which are described in the different clauses of the Bill always provide for criminal intent being requisite for making an act criminal. I ask, where is that criminal intent in clause 5? You will find that clause 5 is the only clause in which neither expressly nor by implication the psychological element so requisite to make an act criminal is to be found. In order to save the time of the House, I shall not go through all the clauses to show this, but I may tell the House that that is a fact which will be apparent to anybody who goes through the clauses.

The psychological element of which I have spoken is called by lawyers *mens rea*, and the conception of *mens rea* has been analysed by Professor Clarke in his book "Criminal Liability". He says this *mens rea* requires three elements, namely, a power of volition in the doer of the act which is adjudged to be guilty, secondly, knowledge of the circumstances which make the act criminal, and, thirdly, in certain cases, foresight of the consequences. In this clause the second element, and I consider it the most important element, is wanting. I have been citing these authorities in order to escape from the charge of "a confusion of thought". I would now come to the theory of "wrongs of absolute liability" which was propounded by the Honourable the Law Member in support of his contentions. I know that these wrongs, which are called wrongs of absolute liability, do not require the mental element of which I have spoken. But I also know, Sir, that these wrongs of absolute liability have been said by a great Judge, as you will find in *Sherras* vs. *De Rutsen*, to fall into three classes, and I will read to you the three classes mentioned in that case. Firstly, cases, not criminal in any real sense, but which in the public interest are prohibited under a penalty; secondly, public nuisances; and, thirdly, cases criminal in form, but which are really only a summary mode of enforcing a civil right. Now, I ask my Honourable friend, the Law Member, in which of these three classes does this clause 5 fall? Is it a trivial offence? It is an offence punishable, be it noted, with six months' imprisonment and a fine of unlimited amount—a most serious offence. It cannot, therefore, come within class 1. Is it an offence which can be called a public nuisance? Of course not. Nor can I say it can possibly fall within class 3 which speaks of cases criminal in form only, but really civil in their nature as regards liability. Within none of these three classes can clause 5 be by any stretch of imagination, brought, I submit, therefore, that the theory of wrongs of absolute liability does not help

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my Honourable friend. Dr. Kenny, at page 48 of Kenny's Criminal Law, speaks of the grounds on which the Legislature in modern times, though very averse to creating wrongs of absolute liability, does think it fit to enact such Statutes, and these grounds are, firstly, that the penalty incurred is not great. The penalty incurred here is six months' imprisonment and a fine of unlimited amount. Secondly, the damage caused to the public by the offence is *in comparison with the penalty* very great; and, thirdly, where the offence is such that there would usually be *peculiar* difficulty in obtaining adequate evidence of the ordinary *mens rea* if a high degree of guilt were to be required. Now, all these three grounds must co-exist according to Kenny in order to make it desirable for the Legislature to enact a fresh "wrong of absolute liability". I say, that none of these three grounds holds good in the present case. Again, Sir, this is a deterrent piece of legislation,—legislation which is being enacted for the purpose of fighting the manifestations of the civil disobedience movement, and it could only be effective if it is deterrent. Therefore, it is advisable to make the fine unlimited as it has been done in the Bill, as I say, with perfect propriety. But if you aim at deterrence, how can you possibly deter a man who is absolutely ignorant of what he is doing? You cannot deter a man when the man does not know what he is doing. The main purpose of your legislation, therefore, will be frustrated by not requiring knowledge or reasonable belief in the accused as stated in my amendment. Sir, to be brief, the failure to embody the principle which I have just stated in this clause is bound to lead to very regrettable results. Just consider how this clause will work in actual practice. Suppose there is a document containing 15 passages, of which passages, Nos. 10, 12 and 14 are objectionable, are seditious or obscene or objectionable on one ground or other, and that document is published first in Madras and the Government of Madras declare it—it has got to be declared according to section 99B, objectionable, specifying the objectionable passages and, on that ground and on that ground alone, proscribing the document. As I said, there are only three objectional passages in that document containing 15 passages. As you know, Sir, our Government move very slowly. After the period of appeal on that declaration of forfeiture under the Criminal Procedure Code is passed, some person in the Punjab repeats or reads in public one of the passages from the proscribed document which has not been declared in the notification under section 99B as objectionable. What becomes of the man who so repeats? As I said yesterday, if a sub-inspector hears him repeat that passage which has not been declared objectionable by the Local Government issuing the notification of forfeiture, and reports that in the present circumstances of the Punjab, where the passage has been repeated, the particular passage repeated by the accused is objectionable. Well, the local authorities get the Local Government to notify or give a certificate as the Honourable the Law Member insisted upon saying yesterday, that the passage is objectionable. The accused is hauled up before a Magistrate and the accused says: "I do not know English well and I could not possibly know what the Madras Government Gazette says about the passage as I never heard of the thing, and, before I repeated it, I had no knowledge that the passage was objectionable and the document in which it occurs was proscribed. Can any man, with any sense of fairness or justice, fail to allow such a plea? I say, that the poor Magistrate, however fairminded he may be and however

anxious to do justice between man and man, would be forced to convict the accused and disregard the plea which would appeal to all right minded men. To guard against such regrettable result, I have ventured to bring forward this amendment and I think the Honourable the Home Member is too fair and too just not to see the propriety of the course which I have suggested. If, however, the Government are prepared to proclaim that on account of the voting strength behind them they are not prepared to change a single comma from this Bill, then, I say, the talking of people like me in this House would be absolutely useless and it is better to stop it, but, as I say, the Honourable the Home Member is too fair minded not to see the propriety of this amendment. It is a very reasonable amendment and I am quite sure that if the House agrees to that amendment, the Bill will not be reduced to a pale shadow of its former self, which was the condition laid down by the Honourable Member for his acceding to any amendment from this side. I am quite conscious of the difficulty of bringing home to the accused the knowledge of the circumstances in which the publication becomes objectionable. I am quite alive to those difficulties. But to quote the authority on which the Honourable the Law Member relied, Sir John Salmond, that difficulty must be honestly faced and must not be shirked. I say to the Government, if you find difficulty in bringing home knowledge or reasonable belief to the accused, don't shirk the difficulty, but face it honestly. It is not a superhuman difficulty which cannot be faced. Sir, in the 510 sections of the Indian Penal Code we have got more than 30 sections in which these very words "knowing or having reason to believe" occur, and we have never heard—and I think my lawyer friends will bear me out in this—that those words have been creating any difficulty in the administration of the law to which those sections relate. Nor has the Honourable the Home Member pointed out that in any instance, any of the sections of the Ordinance in which the mental element is required has ever been a source of difficulty in the administration thereof. Sir, after all, the difficulty in convicting the guilty should not possibly be allowed to stand in the way of protecting the innocent, for the maxim is "let a hundred guilty escape, but let not one innocent suffer". With these remarks, Sir, I commend my amendment to the House and to Government.

Mr. B. V. Jadhav (Bombay Central Division: Non-Muhammadan Rural): Sir, I have great pleasure in supporting the amendment moved so eloquently by my Honourable friend from Guzerat. But I am very sorry to observe that sometimes the awakening comes too late. Had my friend used only one minute in pressing this argument before the Select Committee, it is a foregone conclusion that it would have been accepted because there his vote had a tremendous value.

Mr. N. N. Anklesaria: You are talking of the Select Committee? Well there this was the very amendment which I suggested, but I am sorry to say that my Honourable friend among others did not support me. (Laughter.)

Mr. B. V. Jadhav: Well, my memory does not bear that out.

Mr. N. N. Anklesaria: My memory is perfectly accurate.

Mr. B. V. Jadhav: I do not think I did not support any amendment which my Honourable friend moved there.

Mr. President(The Honourable Sir Ibrahim Rahimtoola): Order, order. Questions about voting in the Select Committee ought not to be brought on the floor of the House.

Mr. B. V. Jadhav: I accept your ruling, Sir. But then my Honourable friend has now thought it proper to appeal to the great truth in the administration of justice that it would not matter if a thousand guilty men were to be acquitted, but one innocent man ought not to be convicted. Sir, I think this sentiment has been relegated to oblivion, because the principle of this Bill is: "let a hundred innocents be convicted, but let not one guilty man be let off". (Laughter.) With all that, Sir, I admire the frankness of my Honourable friend, the Mover of this amendment, and I heartily support him.

Mr. C. S. Ranga Iyer (Rohilkund and Kumaon Divisions: Non-Muhammadan Rural): Sir, I rise to congratulate my Honourable friend, Mr. Anklesaria, on the very clear, forcible and closely-reasoned speech that he has delivered. I hope the Honourable the Home Member will not behave, as he has been behaving right through this debate, like what Sheridan called "an allegory on the banks of the Nile"—as obstinate and as head-strong as an allegory on the banks of the Nile. (*An Honourable Member*: "An alligator?") Sir, the Honourable the Home Member has not listened to one single amendment. He has not adopted one single amendment that we have been pressing from this side of the House, and the Honourable the Law Member too has been equally head-strong, rising up to Sheridan's description of obstinacy compared to the "allegory" on the banks of the Nile. Sir, I have no faith in what the previous speaker referred to as to particular happenings inside the Select Committee being adhered to in this House. I was not on the Select Committee and I have no disclosures to make within the precincts of this House. Sir, we have seen that the Honourable the Home Member has not hesitated to lay his unholy hand on the recommendations of the Select Committee. This Bill, as it has emanated from, and been amended by, the Select Committee, has not been left untouched by hand like Mellin's Food. Therefore, Sir, I believe at least once in a way the Honourable the Home Member will be rather kind to this side of the House and listen to the advice of one who does not always persist in obstinately opposing the Government.

Mr. Goswami M. R. Puri (Central Provinces: Landholders): Sir, I rise to support this amendment moved by my Honourable friend, Mr. Anklesaria, and I would also like to congratulate him upon the lucid speech that he has made and the solid arguments that he has placed before this House. Sir, this amendment aims at securing that no guilty man should escape and no innocent man should suffer, and that repetition or publication of articles in total ignorance should not be made an offence. Sir, I would submit that the request made by my Honourable friend, the Mover of the amendment, is quite reasonable and I hope the Government will comply with the request of the non-official Members of this House. With these words, I support the motion.

Mr. S. G. Jog (Berar Representative): Sir, I would congratulate my friend, Mr. Anklesaria, on the amendment that he has moved. I would like to bring to the notice of the House that this is an amendment which

requires no other reasoning. The very fact that it has emanated from Mr. Anklesaria is quite sufficient in itself that it is a most reasonable amendment. It is not an amendment which has come from this side of the House; it is not an amendment which has come from a man who either belongs to the Congress or belongs to a side with Congress sympathies. Nothing of the sort. It has come from a man whose motives cannot, under any circumstances, be questioned by anybody at least on that side of the House. Sir, so far as the discussions in the Select Committee go—I hope I am not washing dirty linen—my friend, Mr. Anklesaria, was very keen, with regard to any clause, to get that qualified by adding the words at times, "wilfully" or "knowingly" or "having reason to believe" or some such words which would bring home to the accused that he had *mens rea*. In every case we wanted to have that qualifying phrase, "whoever either wilfully does it", or "whoever knowingly, or having reason to believe, does a particular thing, whoever deliberately does any such thing", and so on. All these qualifying words we were always trying to have so as to mitigate the rigour of the law. In some cases we did succeed, and in some cases we did not succeed. This is one of those cases in which we were unable to achieve anything. This clause No. 5 corresponds to section 20A of the Special Powers Act. I must admit and give some credit to the occupants of the Treasury Benches and the Home Member and the Law Member that there is no doubt that there is a slight improvement on the provisions as they existed in the Ordinance. Section 20 of the Ordinance had no such *Explanation* which is added in this new Bill. The power given to the Local Government was not in the Special Powers Ordinance and, to that extent, I must admit that there is some improvement. At the same time, it must be said that the clause, even as it is, will go a great way in harassing many innocent people who probably did not know at the time of publishing a thing that a particular portion of it or the particular thing itself was proscribed. If you look at these Gazettes, you will find that, in the first place, they are published in English and they are published in different provinces. I think every week there is a regular list of things that have been proscribed and in each issue a number of them appear. It is no doubt true that ignorance of law or ignorance of these things is no excuse, but having regard to such a mass of things of proscribed literature that appear in every Gazette, there may be hard cases where a man might not have seen all those lists of proscribed literature. I would also appeal even to the Home Member or even to the Law Member whether they ever care to read all these notifications that appear in the various Gazettes about these proscribed literature. Then they must also take into account what must be happening to other people who are not so much conversant with what is published in these Gazettes. If a thing is published in Madras, does he want that even a man in the North-West Frontier Province should know what actually has taken place in the southernmost corner of India? India is a vast country and what is published in the Gazettes in the southernmost corner of the country should also be known by every man in the North-West Frontier Province. If that is the idea, I think it is far from realities. If you look at this question from this standpoint, there may be many cases which will be open to defence.

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The clause, as it runs, says that as soon the man produces a certificate from the Local Government that the so-called portion is objectionable or seditious on some other grounds, that publication becomes seditious and

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the only thing the prosecution will have to prove is that it was published, circulated or repeated. But so far as the defence of the accused is concerned, he may have certain defence of innocence or he did not actually know the thing or there may be some extenuating circumstances in which you cannot charge that man with any deliberate motive or any criminal intention or that he had any idea of deliberately breaking the law, or that he was deliberately repeating that particular portion which the Government had proscribed. That element, that idea, that motive may be quite absent in that man and even then the Magistrate can say: "Yes, it is a fact that you did not know about that proscribed literature and you never had any intention of deliberately giving publicity to that proscribed literature, but I am very sorry the Legislators have not made any such provision." The Law Member has not made any such provision for any such defence and that is why the Magistrate will be helpless. I submit, therefore, that to meet such defences, there must be some provision in this clause. The amendment that is suggested by my friend, I think, is quite reasonable. The words "knowing or having reason to believe" will probably meet the case. There is no difficulty for the prosecution to prove these things. After all, in many cases the Judge or the Magistrate has come to the conclusion on the circumstances of the case. The difficulty which the Government probably anticipates is how to establish "knowing or having reason to believe" or his motive. I may suggest that there might be the antecedents of the man or some other circumstances from which it can be presumed or established that that man deliberately repeated or circulated the proscribed literature. But, in the absence of such surrounding circumstances if there is nothing for the Magistrate to come to the conclusion that that publication or recitation was deliberately done, then the only alternative for the Magistrate is to let go that man. But the law, as it is, will be found to be defective and the Magistrate will be helpless.

There is another thing which I might suggest. If the Government are stiff enough not to change even a comma or not to accept the amendment as proposed by my Honourable friend, then I might suggest another thing. Under sub-clause (*2*), when the prosecution will go before the Local Government for a certificate, naturally the man must be arrested on the report of the sub-inspector or some other police officer that such and such proscribed literature was read or circulated by him. Then the matter goes to the Local Government or the District Magistrate or whatsoever authority may be appointed in this behalf, who will not issue any notice to that man. In other words, he will have no opportunity of saying whether he has anything to say against the certificate. What the Local Government or the District Magistrate will say is, whether that particular passage comes within the objectionable clause and whether it can be certified. But if, in that state of proceedings, an opportunity can be given by the Local Government enabling that man to give an explanation which probably in many cases the Local Government may find to be satisfactory in that case, before giving the certificate, the Local Government may feel satisfied that that man cannot be charged with any direct motive or with an idea of breaking the law or that that particular publication or recitation had nothing to do with the so-called civil disobedience movement. In that case the Local Government may not give this certificate and may excuse that man. If the Government see no reason to accept the amendment of my friend, then I might suggest that some such provision will probably meet such hard cases. But so long as that amendment is not before the

House, I have no other alternative but to support the amendment of my friend. One thing which we must always bear in mind, while framing laws to combat the civil disobedience movement, is that we must see that the laws so framed should stand the test of the other laws. As suggested by my Honourable friend, *mens rea* of the criminal intention is the fundamental thing. No man can be charged for anything if he had no criminal intention, and when we are having this legislation, even according to the Government programme, for three years, we must see that the legislation which they propose to have now must stand all the tests of criminal jurisprudence. Sir, I most heartily support the amendment of my friend, Mr. Anklesaria.

Pandit Satyendra Nath Sen: Sir, I have much pleasure in supporting the amendment moved by my friend, Mr. Anklesaria, with whom I seldom see eye to eye in this House where our positions from each other are as distant as the poles. Sir, sub-clause (*1*) of clause 5, as it stands, is not only wide, but also wild in its scope. As a layman I think that in order to make me liable either of two points at least should be proved against me, namely, that the passage itself which has been repeated or recited by me is in itself objectionable or offending, or that I have knowledge of the fact that the original work has been proscribed and forfeited to His Majesty. Sir, the first point has been rejected by this House. A very valuable suggestion came from an utterly unusual quarter yesterday, namely, from my Honourable friend, Major Nawab Ahmad Nawaz Khan. But my Honourable friend is a layman and my Honourable friend, Mr. S. C. Sen, wanted to give that suggestion a legal shape. When that amendment has been rejected by this House, it has become very necessary that this amendment should be accepted. When that amendment was being discussed in this House yesterday, the Honourable the Law Member rose and spoke against it. I pricked up my ears and, being a stupid man, I failed to catch the exact spirit of his argument. I was anxious to know whether the certificate of the Local Government was subject to scrutiny by the trying Magistrate; and, if I understood the Law Member rightly, I understood him to say that it was subject to such scrutiny. But the next moment he spoke in a different strain and I gathered that the trying Magistrate was simply to ascertain whether the repetition was made by the accused and he was to give his award. He was not entitled to examine and scrutinise the certificate of the Local Government. If that is so, I think every literate man runs the risk of coming within the clutches of the law, because in these busy times no one can be expected to keep a regular account of what publications are proscribed and what are not; and also because they are published only in the Government Gazettes which are hardly available to the ordinary man. Sir, it may be argued that it will be very difficult for Government to prove the knowledge of the accused; but, I think, whatever may be the difficulty, we cannot throw to the winds the cardinal principle of jurisprudence which is so much talked of in this connection that no innocent man should be made to suffer. With these words, I support the amendment.

Mr. Lalchand Navalrai (Sind: Non-Muhammadan Urban): Sir, an amendment of this nature stood in my name. By that amendment I wanted to throw the burden on the prosecution to prove the knowledge of the accused as regards the proscription of the book, or passage, or pamphlet. But when I saw that there was a more comprehensive amendment and, at the same time, one which threw a lesser burden on the

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prosecution, I dropped my own amendment in favour of Mr. Anklesaria's. By this amendment it is not intended to throw the burden on the prosecution to prove the intention, nor would it be asking for the burden of only knowledge, but even if the knowledge is not proved, they should prove at least that the accused had reason to believe. I think it is very reasonable and I think in all laws we find that either intention or knowledge or reason to believe is always made the gist of the offence. In this case, as the clause stands, it is a bald one. It says that whoever publishes or repeats a passage from a book or a pamphlet which has been proscribed will be punished. Whether that man knows or not, or has reason to believe or not that the offending matter was really proscribed, he would still be punished. Now, in the debate, it has been urged that the proscribed books, etc., are published in the Gazette. They are no doubt published, but the reason has also been given that they are so many that nobody has any time to read them, and, therefore, it cannot be said that the general principle of presumption that everybody knows the law can be thrown on such a person when the publication is proscribed under this clause. It would be absurd from the common sense point of view but, even according to law, any notification that is published has not the effect of law, so that according to law there can be a presumption against him. It is only when a particular law has been enacted that it brings out the presumption that everybody knows the law, but the particular notification of Government will not come under that category. Therefore I am submitting that when the burden has been lessened, the amendment is very reasonable. Otherwise my excuse for speaking on this would be to ask the Law Member a direct question on this point. Suppose that there is an accused before a Court. This accused has really published or repeated a passage, but Government come to know that that man had really no intention or any ulterior motive. He was also absent from India and has come back quite recently and he did not know of the notification of proscription and he had no reason to believe it. Supposing there is such an accused, will Government ask that the man should be punished or will they say that this clause does not apply? If Government say that this clause would not apply to that man, they would hold that this man should not be prosecuted and I would be satisfied. But, on the general principle, what would be the reply to such a case? I submit that a direct reply should come from Government. Therefore, I am submitting that, in my humble opinion, Government will not hold or give that reply direct to this clause, as it stands, or, as it is enacted, unless certain words are put into it of the nature of this amendment. Sir, I support the amendment.

Mr. Amar Nath Dutt (Burdwan Division: Non-Muhammadan Rural): Sir, I also join in the chorus of congratulation to the Honourable the Mover of this amendment. I remember, two years ago when I met my learned friend for the first time in the Western Hostel, he was eager to form His Majesty's Opposition here with my esteemed friend, Sir Hari Singh Gour, as the Leader; but there was some difference of opinion and Diwan Bahadur Rangachariar became the Leader and so he did not join us. Now, I find that the advent of our new Leader, Sir Hari Singh Gour, has also brought him over to our side. This is as it should be for he represents the constituency from which, Sir, your predecessor in office came, and it is but right that he should follow in the footsteps of that great

predecessor of yours. I supported the deletion of the whole clause, because I felt that there was no necessity for it; but having failed in our attempt to have this clause deleted, the only other alternative that I find can be adopted in the interests both of the Government and of the Governed was to have the clause modified in the way in which my Honourable friend, the Mover of the amendment, wants to have it modified. It has been said by my Honourable friend, Mr. Jog, whom I do not see here now, that this amendment is a very reasonable one, as if the other amendments were not. I do not agree with him there. Unless an amendment is reasonable, I do not think any reasonable man will support it. There may be divergence of views and we may be looking at things from different standpoints. In spite of that, when you find that every amendment has its supporters—and there were more than one—we should not characterise a particular amendment as the only reasonable one. Then, again, I do not agree with my Honourable friend, Mr. Jog, when he says that his motive cannot be questioned. Nobody has questioned motives. On the other hand, I would ask him to accept it and that he should not question the motives of any of the Honourable Members who have moved several amendments. No one had any motive, even my Honourable friend, the Law Member, when moving his amendments—save and except the interest of his country to serve and the Government of the country. As I have already said that our angle of vision may be different, but nobody can question the honesty and sincerity of purpose of the Members of the Treasury Benches as well as Members of the Opposition. With respect to this clause and the amendment, I submit that the same reasons have been advanced for enacting sub-clause (*2*) and I do not agree with that for reasons which I have said in another amendment to a clause of like nature. Be that as it may, I submit that this amendment should be accepted by the Honourable the Home Member on this very ground if I can convince him that the reasons for which he wanted to enact this clause do not exist. He said yesterday that people who took to civil disobedience methods, the first thing that they did was without any reason whatever to begin to read passages from proscribed literature. If they do it for the fun of the thing, I say, why do you not leave them severely alone?

The Honourable Mr. H. G. Haig (Home Member): I did not say yesterday that they did it without any reason. The reason obviously is to spread seditious utterances.

Mr. Amar Nath Dutt: In that case my reading of these facts is a little different from the Honourable Member's. I think in many cases simply for the fun of it and to annoy the officers they do it. I may give instances of people crying "Bande Mataram" whenever they see a man who would not like that cry. It is no doubt annoying, but if the man whom he intends to annoy only exercises a little self-restraint which is expected of responsible men, I think in that case the man who cries will be tired of doing so. As I was saying, I disagree with my Honourable friend over there when he says that this will spread sedition. It is misgovernment only that can breed real sedition leading to revolutionary methods. It is oppression and tyranny that is the cause of real sedition and sedition, in mere talk or out of mere fun to annoy a particular Government officer or a particular citizen who wants to show himself up as a very very loyal citizen for some ulterior motive, I beg to submit, is not real sedition. That being so, I think if responsible men will have a little amount of patience and allow these men to follow their own methods,

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which after all does not injure Government or anybody else for the matter of that, I think there will be no such cries and no such things done for the sake of fun for any length of time and the thing will be at an end. But if you want to put a stop even to these things in that way, I think you ought to accept the very reasonable amendment for the sake of making the law a real law and not a negation of all laws. It has been argued that ignorance of law is no excuse. But that principle does not extend to executive acts and the Honourable the Home Member said that these are executive acts and these executive acts he wants to legalise. Publication in a Gazette of proscribed literature is an executive act and I am aware of no system of jurisprudence which compels us to know of all executive acts that may be described in that precious official document known as the Gazette of a particular Province or the Gazette of India. I well understand the basis of the principle of ignorance of law is no excuse, but certainly there is no such principle as ignorance of an executive act or an executive fiat is also no excuse. In fact, it will be extending the principle too far.

Then, my friend has tried to convince the other side that there should be some test of criminal jurisprudence in a law like this. I submit I am not so hopeful as my friend, because for the last five or six days we have seen that test of criminal jurisprudence has not appealed to them. That being so, I would invite every elected Member on this side of the House to come over to our side, to once at least forget in their lives that they have not always to please the Government but that at times they have to look to the interests of the people and to vote for this amendment which I support wholeheartedly.

The Honourable Sir Brojendra Mitter (Law Member): Sir, I want to dispel one misconception with regard to the principle which was enunciated by Mr. Jog and repeated by my friend, Mr. Amar Nath Dutt, that ignorance of law is no excuse. That principle has no application whatsoever to this case, because notification of proscription is a matter of fact, and not a matter of law. What is the underlying principle of clause 5? It is this, that no one should publish, circulate or repeat any seditious matter; that is the thing which the Government want to stop. Paraphrasing this clause I would read it like this: "Whoever publishes, circulates or repeats in public a seditious passage from a proscribed book shall be punished". That is not exhaustive, but, for the purpose of my argument, I am confining myself to sedition and not referring to promotion of class hatred. What is sought to be introduced into this clause is this, that he can be punished only if it can be proved that he knows that the book had been proscribed. In support of that argument, Mr. Anklesaria urged that the clause, as it runs, might rope in innocent persons. I contest that proposition. What we are aiming at is the stoppage of repetition of seditious matter. If a man repeats seditious matter, why do you presume he is innocent?

Mr. N. N. Anklesaria: Who calls it seditious?

The Honourable Sir Brojendra Mitter: I am coming to that. The question is asked—who calls it seditious? The Local Government calls it seditious. That is, Sir, as I tried to explain yesterday, not merely the opinion of the Local Government, but the opinion of the Local Government

is subject to the scrutiny of the High Court. An order of proscription may be set aside by the High Court on the ground that the matter complained of is not seditious. Therefore, we start with this that when in the opinion of the Local Government, which is subject to the scrutiny of the High Court, a matter is seditious, that must be taken to be seditious. Start from that point. A man goes and repeats a seditious passage, and he is punished under this clause. Why should you say that we are punishing an innocent person? A man may not know that a book has been proscribed, but certainly he is presumed to know what is seditious and what is not seditious, because that is a question of law. That principle that ignorance of law is no excuse does apply to the case where a man has to judge whether what he is repeating in public is seditious or not seditious. Therefore, the argument that an innocent person may be punished under this clause does not hold good. And how does the amendment improve the situation? That person either knows that a book has been proscribed or he does not. How does his absence of knowledge that it has been proscribed make him any more innocent than what he was before? If he is repeating a seditious passage, the offence is in that repetition, not in his knowledge that the Government have declared it objectionable. That has got no bearing on the nature of the passage. If there be inherent sedition in the passage, it is immaterial whether it is proscribed or not. Supposing it is not proscribed, and a man repeats the seditious passage, is he not liable for prosecution for sedition? Sir, instead of prosecuting a person for sedition, we are providing in this clause that when a person is guilty of sedition, he shall be taken before a Magistrate and the certificate of the Local Government will be conclusive on the point that the passage is seditious. That is, we are substituting executive opinion, which is subject to judicial scrutiny, for the opinion of the Magistrate before whom a man is prosecuted. That is all that this clause proposes to do.

Then my friend Mr. Anklesaria's argument was that we might be penalising a man for repeating a passage which in ordinary circumstances would be perfectly innocent. I submit, Sir, there is no warrant for that supposition, because what in ordinary circumstances would be perfectly innocent would not be a case of repetition of what is intrinsically and inherently seditious . . . .

Mr. N. N. Anklesaria: I cited the instance of *Kansa Vadha*, the execution of *Kansa*.

The Honourable Sir Brojendra Mitter: Then his next argument was that this clause did not require guilty intention and, therefore, the clause offended against one of the primary principles of criminal jurisprudence. In elaborating that argument, he dealt with the question of *mens rea*. In this House I have noticed there is a good deal of misconception about *mens rea*. There is no such thing as *mens rea*, as known in English Common law, existing in the Criminal Law of India. Sir, in support of this proposition, which to many of my friends may seem astounding, I shall quote a passage from Mayne's Criminal Law. Dealing with *mens rea*, he says this:

"It is an almost immemorial commonplace of English judges to state that there can be no conviction on a criminal charge, unless the prisoner has a *mens rea*, or guilty mind."

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Then, after quoting some old authorities, he goes on to say:

"Its meaning was discussed with great elaboration in two English cases. . ."

He gives those cases:

"In the last case, Stephen, J., with characteristic independence, expressed an opinion that the maxim itself was not of much practical value, and was not only likely to mislead, but was absolutely misleading; and, in this opinion, Manisty, J., who agreed with him in nothing else, most heartily concurred. When the maxim originated, criminal law practically dealt with common law offences, none of which were defined. The law gave them certain names, such as treason, murder, burglary, larceny, or rape, and left any person who was interested in the matter to find out for himself what these terms meant. To do this he had to resort to the explanations of text-writers and the decisions of judges. There he found that the crime consisted, not merely in doing a particular act, such as killing a man, or carrying away his purse, but in doing the act with a particular knowledge or purpose. The super-added mental state was generalized by the term *mens rea*, and the assertion that no one was a criminal unless he had the *mens rea*, really came only to this, that nothing amounted to a crime which did not include all its necessary ingredients. . . . The maxim that every criminal must have a *mens rea* was generally true, but was always valueless. The real question was, whether in each case the accused had the particular *mens rea* which proved him a criminal."

After discussing the meaning of the expression *mens rea*, Mayne goes on to say:

"Under the Penal Code such a maxim is wholly out of place. Every offence is defined, and the definition states not only what the accused must have done, but the state of his mind with regard to the act when he was doing it. It must have been done knowingly, voluntarily, fraudulently, dishonestly, or the like."

Therefore, to do a thing knowingly is not necessary; in some cases mere voluntary action is *mens rea*. Sir, when a man goes and repeats a seditious passage, does he not do it voluntarily, or does he do it involuntarily? As knowledge is in certain offences an essential element in *mens rea*, so, voluntariness in certain other offences is an essential element in *mens rea*. Here we are dealing not with an offence which has knowledge as an essential element, but of which voluntariness is an essential element. Where then this clause offends any principle of criminal jurisprudence I fail to see. The whole confusion has arisen from the English conception of the expression *mens rea* without reference to its application to Indian offences under the Indian Penal Code and other criminal laws. That is the basis of the whole misconception. Knowledge or criminal intention is not a necessary ingredient in every offence. In many offences voluntariness is quite enough. Let me give this illustration. A man is in possession of an unlicensed firearm. He may or may not know whether license has been taken out for that particular weapon. It is not necessary that he should know it,—that he should know that it is unlicensed. He may not have any criminal intention of making an illegal use of that weapon. Not necessary. The mere fact that he voluntarily possesses an unlicensed revolver is an offence under the law. In that case that voluntary possession is the *mens rea*. No intention is necessary, no knowledge is necessary. I will give another instance. Mr. Ranga Iyer comes from Europe, and lands in Bombay with dutiable goods which he has not declared. He may or may not know that the particular thing—say, six pairs of silk stockings that he has got in his suit case is dutiable. His knowledge is immaterial. The very fact that silk stockings are dutiable is quite enough to constitute an offence. No improper intention may have been in his mind. (Laughter.) He may not have any knowledge of anything, but nevertheless, he will be

guilty of an offence. So much for *mens rea*. My learned friend, Mr. Anklesaria, said, you cannot deter a man from doing what he does not know to be wrong. What is the thing which he has got to know according to the amendment? He has got to know that a thing has been proscribed, not that what he is repeating is right or wrong. That is left to his own judgment. So, his knowledge or his ignorance of the notification in the Gazette has no bearing upon his judgment as to whether the passage which he is repeating is seditious or not seditious. I do not follow that part of the argument of my learned friend. My Honourable friend gave an illustration of a book containing 15 passages, three of which are objectionable and the Madras Government declares these three passages, proscribes them. Ordinarily, when a book is proscribed, the book is proscribed, not that passages are culled out from that book.

Mr. N. N. Anklesaria: The whole book is proscribed.

The Honourable Sir Brojendra Mitter: Then he says, a man reads in public a passage not declared. The premise is wrong, because passages are not declared, the book is declared.

Mr. N. N. Anklesaria: Not declared under section 99B of the Criminal Procedure Code, because they have got to declare what is the seditious matter.

The Honourable Sir Brojendra Mitter: I was thinking of the notification of proscription. In the notification, a book would be proscribed, no passages will be mentioned there.

Mr. N. N. Anklesaria: Because the grounds have to be mentioned in the notification.

The Honourable Sir Brojendra Mitter: The ground mentioned would be that there are passages in the book which are seditious.

Mr. N. N. Anklesaria: Objectionable passages have got to be specified in the notification under section 99B.

The Honourable Sir Brojendra Mitter: I venture to disagree.

Mr. S. C. Mitra (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): They are not done as a matter of fact.

Mr. N. N. Anklesaria: The matter has to be specified.

The Honourable Sir Brojendra Mitter: Section 99A says:

"Where any newspaper, or book. . . wherever printed, appears to the Local Government to contain any seditious matter, or any matter which promotes or is intended to promote feelings of enmity or hatred between different classes of His Majesty's subjects, that is to say, any matter the publication of which is punishable under section 124-A, or section 153-A, of the Indian Penal Code, the Local Government may, by notification in the local official gazette, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter.....to be forfeited to His Majesty."

All that the Local Government has to do is to state the grounds of its opinion, and it would be a statement of the grounds of its opinion if it says that this book contains matter which promotes class hatred, or this book contains matter, which is seditious under section 124A. That would

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be quite enough. It is not necessary to quote passages, and it is not usual to quote passages. Then, my friend went on to say that the sub-inspector in the Punjab reports that a certain passage was repeated which was not declared by the Madras Government as seditious. Sir, as I have said, the Madras Government has not declared any passages and if the sub-inspector brings to the notice of the Local Government a seditious passage in that book and the Local Government issues a certificate, as we are contemplating, then the presumption would be that that particular passage is an objectionable passage. Sir, the order of proscription by the Madras Government was subject to the scrutiny of the Madras High Court. If the order stands, the presumption would be either that the Madras High Court did not set aside the order or that no one thought it worth his while to take the matter to the High Court to have the order set aside. Now, the order stands. If the order stands, the passage which the sub-inspector considers to be objectionable is brought to the notice of the Punjab Government. The Punjab Government may take the opinion of its legal advisers. It may come to the conclusion that it is not objectionable or it may come to the conclusion that it is objectionable. If it comes to the latter conclusion, it issues a certificate on the basis of which a prosecution can be launched. Where is room for any confusion? Where do these passages 10, 12 and 14 come in? The only passage which is material is the passage which was brought to the notice of the Punjab Government and which was embodied in a certificate. Then, Sir, I come to the last point of my learned friend, Mr. Anklesaria. He says: "Oh, the Government may have difficulty in proving knowledge, but you must honestly face it". In ordinary cases I would certainly accept that advice, but in this case knowledge is absolutely impossible of proof. You are prosecuting a man for repeating a seditious passage from a proscribed book. He was liable to prosecution for sedition, but you are not taking that protracted course of a regular trial under section 124A. You are taking the shorter course. For that shorter course you go to the Local Government for its opinion whether the passage is seditious or not. If you are forced to prove that the accused had knowledge of the notification declaring the book to be forfeited in most cases the prosecution would fail, because such proof is impossible. A man goes to a street corner and reads a seditious passage. How is anybody in the Government to know whether that man had knowledge of the fact of proscription or not. Therefore to require proof of this fact would really mean defeating every prosecution under this clause. It would be frustrating the object of the clause. When you are enacting any law, you must enact it in such a way that its wording does not frustrate its object. If you introduce the element of knowledge here, you will be frustrating the object of this clause. I concede that that would not have been a conclusive answer provided there were inherent risks in the clause, risks to which an ordinary innocent person might be exposed. I have shown that an ordinary citizen who repeats an innocent passage is not exposed to any risk. An ordinary citizen who repeats a seditious passage cannot claim immunity to the same extent and, therefore, in order to bring that man to justice who has repeated a seditious passage, you should not enact a law which would make prosecution futile. Sir, the amendment would render the clause futile. I oppose the amendment.

Mr. S. C. Mitra: I support the amendment of my friend, Mr. Anklesaria. I admit that there has been confusion of thought, but I am afraid the

learned Leader of the House might have intentionally tried to confuse the House. He says that whoever repeats a seditious passage only, comes under the purview of this clause. What is necessary for a conviction? What is required to be proved for conviction under this clause is the publication and the only other element necessary to be proved is that it is from a newspaper, book or other document which has been proscribed and where this passage occurs. Where does the Honourable the Leader of the House find that the person who committed the offence was repeating a seditious passage? It is the Government in their executive authority who styles it as a seditious passage. For the conviction of the person only two elements are necessary. It is publication and that it occurred in a proscribed newspaper or book or document. Then the Leader of the House was trying to confuse us by saying that because Government in their executive function said that it was seditious, so it must be taken for granted that the man was knowingly repeating a seditious passage. Here I join issue with him.

The Honourable Sir Brojendra Mitter: I did not say that.

Mr. S. C. Mitra: That is what I understood the Law Member to say.

The Honourable Sir Brojendra Mitter: I may not have expressed myself clearly.

Mr. S. C. Mitra: That is my misfortune. I find in this clause there is no necessity of proving that the passage is seditious. It is merely the publication and that the passage was quoted from a book which has been proscribed by Government are the only two facts that are to be proved. I shall be glad to be enlightened by the Honourable the Home Member when he makes a reply—whether in the Court there will be any necessity of proving that the passage was seditious beyond the fact that the sub-inspector found it to be seditious and the Government on that report accepted the passage as seditious. Very ingeniously the Law Member said that when the book itself was proscribed, there were provisions to move the High Court for annulling that proscription. The book was proscribed. It was in the interest of the author to make an appeal to get the order annulled. The offender, under the present clause, was not a party when the book was proscribed. Why should he take it upon himself to fight against the proscription and go to the High Court.

The Honourable Sir Brojendra Mitter: If Mr. Mitra will excuse me for a minute, I think he is not right in saying that it is only the author of the book who can go up to the High Court. Anybody who has got a copy of the book can go up to the High Court. Mr. Mitra will find that in the *Comrade* case, Mr. Muhammad Ali's case. He took the case to the High Court on the ground that he had a copy in his possession and that copy had been forfeited to His Majesty.

Mr. S. C. Mitra: That may be so, but our contention in this case is this. If a man committed any offence unwittingly, it is not expected of this gentleman, who is not even aware of that order of forfeiture or proscription, to go to the Court. There may be a right of

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anybody to fight against any orders of forfeiture. Sir, every day so many books, leaflets, documents and newspapers are being forfeited, and if it be the business of anybody to fight in each case then I think their hands will be too full. But our case is that the offender here under this clause, if he is not even aware of that forfeiture, should be in that case protected. So it is not a question of a man repeating a seditious passage.

Then, as regards the other point, I could not understand why, if an article is seditious, the man should not be prosecuted under the seditious section and why he should be denied trial by a judge and which is appealable in the regular way, and why this short cut to get the man convicted should be taken recourse to. That question has not been answered by only saying that it is a shorter route. There may be a shorter route, but it is liable to great abuse and to denial of justice to a man. As regards the question of *mens rea*, I think my Honourable friend, Mr. Anklesaria, argued it very lucidly and made it clear that there is that difference between the English and the Indian law that under the English law the guilty mind has to be proved, but in Indian Law unless the section specifically provides for *mens rea*, it is not a necessary element for conviction, but that is no argument why we should demand in this clause to include *mens rea* as a necessary element, and there is no reason why these words should not be added to prove the guilty mind of the offender. Sir, with these words, I support the motion of my friend, Mr. Anklesaria.

The Honourable Mr. H. G. Haig: Sir, I am not sure that it is really incumbent on me to say anything after the extremely exhaustive exposition of the law given by my Honourable colleague, the Law Member. The Honourable Members opposite have expressed their great admiration, which I share, for the speech of my Honourable friend, Mr. Anklesaria. It was learned, it was eloquent and it was long—three very commendable qualities in speeches on this debate. We have also been exhorted by my Honourable friend, Mr. Amar Nath Dutt, to be patient. He suggested that in enacting this clause the Government were showing some impatience. Well, I think, Sir, as to that charge, that while the members of Government have sat here day by day and listened to these elaborate debates on points, which I confess have often seemed to me small points, they cannot be accused of undue impatience. This particular point, though it has given rise to most elaborate legal argument, appears to me, to my untrained intelligence, to be a very simple one. The question is whether when a document has been proscribed and its proscription has been published in the Government gazette, it is reasonable to assume that a person who repeats passages from that document is aware that it has been proscribed. I submit that in the first place the document is a seditious document or it would not have been proscribed, and anyone who proposes to repeat a passage from such a document has got to exercise reasonable caution. There is no difficulty in satisfying himself whether in fact it has or has not been proscribed; and in fact, as Honourable Members are perfectly well aware, if this provision were inserted in the clause and it were necessary for the prosecution on every occasion to prove that the accused actually knew that the book had been proscribed, then they would be asking the prosecution to prove an impossibility. The clause would be made entirely ineffective. Sir, I oppose the amendment.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That in sub-clause (*1*) of clause 5 of the Bill, after the word 'force' the words 'knowing or having reason to believe that such copies have been so declared to be forfeited' be inserted."

The motion was negatived.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That clause 5 stand part of the Bill."

Sir Abdur Rahim (Calcutta and Suburbs: Non-Muhammadan Urban): Sir, I want to speak on the motion that clause 5 stand part of the Bill.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): Yes.

Sir Abdur Rahim: Sir, I wish to oppose this motion. This is a typical clause and I wish to make it clear to the House what the real nature of the entire Bill is, from the wording and from the scope of this clause. Amendment after amendment has been moved and rejected. Sir, I think I am in order?

Mr. President (The Honourable Sir Ibrahim Rahimtoola): If you restrict yourself to clause 5.

The Honourable Mr. H. G. Haig: Sir, on a point of order,—have we not already had a full debate on clause 5 as a whole? Is it in order that we should have a second debate on the clause as a whole?

Mr. President (The Honourable Sir Ibrahim Rahimtoola): It is obvious that Honourable Members are entitled to express their views on every question that has to be put to the House and on which they have a right to vote. The Chair recognizes the force of the argument which the Honourable the Home Member has advanced, *viz.*, that that would lead to repetition. So far as possible, the Chair will take care that repetition does not take place. It has to be remembered that when a question has to be put to the House and it has to be voted upon, discussion on it must be held to be in order. The fact that the original amendment asking for the repeal of this clause was discussed and voted upon cannot take away the right to discuss why the clause should or should not be allowed to stand part of the Bill.

Sir Lancelot Graham (Secretary, Legislative Department): Sir, might it not be desirable in that case either to cut short the debate on the motion that the clause be omitted, or to treat that motion as a purely negative motion and disallow it, instead of having a debate on the same question twice over?

Mr. President (The Honourable Sir Ibrahim Rahimtoola): That may be the fault of the Rules and Standing Orders or the practice which has prevailed. As a matter of fact there has hardly been any controversial piece of legislation before this Assembly since it was constituted during the discussion on which amendments for the omission of clauses have not been held to be perfectly in order and allowed to be discussed. (Applause.) This practice has prevailed all these years and the Chair has no intention of making any change in that procedure.

Sir Abdur Rahim: Sir, I do not propose to take up much of the time of the House. The amendments have been disposed of one after the other and we have now come, therefore, to the clause as it stands. I said that this is a typical clause and it really reveals the object with which it is to be enacted and this is the object throughout the entire Bill. Now, what I wish, first of all, to point out is that the clause purports to define the jurisdiction of the executive on the one hand and of the Court on the other. Let us see what is the jurisdiction of the executive as laid down in the clause. The jurisdiction of the executive is that it can declare any book, newspaper or a document to be objectionable and, therefore, to be proscribed. What happens afterwards, I am not concerned with as I am concerned with the scope of this clause. The man whose book or document or newspaper has been proscribed or any other person who takes an interest in the matter can refer the matter to the High Court. That is another matter. But it is the jurisdiction of the executive under this clause to pronounce upon the nature of the publication. Now, what is left to the Court under this clause? The Court has only to find that any passage from that book or newspaper or document has been recited or repeated in public. If that is found, that is quite enough for the Court and it must, therefore, convict the person who has repeated that passage. It does not pronounce, according to this clause, upon the character of the passage that is repeated. If the fact is proved that a man has recited a passage from a prohibited publication, he is guilty and is liable to be sent to jail. Now, supposing a newspaper, for instance, is proscribed. As Honourable Members know, a newspaper contains all sorts of matter. Some of it may be objectionable and, so far as it is objectionable, we must take it for granted that the pronouncement of the executive is conclusive as the law requires. But there are other passages in a newspaper which are not objectionable. Still, according to the interpretation that the Court is bound to put upon this clause, any passage, however innocent or laudable, cited from a proscribed newspaper, is liable to be brought under its operation and the man can be sentenced.

I do not want to repeat the arguments that have been addressed to this House as regards the question of *mens rea* or guilty knowledge or any element that ordinarily goes to constitute a crime, but I do challenge the statement of the Honourable the Law Member that the Indian Penal Code does not recognise the guilty mind as a necessary ingredient of an offence. There may be some particular cases, individual cases, in which that element need not be present, but throughout the Indian Penal Code surely that is the most important element. In almost every offence of any character it is necessary to find out whether there has been guilty knowledge or not. Malicious intention or unlawful object or some such element has to be found. I do not know how a clause like this came to be drafted. It simply means that the jurisdiction of the Court to pronounce upon the real guilt of a person is taken away and everything is left to the executive. The question is whether the House would accept a clause of this character.

The Honourable Mr. H. G. Haig: Sir, having been present throughout the debate on this clause, I think I am right in saying that all the points raised by the Honourable the Leader of the Independent Party have already been fully discussed and replied to and, therefore, I do not propose to give any further reply.

Mr. President: The question is:

"That clause 5 stand part of the Bill."

The Assembly divided:

AYES—54.

Abdul Hye, Khan Bahadur Abul Hasnat Muhammad.
Acott, Mr. A. S. V.
Ahmad Nawaz Khan, Major Nawab.
Allah Baksh Khan Tiwana, Khan Bahadur Malik.
Amir Hussain, Khan Bahadur Saiyid.
Anklesaria, Mr. N. N.
Bajpai, Mr. G. S.
Bhore, The Honourable Sir Joseph.
Bower, Mr. E. H. M.
Burt, Mr. B. C.
Dalal, Dr. R. D.
DeSouza, Dr. F. X.
Dudhoria, Mr. Nabakumar Sing.
Dunn, Mr. C. W.
Dutt, Mr. G. S.
Fazal Haq Piracha, Shaikh.
Fox, Mr. H. B.
Graham, Sir Lancelot.
Greenfield, Mr. H. C.
Gwynne, Mr. C. W.
Haig, The Honourable Mr. H. G.
Hezlett, Mr. J.
Hudson, Sir Leslie.
Ishwarsingji, Nawab Naharsingji.
Ismail Ali Khan, Kunwar Hajee.
James, Mr. F. E.
Jawahar Singh, Sardar Bahadur Sardar.
Mackenzie, Mr. R. T. H.
Macqueen, Mr. P.
Meek, Dr. D. B.
Metcalfe, Mr. H. A. F.
Mitter, The Honourable Sir Brojendra.
Moore, Mr. Arthur.
Morgan, Mr. G.
Mukherjee, Rai Bahadur S. C.
Nayudu, Rao Bahadur B. V. Sri Hari Rao.
Nihal Singh, Sardar.
Noyce, The Honourable Sir Frank.
Rafiuddin Ahmad, Khan Bahadur Maulvi.
Raghubir Singh, Kunwar.
Rajah, Rao Bahadur M. C.
Rau, Mr. P. R.
Ryan, Mr. T.
Sarma, Mr. R. S.
Schuster, The Honourable Sir George.
Scott, Mr. J. Ramsay.
Sher Muhammad Khan Gakhar, Captain.
Singh, Mr. Pradyumna Prashad.
Smith, Mr. R.
Sorley, Mr. H. T.
Tottenham, Mr. G. R. F.
Wajihuddin, Khan Bahadur Haji.
Yakub, Sir Muhammad.
Zulfiqar Ali Khan, Sir.

NOES—40.

Abdoola Haroon, Seth Haji.
Abdul Matin Chaudhury, Mr.
Abdur Rahim, Sir.
Azhar Ali, Mr. Muhammad.
Badi-uz-Zaman, Maulvi.
Chandi Mal Gola, Bhagat.
Chetty, Mr. R. K. Shanmukham.
Chinoy, Mr. Rahimtoola M.
Dutt, Mr. Amar Nath.
Gour, Sir Hari Singh.
Gunjal, Mr. N. R.
Ibrahim Ali Khan, Lt. Nawab Muhammad.
Isra, Chaudhri.
Jadhav, Mr. B. V.
Jha, Pandit Ram Krishna.
Jog, Mr. S. G.
Lahiri Chaudhury, Mr. D. K.
Lalchand Navalrai, Mr.
Misra, Mr. B. N.
Mitra, Mr. S. C.
Mody, Mr. H. P.
Pandian, Mr. B. Rajaram.
Pandit, Rao Bahadur S. R.
Parma Nand, Bhai.
Patil, Rao Bahadur B. L.
Phookun, Mr. T. R.
Puri, Mr. Goswami M. R.
Ranga Iyer, Mr. C. S.
Rastogi, Mr. Badri Lal.
Reddi, Mr. P. G.
Reddi, Mr. T. N. Ramakrishna.
Sarda, Diwan Bahadur Harbilas.
Sen, Mr. S. C.
Sen, Pandit Satyendra Nath.
Singh, Kumar Gupteshwar Prasad.
Sitaramaraju, Mr. B.
Sohan Singh, Sirdar.
Thampan, Mr. K. P.
Uppi Saheb Bahadur, Mr.
Ziauddin Ahmad, Dr.

The motion was adopted.

Clause 5 was added to the Bill.

The Assembly then adjourned for Lunch till Thirty-Five Minutes Past Two of the Clock.

The Assembly re-assembled after Lunch at Thirty-Five Minutes Past Two of the Clock, Mr. President (The Honourable Sir Ibrahim Rahimtoola) in the Chair.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That clause 6 stand part of the Bill."

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

"That clause 6 be omitted."

As originally drafted, clause 6 was to introduce an amendment in section 505 of the Indian Penal Code. There, in that section, in sub-section (*b*), the words "whereby any person may be induced to commit an offence against the State or against the public tranquillity" were to be omitted and in their place "or hatred or contempt towards any public servant or any class of His Majesty's subjects" were to be substituted. That was the original clause as proposed in the original draft of the Bill. In the Select Committee, every reference to the Indian Penal Code was dropped and, therefore, the clause, as is now before the House, was substituted for the original clause 6 of the Bill. The clause says:

"Whoever makes, publishes or circulates any statement, rumour or report which is false and which he has no reasonable ground to believe to be true, with intent to cause or which is likely to cause fear or alarm to the public or to any section of the public or hatred or contempt towards any class of public servants or any class of His Majesty's subjects shall be punished, etc., etc."

I want to point out that "any class of public servants or any class of His Majesty's subjects" do come under the expression "any section of the public" and, therefore, they are not required here. I congratulate the Home Member and the Law Member for dropping the protection granted to any public servant in the original draft—hatred or contempt towards any public servant—and they have now retained hatred or contempt towards any class of public servants. But I maintain that any class of His Majesty's subjects is not at all required here. This Ordinance Bill has been brought forward for the sake of affording protection to Government servants and the Bill, as returned from the Select Committee, provides protection to a class of public servants; but then there is no necessity of any class of His Majesty's subjects because any section of the public is protected by clear words and, therefore, any class of His Majesty's subjects is superfluous. I maintain that the original provision in the Indian Penal Code is quite sufficient for the protection of Government servants and everybody. Any statement, rumour or report which is prejudicial to them will bring the offender under the clutches of the law and he will be adequately punished under the Indian Penal Code and, therefore, there is no necessity for this new clause which is very stringent and brings in many confounding things. As I have just pointed out, there is no necessity for making any mention about any class of His Majesty's subjects, because His Majesty's subjects are generally protected by the Indian Penal Code. Some protection was required towards a class of public servants no doubt, because we have seen that in the non-co-operation movement certain services were singled out and contempt was shown towards them . . . .

Sir Muhammad Yakub (Rohilkund and Kumaon Divisions: Muhammadan Rural): But you moved a similar amendment about that clause also—protection of some servants?

Mr. B. V. Jadhav: Therefore I maintain that the clause is very wide and does not deserve to be accepted by this House. At the same time I shall point out that the Bill, as originally drafted, was an amendment to the Indian Penal Code, and, therefore, the Exception to section 505 would have automatically applied to the new section; but here although some words have been imported in the body of the clause, I do hold that the Exception as given in section 505 of the Indian Penal Code is more liberal and, therefore, ought to have been introduced here. I, therefore, propose that clause 6 be omitted.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): Amendment moved:

"That clause 6 of the Bill be omitted."

Kunwar Raghubir Singh (Agra Division: Non-Muhammadan Rural): Sir, I beg to oppose the amendment moved by Mr. Jadhav. I am surprised that he being a Member of the Bombay Government at one time should bring forward such an amendment as this, namely, to omit the whole clause which is really in the interests of Government.

Sir Muhammad Yakub: He is not a Member of the Government now.

Kunwar Raghubir Singh: I was recently reading a book called Storia Do Mogor by Manucci. There I found how Prince Aurangzebe spread false rumours to prejudice the cause of Prince Dara. Therefore, it is the duty of every wise Government to see that false rumours are not circulated in the country. As a Government, the Government of India have taken a very right step in inserting this clause, because false rumours play a great havoc in the present political condition of the country. For instance, a rumour was spread the other day that Mahatma Gandhi was out of prison. So every civil disobedience man took advantage of it to show mysterious powers of the Mahatma and the rumour was so widespread that everybody, even in remote villages, began to speak of it. Therefore, it is very necessary that this clause should be retained. I am against the entire omission of the clause, and, therefore, I oppose the amendment of my Honourable friend, Mr. Jadhav.

Mr. Amar Nath Dutt: I am sorry, Sir, that my friend from the Agra Division has not been able to find himself in agreement with the Honourable the Mover of the amendment. Probably he thinks more for the Magistrates and Collectors than Mr. Jadhav, a former Minister of the Government of Bombay.

Mr. B. V. Jadhav: Still he was an elected Member.

Mr. Amar Nath Dutt: Be that as it may, I submit that the clause which the Government desire to insert in the Bill is not needed for the purposes for which it has been introduced, namely, to combat the civil disobedience movement. They want to protect Government servants from certain things, and those are: "things likely to cause fear or alarm". I

[Mr. Amar Nath Dutt.]

submit that fear or alarm which does not induce anybody to break the law or commit an offence should not have found a place in this Bill, in fact that principle is to be found in section 505 of the Indian Penal Code, where we have in clause (*b*) "with intent to cause or which is likely to cause fear or alarm to a public or to any section of the public whereby any person may be induced to commit an offence against the State or against public tranquillity". Certainly, nobody would quarrel if you have a provision like this in this Bill, and I think what my friend from Aligarh meant was that such protection ought to be given, and I think my friend, Mr. Jadhav, will not deny that such protection should be given. But to give protection to the extent that is contemplated here is something very wide and is not needed for combating the civil disobedience movement. In the first place, I think that Government officers ought to have some stamina in them to withstand public criticism or even unjust contempt which others may feel when discharging their public duties. To deal with the masses of the people is a very difficult thing, and I think many of the Government officers will bear me out when I say that a kind word or kindly treatment will capture the imagination as well as the affection of the people over whom these officers rule, while the people will not dare express their contempt or hatred for the unjust and tyrannical acts which these officers are prone to commit at times in their official capacity. I submit that to take away the Government officers who have to administer the law in the mufassil from the light of criticism is not the right thing to do, because every criticism made against an officer may be said to bring him to contempt or hatred, in fact in these days if the Honourable the Home Member would care to acquaint himself with the conditions in the mufassil and see how these officers are behaving with the people, he will at once see that their behaviour cannot but evoke contempt and hatred for that class of people who administer the law at the present moment. You cannot expect that the whole people will be above all such feelings of hatred or contempt for the wrong doers, and especially when these wrong doers happen to possess unlimited powers. Beginning from a small pin prick to the hang rope of the executioner, you have everything in your power. The law gives you certain powers to inflict punishment on the people, but besides this you exercise more powers than is contemplated by the law. If the Government officers are law-abiding, if they had that amount of respect for law which people outside that sacred ring have, I think there would have been less room for enacting a clause like this. You cannot kill hatred and contempt for an individual of that type. So long as human nature continues to be what it is, one is bound to hate men who do things for which hatred is the least thing that can be expressed.

Then, as regards contempt, I submit that if their conduct is such, which is not contemptible, I think no amount of contempt can affect them. If they act in a contemptible manner,—and I do say that they often act in a contemptible manner,—then there is nothing wrong in criticising the actions of such officers. Here is one instance in which you are acting in a contemptible manner. You are flouting the opinion of the public; you are flouting . . . . .

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The Honourable Member should address the Chair.

Mr. Amar Nath Dutt: Sir, I beg to be excused. Sir, they are flouting public opinion; they are not paying any heed whatsoever to the views expressed by the representatives of the people here, and need I say that it evokes both hatred and contempt in us for that? Instances like these ought to be avoided as far as possible in order to have good relationship between the Government and the people. You have witnessed from day to day how the Government servants here have treated all our appeals to them with respect to this piece of legislation, and if we demand of our servants, as they glorify to call themselves though really they are our masters, if we expect our servants to act according to our wishes, nay orders, and if they do not act up to our wishes and orders, then we would have at once dismissed them if we had that power. They are arming themselves with more powers with a view to keeping themselves tight to their seats so that nobody can disturb them. That being their position, they should not deny us the little human feeling of hatred and contempt which their conduct must evoke in us. Sir, I may say that I am not addressing them personally, because I know every one of them is an estimable gentleman,—my Honourable friend, Mr. Dutt, as well as my Honourable friend the Home Member. But the system they represent is a vicious one, and so long as they are in that system, their conduct inspires nothing but hatred and contempt. That being so, I support the deletion of this clause.

The Honourable Mr. H. G. Haig: As the House will have observed, this clause is proposed as a substitute for clause (*b*) of section 505 of the Indian Penal Code. The first difference from clause (*b*) of section 505 of the Indian Penal Code is that the words "whereby any person may be induced to commit an offence against the State or against the public tranquillity" are omitted. In other words, when the rumour is false and is likely to cause fear or alarm to the public, it is proposed that that in itself should be an offence and that it should not be necessary further to establish the very difficult proposition that the spreading of that rumour is likely to induce a person to commit a definite offence against the State. We all know that in this country the spreading of rumours, particularly false rumours, is a very easy matter and that it is apt to have a deplorable effect on the countryside in creating a general state of unrest. It is the easiest thing in the world to spread a rumour—they are after all to a large extent illiterate people, and consequently credulous people—a rumour that the Government are either going to take some perfectly unjustifiable and ridiculous action, or that the Government are being overthrown, or that there has been a mutiny of troops, or whatever it may be. Those rumours in themselves are most pernicious, and it is the intention of this clause that deliberate spreading of false rumours of that kind should be prohibited. The second point is that we have also prohibited the spreading of false rumours which are likely to cause hatred or contempt towards any class of public servants or any class of His Majesty's subjects. My Honourable friend, Mr. Amar Nath Dutt, seemed to think that by making that provision we were interfering with what he regarded as his inalienable right as a man to indulge in the human feelings of hatred and contempt towards Government servants. I should be the last person to attempt to deprive my Honourable friend of that satisfaction, and I would point out to him that this clause in no way interferes with any degree of hatred or contempt that he may feel towards these Benches. The only thing with which it interferes is the spreading of definitely false reports

[Mr. H. G. Haig.]

about us which are likely to cause those feelings. Sir, I oppose the amendment.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question which I have now to put is:

"That clause 6 of the Bill be omitted."

The motion was negatived.

Mr. S. C. Sen (Bengal National Chamber of Commerce: Indian Commerce): I move:

"That in sub-clause (*1*) of clause 6 of the Bill, the words 'or which is likely to cause' be omitted."

The clause is wide enough and I do not know what mischief it will cause, but these words "or which is likely to cause" further extend the mischief of this clause. The clause says:

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"with intent to cause or which is likely to cause fear or alarm to the public or to any section of the public. . ."

That is in very wide terms. Any two persons may come forward and say that they have been alarmed, that alarm has been caused to them. It is not very difficult to do so in these days. So, I do not think that the operation of this clause should be further extended by the use of the words "or which is likely to cause". As a matter of fact, the phrase "with intent to cause" may, in legal phraseology, be said to include "likely to cause", because a man's intention cannot be found either by stethoscopic examination or by X-ray examination. The intention is gathered from the reasonable or probable effect. So, in practice, the words "which is likely to cause" are included in the words "with intent to cause". There may be some difficulty in interpreting the words "or which is likely to cause", and, in my opinion, it will further extend the operation of this clause. I move my amendment.

The Honourable Sir Brojendra Mitter: Two objections have been taken by Mr. Sen to the clause. One is that the word "public" is too wide, and secondly, that the expression "with intent to cause" includes "likely to cause". My short answer is this. We are doing nothing new. It is already in section 505 (*b*). Section 505 (*b*) says:

"with intent to cause or which is likely to cause fear or alarm to the public or to any section of the public."

So, these are not new words. They are already in the Indian Penal Code, and no reason has been assigned why the Penal Code should be altered by the omission of these words.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question which I have now to put is:

"That in sub-clause (*1*) of clause 6 of the Bill, the words 'or which is likely to cause' be omitted."

The motion was negatived.

Mr. B. V. Jadhav: I move:

"That in sub-clause (*1*) of clause 6 of the Bill, for the words 'one year' the words 'three months' be substituted."

It might be pointed out from the Government side that in section 505 of the Indian Penal Code the punishment that is provided extends to two years and Government have been merciful enough to reduce it to one year. But I may point out that the offences under section 505 are very serious and heinous. Section 505 (*a*) runs thus:

". . . with intent to cause, or which is likely to cause, any officer, soldier, sailor or airman in the Army, Navy or Air Force of Her Majesty or in the Royal Indian Marine or in the Imperial Service Troops to mutiny or otherwise disregard or fail in his duty as such."

It is a very heinous crime and, therefore, the punishment of two years that is provided in section 505 is all right; but in the present clause the offences that are made punishable are not so very serious and, therefore, the argument that in the original clause two years punishment was provided does not apply. Then sub-clause (*b*):

"with intent to cause or which is likely to cause fear or alram to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity."

That is also a very serious crime and, therefore, the punishment of two years is justifiable, but the acts that are made offences under the new clause are not so very heinous and, therefore, such a punishment as that extending to one year is unnecessary. At the same time, I may point out that in clause 4, which has been adopted by this House, the punishment is only three months and clause 4 is a very important clause as has been urged from the Government side. It provides against boycott of Government servants. The boycott is a great inconvenience to Government servants no doubt and if, for that offence three months are sufficient, then I submit that the offence brought under the purview of this clause should also be punished with three months. Therefore, I move the amendment.

Mr. Lalchand Navalrai: I support this amendment. It is admitted that this clause has been widened and made more elastic than section 505, Indian Penal Code. To provide one year's punishment in the first instance is, I think, too much. I know that it is a maximum punishment, but I think, if not reduced by the Act, it will induce Magistrates to give greater punishment. I, therefore, support the amendment.

The Honourable Mr. H. G. Haig: My Honourable friend, Mr. Jadhav, rightly anticipated my line of reply to his argument by pointing out that under section 505 of the Indian Penal Code, a maximum penalty of two years is provided. I concede his contention that some of the offences under section 505 of the Indian Penal Code are more serious than the offence aimed at in this clause, but that point is very fully met by the fact that under section 505, the maximum period of imprisonment is two years, while we are providing merely for a maximum of one year. The period is that which the Select Committee recommended and I think in this matter it is safe to stand on their conclusion. Sir, I oppose the amendment.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That in sub-clause (*1*) of clause 6 of the Bill, for the words 'one year' the words 'three months' be substituted."

The motion was negatived.

Mr. B. V. Jadhav: I move:

"That in sub-clause (*1*) of clause 6 of the Bill, for the words 'one year' the words 'six months' be substituted."

I need not repeat the argument I advanced at the time of moving the first amendment, but I would point out that if the Honourable the Home Member found three months too low, he may be induced to accept the period of six months proposed by this amendment.

Mr. Lalchand Navalrai: For the same reasons I support it.

Rao Bahadur B. L. Patil (Bombay Southern Division: Non-Muhammadan Rural): Sir, we ought to make a distinction between section 505 of the Indian Penal Code and the new clause now under discussion. The offences mentioned in section 505 of the Penal Code are certainly more serious and, if you look to the present clause, you will see that the offences are rather imaginary or sentimental in their nature. If you compare the present clause with the provisions of sub-clause (*b*) of section 505 of the Penal Code, you will realise the difference. Then, with regard to the punishment, there it was meant to be deterrent looking at the nature of the offence, but here the object is to fight the civil disobedience movement and not to cause a permanent impression upon the people of this country. I advance this argument, because the wording of the present clause is likely to include opinions honestly expressed. It is very difficult in many cases to distinguish between opinions honestly expressed and rumours. Much depends upon the view one takes. The officials might call a statement false, but at the same time one may contend that it is true. Sometimes it is very difficult to know the exact facts. The newspapers generally supply information to the reading public, on the information they get; sometimes it is contradicted. But sometimes the contradiction itself is found to be false. Under these circumstances, it is very difficult to know which is true and which is false as it is difficult to distinguish between a false rumour and an opinion honestly expressed. I beg to suggest that it would be proper for the Government to accept this modest amendment which has been so pitifully moved by Mr. Jadhav.

The Honourable Mr. H. G. Haig: My reply to the previous amendment was a general one and, therefore, covers the arguments which have been advanced with reference to this amendment and I do not think it is necessary to repeat them. But with reference to what has just fallen from my Honourable friend, Rao Bahadur Patil, regarding the relativity of truth, I would remind him that it is a common duty of a Court to determine whether a thing is false or true, and we shall not be putting on the Courts any greater obligation than that ordinary and common one.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That in sub-clause (*1*) of clause 6 of the Bill, for the words 'one year' the words 'six months' be substituted."

The motion was negatived.

Mr. Lalchand Navalrai: Sir, I move:

"That to sub-clause (*1*) of clause 6 of the Bill, the following proviso be added:

'Provided that no Court shall take cognisance of an offence punishable under this section unless upon complaint made by order or under authority from the Local Government or some officer empowered by the Government in this behalf'."

Sir, it may be said that I am hoping against hope. But I do not think that that will be the mentality. I hope consideration will be given to my amendment because in this new clause new offences are created, and, under section 505, I. P. C., there is a difference. Under that section, it is not mere circulation, but some overt act has to be proved to have been done, whereas in this case mere giving fear makes out the offence. Therefore, it is very necessary for the Government to consider that there ought to be some precaution. I am not taking out the power from the hands of the Government. What I ask for is a precaution of an executive nature. Some precaution there ought to be and with that view I move my amendment.

Mr. S. G. Jog: Sir, the other day when a similar amendment was moved by my esteemed friend, Sir Muhammad Yakub, he charged this side of the House with inconsistency or rather with blowing hot and cold in the same breath. It was pointed out by my esteemed friend that when the Local Government's or any other responsible officer's sanction was given, that practically amounted to a mandate to the Magistrate and that the only thing then left to the latter was to pass a sentence. It was pointed out that there should be precaution, particularly when new offences were created, as then they were likely to work more mischief, by creating a handle for starting prosecutions under this clause. Sir, it is no doubt true that the politicians, as well as the occupants of the Treasury Benches, have on occasions to be exposed to the charge of inconsistency by blowing hot and cold in the same breath, but in view of the very vagueness of this offence and in view of the fact that a new offence is being created, I think we should have some sort of precautionary measure or, to use a technical phrase, a sort of safeguard, and, therefore, I think we should support my friend, Mr. Lalchand Navalrai's amendment which will much minimise the rigour of the clause. Sir, I heartily support the motion.

Mr. B. V. Jadhav: Sir, I rise to support the amendment moved by my friend, Mr. Lalchand Navalrai. The proviso which the Mover of the amendment wishes to be inserted does form part of clause 4 and, on the same analogy, it might be said that this should be necessary also with regard to this clause 6. Therefore, Sir, I support the motion.

The Honourable Mr. H. G. Haig: Sir, my Honourable friend, Mr. Lalchand Navalrai, in moving his amendment, said that he was hoping against hope. It was I think a very small hope that he had,—that in this matter he might prevail on us to accept his amendment, and, therefore, I feel, Sir, that I am not being very brutal in extinguishing that very little hope. The Honourable Member himself provided the answer to his own argument. He pointed out that under section 505 of the Indian Penal Code there is no such procedure, and the various offences under

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section 505 are very closely analogous to the offences under this clause. It would be, in my opinion, quite wrong to have a different procedure in this clause from the procedure already in force for section 505. Sir, I oppose.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That to sub-clause (*1*) of clause 6 of the Bill, the following proviso be added:

'Provided that no Court shall take cognisance of an offence punishable under this section unless upon complaint made by order or under authority from the Local Government or some officer empowered by the Government in this behalf'."

The motion was negatived.

Clause 6 was added to the Bill.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The question is:

"That clause 7 stand part of the Bill."

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

"That clause 7 of the Bill be omitted."

The marginal note to this clause is "Molesting a person to prejudice of employment or business". Technically, it may be said that this clause is aimed against picketing. This is an Ordinance-made offence. Before the Ordinances were passed, the act of picketing was not punishable at all, and it is the right of every subject of His Majesty to be allowed to make use of this common right. Now, a man might meet a friend and both of them might stand and talk together. In that way they may cause some slight obstruction to others, but if that obstruction is not intentional and if the other persons had a right way to some other place to move on, then I think loitering there would not be an offence at all. But, under the present Ordinance rules, this picketing has been made penal and severe penalties are provided in this new Bill also. The Bill says:

"Whoever, with intent to cause any person to abstain from doing or to do any act which such person has a right to do or to abstain from doing, obstructs or uses violence to or intimidates . . ."

Of course using violence or intimidation is generally penal and must be punished. We have nothing to say against actual obstruction or the use of violence. We cannot defend it. But, at the same time, we have to see that the right of picketing ought to be respected if it is non-violent and at the same time if it is not against the expressed desire of the person whose shop or house is picketed. Sir, the clause is an objectionable one, so much so that my esteemed friend from Guzerat, Mr. Anklesaria, also has tabled an amendment and it will be realised, therefore, that it must be a really objectionable clause. Then:

"with intent to cause any person to abstain from doing or to do any act which such person has a right to do or to abstain from doing, obstructs or uses violence to or intimidates such person or any member of his family or person in his employ . . ."

Thus the protection that is afforded is not only to the owner of the shop, but it extends to "any member of his family or person in his employ". So the protection is very much spread out and it is rather indefinite, because it will be difficult to say who is or is not a person in his employ and whether that person was picketed because he was the employee of a particular individual, and so on. So, it is rather an indefinite provision and it ought not to be there:

"where such person or member or employed person resides or works or carries on business".

Therefore, the protection which is extended is not only available to authorised persons, but it refers also to various places. A person may have a place of business in one place and if the picketing is carried on there, it is made penal. That person may have a place of residence in another place and his servant may have his place of residence in a third place. The protection under this clause is spread over so many places that it is really difficult for one to say where a pedestrian will be safe; whether he will not come under the clutches of the law for picketing a particular individual or a member of his family or an employee of his at his place of business or at his place of residence or at the place of residence of a servant, and so on. It is so very indefinite and so very extensive that it will be very difficult for an honest man to even move out of his house and to go for his business. Then, Sir, that is not all. The clause goes on to say:

"or happens to be, or persistently follows him from place to place,"

He may not be at his place of business; he may not be at his place of residence; but wherever that person or the servant or the member of his family happens to be. If he is in a theatre or a cinema house and if some other person is also there, then perhaps the first person may object that he is followed by him wherever he goes and, therefore, he may seek to bring him under the clutches of the law. Then, Sir, that too is not enough, but in sub-clause (*b*) it is said:

"loiters or does any similar act at or near the place."

People do not walk at the rate of four or five miles an hour, but sometimes they go very slow and if they are going very slow in front of a shop, then perhaps a policeman may go to him and pounce upon him and say: "You are loitering here; come along with me; the offence is made cognizable. I shall prosecute you". The indefiniteness and the harmfulness of the clause are apparent. Sub-clause (*b*) further goes on to say:

"where a person carries on business, in such a way and with intent that any person may thereby be deterred from entering or approaching or dealing at such place."

Then there is an *Explanation* which runs thus:

"Encouragement of indigenous industries or advocacy of temperance, without the commission of any of the acts prohibited by this section is not an offence under this section."

It might be argued on behalf of Government that this *Explanation* has been inserted there in order to provide that propaganda for Swadeshi could be carried on with impunity. But, then, the condition is put in:

"without the commission of any of the acts prohibited by this section."

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And the acts prohibited by this clause are so very wide that it will be quite impossible to exempt any person or any action under it and, therefore, the operation of this clause will be to the effect of stifling any Swadeshi propaganda or any propaganda against drink. So, Sir, I move that the whole clause be deleted.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): Amendment moved:

"That clause 7 of the Bill be omitted."

Diwan Bahadur Harbilas Sarda (Ajmer-Merwara: General): Sir, the motion under discussion is No. 106 on the list. 105 amendments have been proposed and all have been rejected and there is not the ghost of a chance for this motion to survive the slaughter of the innocents. If I, therefore, support this motion, it is to record my protest against the enactment of clause 7 in its present form in this Bill.

Sir, I have nothing to say to Government making it an offence for people to use obstruction or violence in order to prevent Government servants and others from doing their duty or what they are paid to do or when they are anxious to do what is profitable to them. My complaint is that the provisions of this clause are all-embracing. What surprises me is that those who are responsible for this unhappy piece of legislation —unhappy not because it is to protect Government servants or others from harassment and trouble, unhappy not because it takes certain steps to save innocent people from unwittingly committing certain acts which Government have made penal, but unhappy because in their zeal to crush the civil disobedience movement, the framers of this clause have lost their sense of proportion, perspective, and even the power to connect cause with effect and have presented to this House a draft which makes a man liable to be prosecuted, no matter what he does or omits to do. I am sure that the Honourable Sir Brojendra Mitter is not responsible for it, his sincerity of purpose is well known; not even Sir Lancelot Graham whose sturdy common sense is appreciated by all.

Sir, speaking on this Bill on the 27th September last when it was placed for consideration before the Legislative Assembly in Simla, I made the following remarks in connection with clause 7:

"This provision too is equally too comprehensive, and unless it is modified or the intention of Government is translated by words into restricting it to certain political matters, the clause, as it stands, will cover the case of a man interested in and working for social reform. A person, 70 years old, is entitled to, and has a right to, marry, under the law, a girl 14 years and 3 days old. If a social reformer or anybody, who takes interest in purifying society, tries to dissuade that man from following that course, and if he loiters or stands in front of the door of that man's house, under this law he can be prosecuted, for there is nothing to show that . . ."

The Honourable Sir Brojendra Mitter: Sir, I rise on a point of order. Is the Honourable Member entitled to quote the authority of his own speech?

Mr. President (The Honourable Sir Ibrahim Rahimtoola): Order, order: The point of order is that the Honourable Member is reading his own speech made in this House.

Diwan Bahadur Harbilas Sarda: I am trying to show that this Bill, before it went to the Select Committee, was open to certain objections and, though Government have had time to reconsider their decision to make it shorn of all its defects, still the thing remains where it was. Then I want to show why Government have done this. The reason why I am quoting from my speech is to show that Government have done nothing to remove the defects of the Bill.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): Apart from the point of order, the Chair should like to suggest to the Honourable Member (Diwan Bahadur Harbilas Sarda) that it would be more effective if he were to give expression to those views again in his own words instead of reading them out from previous records.

Diwan Bahadur Harbilas Sarda: I will accept your suggestion, but I thought I was perfectly within my rights to show how Government were behaving in this matter, and, in order to show that, I was quoting certain words from my speech. If, however, as you suggest, it is better that I should raise the same objection while discussing now this thing, I will take that opportunity. It appears to me that Government, after the discussion was over in the Assembly in September, became aware of the shortcomings of their handiwork and saw the force of the criticisms directed against this measure by Members on this side of the House and by me particularly on clauses 2 and 7. But whether it was their fear of loss of prestige, or whether they thought that, constituted as this House at present was, they were able to carry the most defective and reactionary measure without any difficulty . . . . .

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The Chair is very reluctant to interrupt the Honourable Member, but from the Honourable Member's observations the impression produced is that he is making a speech on the third reading. At present we are dealing only with clause 7. The Honourable Member appears to be dealing with the whole Bill and the attitude of Government in regard to it. That would be perfectly relevant on the occasion of the third reading, but at present the Honourable Member will please restrict himself to the provisions of clause 7 and give his reasons in full why he is opposed to the retention of the clause in the Bill.

Diwan Bahadur Harbilas Sarda: I am confining myself entirely to clause 7. All the remarks that I am now making are confined only to clause 7. If they indirectly apply to other clauses, I am not to blame for it, but the gentlemen who sit on the opposite Benches. I am confining myself entirely to the defects which are inherent in the language in which they have framed this clause and I do not want to go an inch beyond clause 7.

I was only saying just now that I criticised clause 7 of this Bill in Simla, but notwithstanding the opportunity that was given to them they have not amended this clause 7 and my speech should be taken to be strictly limited to clause 7. I have nothing to do with any other clause of the Bill. Whether it was the matter of prestige or whether they thought that in this Assembly they could carry anything they liked, they have not agreed to modify this clause so that it may be shorn of those defects which make it unacceptable to all reasonable men save those who are under a

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mandate to support it or who have surrendered their judgment to the safe or the unsafe keeping of the gentlemen who adorn the Treasury Benches. Sir, if they did not agree to modify the frame of this Bill, they have tried to explain away the criticisms that were directed against it and they have added an *Explanation* to this clause 7. But that *Explanation* is not only superfluous, but, to use the mildest of words, meaningless. The *Explanation* reads thus:

"Encouragement of indigenous industries or advocacy of temperance without the commission of any of the acts prohibited by this section is not an offence under this section."

Who in the world ever supposed or contended that if a man did not break any of the provisions of this clause he would be guilty under this clause? Does any man, with a grain of sense in him, contend or assert or allege that if a man does not break the provisions of a law, if he does not do anything which a particular section of law prohibits him from doing, he will be guilty under that law? I fail to understand the meaning of this *Explanation* which they have added to this clause.

Sir, I would ask the Honourable the Home Member, or rather I would ask the Honourable Mr. Haig for whose sense of justice I have great respect, seriously to consider whether, if it is not his intention to expose workers in the cause of social, educational or economic reform to harassment and trouble, it is not up to him to modify this clause so that those who work for social reform or educational reform or economic reform shall be excluded from the purview of this clause as long as they do not use any violence to anybody and pursue their avocations peacefully.

It is very difficult for any one not initiated into the mysteries of statecraft to understand the principle underlying this clause which makes it penal for a man to do something to another man which the other man may not even dislike and about which he has no cause of complaint.

Another extraordinary feature of this clause is that under this clause a person to whom anything is done has no right to complain. A loiters before the door of B; B finds no cause to complain against A and he does not complain or object to A's act. But a third party, *viz.*, the police, comes in and files a complaint and the man is punished. The matter is between two men, none of whom has complained, but a third party comes and complains that the man has committed an offence. This is the most extraordinary feature of this piece of legislation so far as this clause is concerned. Shall I take it that the framers of this clause have inadvertently or unwittingly betrayed their real objective by inserting this clause which clearly shows that their sole purpose is not to crush the civil disobedience movement, but to control the entire activities of men, whether political, moral, social, economic or religious?

Sir, the clause, if we ignore the other alternatives and take only one alternative reads thus:

"Whoever with intent to cause any person to abstain from doing or to do any act which such person has a right to do or to abstain from doing, loiters at or near a place where such person resides or happens to be shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both."

You will see the absurdity and the ridiculousness of this provision if you consider one or two illustrations which I will give you to illustrate the purview of this clause. A man has a right to fast for one hundred days: he has a perfect right to do so; if a man goes to him or loiters near his house to dissuade him by entreaties from doing so, he is liable to be prosecuted under this clause. A person has a right under the Hindu customary law to marry two wives or more. If a brother of his first wife loiters near his house to entreat him not to marry a second wife and make the life of the first wife miserable, and he only wants by entreaties to dissuade him from carrying out his intention, that man is liable to be prosecuted. Take the third case as I said—a person has the right to take a leap from one side of a well to the other—he has a perfect right to do so and he has made his intention known; and if a man goes to him or loiters outside the door of his house with the intention of dissuading him from attempting the leap as it might endanger his life, that man is liable to be prosecuted though the person he wants to save does not complain of the advice given him; but under this clause, as it is framed, the police have a right to challan that man and he is liable to be punished. The fourth instance which I gave last Session is the case of a man of 70 years who wishes to marry a girl of 14 years one day, which under the law he has a right to do, and if a man goes, and stands outside his house and wishes to dissuade him from doing so, he is liable to be punished. It is no argument to say that Government would not be so foolish as to prosecute such people as I have enumerated. The point at issue is not whether Government will do this or will not do this. The point at issue is whether under the clause, as it is framed at present, a man is liable to be so prosecuted, particularly when we consider that the nature of the act, the intention of the person doing it, and even the fact that it is not displeasing to the person against whom the act is done, is of no consideration so far as this clause is concerned.

If the clause had been so framed as to make it penal for a person to prevent people from carrying on their trade or following their profession, or do anything to interfere with a person who wants to do something which is profitable to him, or if he is compelled to do something which is unprofitable or which he does not like to do, I could understand and I could appreciate Government's desire to enact the clause. But when Government ask us to help them to enact a clause which makes it an offence for us to do what we have every right to do and what, in certain circumstances, are ordinary duties to our fellowmen, and ordinary laws of morality, ordinary common sense imposes upon us the duty of doing, we are compelled to say "no" and reject the demand.

Mr. H. T. Sorley (Bombay: Nominated Official): Mr. President, I oppose this amendment. We have now come to clause 7 of the draft Bill. Clauses 7 and 13 are the two most important clauses of the Bill and it is absolutely necessary that clause 7 should be put on the Statute-book in something more or less like its present form. I am going to give reasons which I hope will convince this House why this course ought to be followed. The civil disobedience movement has discovered a new technique of law-breaking for which the Criminal Law, as it stands on the Statute-book today, is quite ineffective and this technique consists of two parts: the first is a mass campaign of certain specified offences by crowds, and the second part is an instigation of these crowds by juntas, cabals, or cucuses, call them by what name you like, which exist for the very

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purpose of instigating disobedience to the law. These juntas go by the name of Congress Working Committees and they have been declared illegal in many parts of the country. Now the effect of this law breaking is the intimidation of individuals which has resulted in a tyranny, a very gross tyranny, which must be stopped and which it is the duty of the State to stop. Now, the law breaking is of two kinds: first, it is committed by crowds as such; secondly, it is committed by numbers of individuals acting as agents together for this purpose. The first type of law breaking is mass law breaking and usually takes the form of various kinds of unlawful assemblies. The second kind of law breaking is what we call vaguely and unscientifically picketing. I shall, in the course of the next few minutes, try to draw a distinction between what picketing means in theory and what it has actually meant in practice. And I wish to explain my point of view by particular reference to examples of picketing in the Bombay Presidency. I had many excellent opportunities of seeing the course of the civil disobedience movement in the Bombay Presidency not only in the Bombay City, but in seven districts of the Presidency at various dates during 1930, 1931 and 1932; and I am talking from full knowledge and with full responsibility for what I say. The one cardinal fact in respect of the kinds of law breaking typified by picketing is the inadequacy of the law relating to criminal intimidation and the discovery that has been made by the organisers of the civil disobedience movement of this. They have discovered that it is just as easy to injure a man, to annoy a man, to intimidate a man and terrify a man by merely following him about in the street or by lying in front of his door as it is by hitting him on the head. And there is this great difference between following a man about in the street and hitting him on the head, that whereas the law provides a perfectly adequate remedy against persons who hit others on the head, it is very weak and vacillating when it is dealing with persons who follow others about in the street or lie in front of other people's doors. The definition of criminal intimidation is given in section 503 of the Indian Penal Code thus:

> "Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation."

Now, the plain fact of the matter is that this definition of criminal intimidation does not cover many acts of intimidation which have been found most effective during the civil disobedience movement and have been admitted by this House to be objectionable and requiring suppression. I do not want to discuss the inadequacies of section 503 in detail, because I wish to proceed to more important matters, but I just want to say this now, that the great weakness in section 503 lies in the meaning which Courts have attached to the term "threatens". The word "threatens", as interpreted by the Courts, does not cover very many actions which are in the nature of threats and have the same effect as threats, and as long ago as, I think, about 1888, it was held in the Courts that advising persons not to deal with others did not constitute criminal intimidation. and it was held in other cases that threats of *ex*-communication and social boycott did not come within the scope of section 503. As the civil disobedience movement has been largely built up on this defect in section 503, it is perfectly obvious that the law in this respect is inadequate.

The existing law is inadequate because, as I have said, the definition of criminal intimidation is not sufficient. It does not cover intimidation of the nature which is now provided for in clause 7 of this Bill. Clause 7 of this Bill is properly to be regarded as an extension of section 503 of the Indian Penal Code and as a supplement to it. The second reason why the law relating to intimidation has been insufficient for the civil disobedience movement is that even in cases where a sufficient legal remedy is available under the law, it cannot be applied, because crowds or a number of individuals act together as aggressors and the individual aggrieved is afraid to complain, and the third reason, why the law relating to intimidation is inadequate, is that it fails at present to provide a short, sharp, simple remedy which will penalise directly the various actions that take place without it being necessary for the State to establish that certain very definite actions have occurred which would bring the law within the various provisions of the Indian Penal Code.

I come now to discuss for a few moments the general nature of picketing. Picketing, as I understand it, means something like this. It means that one or two or more individuals, who do not agree with a person, go to visit him or stand over him in order to try to persuade him to change his view, to do something that he would not otherwise wish to do. In other words, picketing is a form of persuasion to be carried out by argument, with logic and with reasonableness. Now, there is nothing objectionable in that, but the point is that when one man is going to be persuaded by several persons, it is a question of fact exactly where persuasion ceases to be unobjectionable and becomes objectionable, and it seems to me perfectly clear that the persuasion becomes objectionable when any question of force, or compulsion or intimidation or annoyance enters in the circumstances, and it is precisely my criticism of picketing as carried out by the Congress organisation during the civil disobedience campaign that it has always gone beyond this limit. It has passed beyond reasonable limits, it has passed from the bounds of the unobjectionable, it has crossed that barrier and become definitely objectionable, and in this view I am fortified by the admission made by the Congress itself at the time of the Gandhi-Irwin Pact. In the Lord Irwin-Mr. Gandhi Pact, signed by the Congress on the 5th March, 1931, it was said that "such picketing (that is in furtherance of boycott of intoxicating drugs and drinks and of all foreign cloth and liquor shops) should be unaggressive and should not involve coercion, intimidation or restraint, hostile demonstrations, obstructions to the public or any offence under the law. If these conditions are satisfied in any area, picketing is to be suspended there". I think that is a complete admission on the part of the Congress that the picketing, as carried out up to the 5th of March, 1931, did overstep these bounds, and the question which I wish to put to the House now is, when we consider the kind of organisation which the Congress has employed in order to paralyse the State and the authorities responsible for law and order, and when, in consequence of the policy laid down, they engage large numbers of agents to stand over, watch and beset, to use the English phrase, in order to get those with whom they disagree to change their views, when we remember that the Congress itself is avowedly out to paralyse the State and to change the system of Government by unlawful means, can we for a moment suppose that picketing of that kind can ever be peaceful, that there will ever be absent from it some element of intimidation or terror or annoyance to the persons whom they wish to persuade and with whose views they are in disagreement? I suggest, Sir,

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that it is quite absurd to think that Congress picketing, as we understand it, can be anything else than unpeaceful and violent.

I wish now to refer to some typical instances of picketing in the Bombay Presidency. I have collected a large number of instances; in many cases I have seen the picketing for myself, but I have collected several typical instances in order that the House may fully understand the problem that we are dealing with, and that the House may realise why a provision like clause 7 should be put on the Statute-book more or less in its present form. I have got five different types of picketing here. The first is one of interference with purchasers and seizing the purchased goods from them; the second is the use of female picketers who employ force; the third is to obstruct persons by lying flat on the roads and not allowing vehicles to pass, and the fourth is picketing followed by crowd action which degenerates into serious offences against life and property and is accompanied by threats, and the fifth kind is picketing accompanied by intimidation in order to force the payment of fines to the Congress, and I am going to quote chapter and verse for every one of these things.

On the 8th of July, 1930, in the Bombay City, at about 9-30 P.M., a police constable in plain clothes purchased two shirts in the Chira Bazar. When he was returning, he was accosted by three or four volunteers who asked him why he purchased shirts of foreign cloth. As the volunteers tried to get hold of the shirts, the constable caught one of them by the neck. A crowd collected and it was alleged that the constable was a C. I. D. man and he was roughly handled.

5th August, 1930, Bombay City. Congress volunteers stopped carts carrying bales of cloth to ascertain whether they contained foreign or swadeshi cloth. The bales were ripped open, and, as they were found to contain foreign cloth, a volunteer accompanied the cart to its destination to ascertain the name of the party to whom the goods were to be delivered and then reported the matter to the Boycott Committee of the Congress.

3rd November, 1930. Bombay City. Three female volunteers of the Hindustani Seva Dal, who were picketing the godown of E. Spinner and Co., attempted to prevent a hand cart containing bales of cloth from leaving the godown. The godown authorities informed the police who went to the godown and formed a cordon round the three pickets and allowed the hand cart to proceed. Soon after, five other women picketers tried to stop a second cart and similar action had to be taken by the police before the cart was allowed to proceed. A crowd collected, jeered at the police and cried "Shame".

20th January, 1931. Bombay City. In the evening a bullock cart and a hand cart laden with foreign cloth were emerging from the docks along the Musjid Bunder road when they were obstructed by about half a dozen volunteers near the Musjid Bunder Bridge. The volunteers prostrated themselves in front of the carts. The driver of the bullock cart left his cart and disappeard, leaving the goods as they were. He was afraid to come back.

21st January, 1931, Bombay City. At about 12-30 P.M., three volunteers obstructed a hand cart containing foreign cloth belonging to a Muhammadan merchant in Kambekar Street. One prostrated himself in front of the

cart, while the other two were pushing away the owner when the police arrived and arrested them.

29th January, 1931. Bombay City. At 6 P.M., a Parsi lady accompanied by two Parsis purchased some foreign cloth from Karanjia and Co. on the Hornby Road, which, as you know, is the main street of Bombay, and were about to enter their car when two volunteers prostrated themselves in front of the car. The Parsis left their car and engaged a taxi, but the volunteers followed and obstructed the taxi. A large crowd collected and some one pulled down the connection cable of the tram into which the Parsis had entered. Word was sent to the police who arrived on the scene, arrested the volunteers and dispersed the crowd.

29th January, 1931. Bombay City. Ten volunteers picketed the shops of chemists and druggists in Princess Street and Shaikh Memon Street. At 11 A.M., a customer, who had purchased some drugs, was going along Shaikh Memon Street, when he was stopped by some volunteers who wanted to examine his purchases. As he had purchased British drugs, he was prevented from taking them away. He left the cooly who was carrying the package with the volunteers and went to the Princess Street police station, but by the time the police arrived the volunteers had disappeared.

I quote now an instance from the mufassil.

East Khandesh, May 1931. The Chopda Taluka Congress Committee started to picket the shop of Fulchand Agarchand as it was alleged that he had imported foreign cloth into Chopda in violation of his pledge. The shop was picketed from May 5th to May 10th and stopped when he paid Rs. 101 which the Congress Committee had ordered as a fine upon him.

I had hoped at one time to be able to draw an analogy between the civil disobedience movement and the General Strike in England, but I consider that possibly a better opportunity for talking on that point may arise later on when the amendments relating to peaceful picketing come up for decision. I just want now to refer to what His Excellency Lord Irwin said on the 9th July, 1930, in the Simla Session of the Assembly in this connection. He said:

"Mass action, even if it is intended by its promoters to be non-violent, is nothing but the application of force under another form, and when it has as its avowed object the making of Government impossible, Government is bound either to resist or to abdicate. The present movement is exactly analogous to a general strike in an industrial country, which has for its purpose the coercion of Government by mass pressure as opposed to argument."

In this connection, in order to throw some light upon the wording of clause 7, I wish very briefly—I have taken up more time than I had intended to—to refer to what happened in Great Britain after the General Strike of 1926. The chief result which ensued from that strike was the passing in 1927 of the Trades Dispute and Trades Union Act. That Act made very important alterations in the law, and the changes which have been made in the English law are exactly analogous to the provisions which are now made in clause 7 of the present Bill. Section 3 of the Trades Dispute and Trades Union Act dealt with intimidation. It defined intimidation for certain purposes as constituting watching and besetting. Watching and besetting corresponds very closely to the various acts which have been specified in sub-clause (*a*) and sub-clause (*b*) of clause 7 of the Bill. The second thing that this Act did was to enlarge the scope of

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criminal intimidation, and it is very instructive. I am going to read out to the House the provisions of section 3 and compare the English law with the present clause. Section 3 enlarged the scope of intimidation for precisely the same reasons as Government are now seeking to enlarge and supplement the definition of criminal intimidation in section 503, because under the law, as it existed previous to the General Strike, a vast amount of intimidation and annoyance was being carried on against private individuals, which the law in its then existing form was unable to stop. Section 3 of the Trade Disputes and Trade Unions Act, 1927, reads as follows:

"Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully or without legal authority:

(1) uses violence to or intimidates such other person or his wife or children, or injures his property; or

(2) persistently follows such other person about from place to place; or

(3) hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof; or

(4) watches or besets the house or other place where such other person resides or works or carries on business, or happens to be, or the approach to such house or place; or

(5) follows such other person with two or more other persons in a disorderly manner or through any street or road; shall, on conviction thereof, by a court of summary jurisdiction or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding £20 or to be imprisoned for a term not exceeding three months, with or without hard labour."

The other important thing which was done by this Act was the declaring of a general strike illegal as such, and any acts in furtherance of a general strike were declared illegal, and this section dealing with intimidation is the main method by which the law was supplemented. The point I wish to make now is that there is a very close analogy between what was done in England in 1926-27 and what is sought to be done now, and for precisely the same reason—that India and England were faced with problems which present very considerable similarity, and the manner in which the problem is met might well be duplicated in the two countries. In a matter like this, where the State is threatened by a subversive and powerful organised minority which wishes to enforce its will upon the community at large, there are two questions which arise. One is, how is such a movement to be stopped and the second is, how is such a movement to be prevented. In the case of England, the General Strike was stopped by calling out the forces of public loyalty and by the provision of some special regulations. A similar movement was prevented for the future by putting on the Statute-book provisions of law which render this kind of intimidation impossible. In the case of India, the movement has been stopped, but not completely stopped, by the passing of the Ordinances for the time being; to prevent its recrudescence it is necessary that similar powers dealing with intimidation, such as are provided in clause 7, shall be put on the Statute-book. Sir, I oppose the amendment.

Raja Bahadur G. Krishnamachariar (Tanjore *cum* Trichinopoly: Non-Muhammadan Rural): This is the second time that I have had the good fortune to follow my friend from Guzerat and to point out for the first

time that all his labours were unnecessary. The victory, so far as this amendment is concerned, is quite clear. I cannot understand why on earth my friend took all this trouble to read to us all these instances. They are perfectly true. Nobody denies them. Every one who follows the newspapers knows them. As you have rightly ruled, if I may say so with respect, the question is whether this amendment should succeed or not. The success is in their hands. Why all this trouble, I cannot understand. (*An Honourable Member*: "Why do you speak then?") I speak because it is my misfortune to oppose this, knowing I am going to lose. Unfortunately we are leading a forlorn hope, as the English phraseology goes. If I had my own way, I should simply sit here and see Government making motion after motion and carrying them, with no opposition. In three hours time the whole business would be over and we can all disperse. I should plainly and honestly have liked that course. Unfortunately there is the newspaperwalla who would call us all shirkers. They will say, we want something from Government. Some of us are afraid, some of us are not, but we ought all to go together. We must act in what they call the herd mentality. That is the reason why I am speaking, but honestly I do not want to speak. (*An Honourable Member*: "Your speech might convert us.") We have got a saying that when the last breath comes, there is no stopping it. Am I going to prevent the last breath from coming out? No, Sir, that is beyond my power. I am not a doctor. My friend from Bombay might try his hand at it, but I cannot do it.

Now, the great historian, James Antony Froude, has remarked that you can never rule a country autocratically except that autocracy affects your own democracy. I was wondering if James Antony Froude was not drawing upon his imagination as a theoretical historian, but today I am thoroughly convinced that I was wrong and I did Froude an injustice in doubting his wisdom, because my friend over there from Guzerat not only recited to this House the steps that have been taken in England, but applauded it and wanted similar action to be taken in India. I am afraid a speech of that sort would not be particularly welcome for instance in Hyde Park for more than two minutes and my friend would get a short shrift there. In the life of Johnson, there is mention made of a curate whose leg of mutton which was found to be good only in parts, but not as a whole. This Bill is not even like that. (*An Honourable Member*: "It is an egg.") Being a Brahmin, I cannot distinguish between one thing and another. Now, if we had a plain honest small Bill which punishes people who prevent them from doing what they are legally entitled to do, probably there would be greater support and sympathy for the Government. Now, we do not know what they want, what they are after. You are going to get this democracy and, before you get the democracy, you get the rope so tightened, so that the man has only to touch the string—and, well, it does not matter what happens.

With the permission of the House, I just want to run through this clause. I want to ask the Government one thing. Do they intend to administer this clause impartially? If they do, the whole of their C. I. D. will come in. I tell you how. The moment some of us start from our places, it may be Trichinopoly or Madras, there is a member of the C. I. D. shadowing us, I do not know if you are aware of it. They say, Krishnamachari, for instance, is No. 88. I do not know if I am honoured in their books, but some of my friends have been honoured. Directly

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they leave Madras, it is wired all over the place that No. 88 has left Madras. It is such an important business that "line clear" messages are sent. (*An Honourable Member*: "How do you know.") Dare anybody deny what I am saying? Let the Honourable the Home Member say "No". I shall answer that question more specifically by saying that time after time, Session after Session in this very Assembly and in the previous Imperial Council, it has been said that the most important person who had been favoured with the attentions of the C. I. D. was my late lamented friend, Mr. Gokhale. Mr. Gokhale, for whom tears are shed now, was the man who was shadowed by the police wherever he went. That, Sir, is my source of information. Now, we shall take this clause and apply it to the C. I. D. "Whoever loiters at or near a place or persistently follows him from place to place." Now, am I not entitled to come from Srirangam to attend this Assembly at Delhi? I have been elected by my constituency and I have been summoned by His Excellency the Governor General to come here. Now, here is a gentleman belonging to the C. I. D. who calls me No. 88 and follows me closely.

The Honourable Mr. H. G. Haig: Are they trying to prevent you coming?

Raja Bahadur G. Krishnamachariar: As for preventing me from coming, if I am too much annoyed, I throw the sop off. So far as the annoyance is bearable and so far as, on the balance of convenience, the annoyance is less than the importance of the duty as I conceive it which I have to perform, I come, but when I find it impossible, well, I give up. Sir, at times the attentions of these gentlemen are intolerable. Only the other day in Simla on the Cart Road there was a little bit of an incident. Every one of us knows of that. Sir, I am quite serious in my objection. I say, this man persistently follows me from place to place with intent to cause any person to abstain from doing any act which such person has a right to do. What I say is this: why does he follow me? I say, his intention is that I should not come here and speak in the Assembly. (*Voices*: "No, No.")

Mr. President (The Honourable Sir Ibrahim Rahimtoola): Order, order.

Raja Bahadur G. Krishnamachariar: Well, I cannot get into their intentions unless I am a Magistrate. Then there is no appeal to the High Court against the finding of the Magistrate. Sir, the fact of the matter is that the C. I. D. man will come and persistently follow: and now will the Government prosecute one C. I. D. man, because he comes under this clause? No. Sir, the man who would come under this clause is the man who wants to persuade another from doing what the former considers to be wrong, and then he will come within the clutches of the law. There is another more serious instance I have in mind. You know, every night, after the bazaar is closed, *Puranas* are recited. In those *Puranas*, there are various injunctions that you should not do this and should not do that. Now, such a practice will come under the clutches of the law if this clause is passed. I believe it was Lord Macaulay who pointed out that as our definitions are framed, it is theft to dip your pen into another man's inkpot: and in order not to drive the Government to such an absurd position, section 95, I believe, has been framed to disregard these minor

offences. But if Macaulay's spirit was hovering over this Assembly—and he was the most distinguished Member of the Legislature in the seat which my Honourable friend, Sir Brojendra Mitter, is now adorning—he would perceive that there was at least one clause which he had forgotten and which the Honourable the Home Member has now supplemented and in reference to which my Honourable friend the Member from Guzerat applauded and pleaded for a whole hour. Sir, what I cannot understand is, why it is that when a man enters a shop and wants to buy something, I should not stand in front of the shop and say, "Baba, please do not buy?" Why should that be an offence? Sir, you are just as much entitled to sell as I am entitled to prevent you from selling some thing. Then:

"loiters or does any similar act at or near the place. . ."

Now, this loitering is a thing which I certainly hold is not a question of ingenious argument as my friend, the Honourable the Home Member, characterised what I submitted the other day. What is it that you are supposed to do when they say you have been loitering? Now, I cannot walk fast and so I walk slowly. They say I am loitering, especially if I am not in the good books of the police. I quite admit that in Guzerat and other places these executive officials have had a hard time, but you are paid for it, you have got to take the lean with the fat, when you are going on with your entertainments, with your parties, with your dances, with your balls, you do not complain. But some day you get into some minor trouble why complain? Sir, it is not an easy job to rule a great Empire and these things are part of the day's work of ruling a great Empire: and simply because in a certain place half a dozen persons had prevented another half a dozen persons from doing a certain thing, you want to move a great and big Legislative Assembly to crush a fly and set to work the Nasmyth hammer. That is not the way a big Government like the British Government should rule India. It is perfectly true that you have trouble now and then. Don't you have trouble in England? You have trouble everywhere now and then. There was the General Strike in England and trouble up to 1926 and even after that for a time, there was such an uproar, but nobody heard of Consolidated Ordinances, and so on. So, before I sit down, I want to make it perfectly clear that this Assembly is not at all unwilling to give powers to the Government which would enable it to govern; but if you interpret governing to mean crushing the people and all their activities, not even allowing them to raise their heads, then we say, "Stop, halt, we cannot go with you". That, Sir, is my position and that, I say, is the position of the Legislative Assembly. Then:

"No Court shall take cognizance of an offence punishable under this section except upon a report in writing of facts which constitute such offence made by a police officer not below the rank of officer in charge of a police station."

Now, Sir, I have had something to do with law-making and I cannot understand what this *Explanation* No. (2) is supposed to constitute as a safeguard. If you want the complaint, there is a thing called "the first report of the offence". That first report of an offence is always laid before the Magistrate, and is this supposed to be more than that? If anybody has read the proceedings of High Courts, he will find very severe strictures made at times by Judges, simply because the first report does not contain all the details. Who is going to be benefited by this *Explanation*? Then, —"officer in charge of a police station". Now, there may be a little bit of fun over that with regard to an officer in charge of a police station in the

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mufassil. About half a dozen constables and one head constable were put in charge of that police station. In one place there is a murder committed, in another place there is an arson committed, and in a third place, a theft committed. All these men go away, and there is only one man generally a new recruit of a constable in charge of the police station who is present in order to make a full report of the facts of the case,—and what does that full report say? He writes two or three lines and then refers the case to the Magistrate. Sir, that is the way these things are done. Sir, when an official report contains facts, they are taken as gospel truth. But when I state certain facts, they are taken as ingenious statements and are brushed aside. Sir, if you want the regard of the people for you . .

An Honourable Member: Whom do you mean.

Raja Bahadur G. Krishnamachariar: I mean it is the Government of India that want the regard of the people. It is not the Chair that is in question, for it already commands the high regard of the people, and the people are so much concerned about the dignity of the Chair that they always uphold it and the affection, with which the Chair is held by the people, is already a known fact. I was only talking of the Government which try to get respect at the point of the bayonet, and I was thinking of the remarks which fell from my Honourable friend, the Official Member from Bengal, when he said that I was narrating grandmotherly tales. Sir, the relationship of a grandmother is not, after all, such a despicable one amongst us. Apart from that, it is not a grandmother story. Will you investigate the matter? I was myself going to prove the whole thing as I possess chapter and verse of it. So it is not a thing that happens occasionally; on the other hand, it is a thing which happens every day in some distant part or other of the mufassil. It is all right for people living in Simla and Delhi and travelling in their saloons, who wake up at 8 o'clock in the morning to say that India is prosperous. Sir, these gentlemen do not understand the thing; we understand it. Therefore, I submit, that in view of the possible trouble that this clause will create, I wholeheartedly support the amendment moved by my Honourable friend, Mr. Jadhav, that clause 7 be deleted although I know it fully well that this will not be the case.

Sir Muhammad Yakub: Sir, after the eloquent, elaborate and convincing speech of Mr. Sorley, for which he deserves to be congratulated, I thought there was no need to make a long speech on the motion before the House. But the clause is so important, that I think a silent vote in support of it would be out of place. Sir, if any of the mischievous activities of the Congress are to be stopped and curbed with a strong hand, it is the operation of what is generally known as the boycott movement. It is very difficult to describe the forms which this mischievous movement has taken in this country. Houses and shops were burnt, cloth was set fire to: the nose of a cloth merchant was cut at Cawnpore, while a Mussalman merchant was killed in Benares. All this was done in the name of what is known as the peaceful operation of picketing. It has been said by certain Honourable Members that the wording of this clause is very comprehensive. I would submit that, on the other hand, the wording of this clause is still not as comprehensive as it ought to have been; and I am afraid that the evil genius of Congress would forge certain other forms of picketing which would not be covered even by this comprehensive

clause of the Bill. Sir, last year in the months of May and June I was sitting in the Bar Library of Moradabad. I saw that about two or three dozen urchins, between the ages of 10 and 15, followed by two or three Congress volunteers, came, shouting insulting slogans and things like that, and besieged our Bar Library. Two or three urchins sat in each door and would not allow any of the members of the Bar to come in or go out and went on shouting that the members of the Bar should give up their profession. It was a hot day and I required some water to drink, but these peaceful picketers would not allow the servant of the Bar Library to bring water for me. Sir, this is what they call peaceful picketing which should be tolerated. Then, Sir, it must be within your recollection that only the other day an Honourable Member wanted to come to this House to attend the Assembly and his residence was picketed and he was not allowed to attend the Assembly. This and many other phases of the activities of this operation of picketing are so annoying and so inducive to the breaking of the law of the land that there can never be any peace and prosperity until this movement is put an end to. Trade is paralysed. We find that many petty merchants have become insolvent and have been ruined; their children are starving: all due to this peaceful picketing. And the most unfortunate part of it is that, quite against the pious traditions of India, women are employed for the purpose of picketing. Sir, in India woman has always been held in very high respect. She has been considered as inspiring awe and is looked upon as a sacred thing, and if a stranger touched the body of an Indian woman, he would have been shot down immediately by her relatives. But what do we find now? We find that our Congress zealots send their young womenfolk in order to be arrested and touched by the strangers. This is the limit of it. Therefore, I submit that the worst of the evils which the Congress movement has done in India is through, what is called, this peaceful picketing and if you omit this clause, it would be better that the whole Bill were dropped. For these reasons, I strongly oppose the amendment and support the clause.

Rao Bahadur B. L. Patil: Sir, it is most unfortunate that the Congress has taken up the Swadeshi and picketing. It is equally unfortunate that the Congress has taken up the temperance movement and, I may add, that it is most unfortunate that the Congress prefers milk to tea! Certainly, these are movements and national work which ought to have been taken up by each and every individual of this country. Because Congress advocates these things, they have become odious. (*A Voice*: "Do you mean to say that the Congress people do not drink tea at all?") My point is this. We legislators ought to see what is good in a particular movement and what is bad in it. I beg to submit that in every good movement there is something evil. There is a proverb in my own vernacular that every light has its shadow. So, I submit that every good movement has its black side; that we must take for granted. Sir, I am alive to the excesses the Congress people do. I know and I have heard many harrowing tales told by the victims of Congress workers. But we must, first of all, see what Congress in reality preaches. Does it preach violence? Does it preach excesses? No. Then, we must see what the advocates of the Congress are actually doing? We should not mind what the riff-raffs, who do not understand the principles of the Congress, do. They are the people who are led away by the superficial; they are the people who do not understand the theory or the principles of the Congress.

Sir Muhammad Yakub: This clause is meant for them and them alone.

Rao Bahadur B. L. Patil: If this clause is meant for such people, why do you not provide a similar clause for the excesses of Government officials? Do you not see every day that in quelling the civil disobedience movement the laws of the country are abused and Government officials often practise excesses? Volumes can be written of excesses in this country. Therefore, I beg to submit, that it is not the excesses that should be our standard in judging the movement. It is the underlying principle and the object which we have got to take into consideration. Therefore, I beg to submit to this House that we should take into consideration the real object and not the excesses—excesses committed both by some of the Congress workers and by some of the Government officials.

Then, Sir, this clause aims at each and everything. It stands in the way of encouragement of Swadeshi, advocacy of temperance and probably in the way of removal of untouchability and progress of social reform and the preservation of orthodoxy. The whole point is that it stands in the way of advocating one's own point of view, of whatever colour it may be. Therefore, it is up to the legislators to examine this clause clearly and analyse it fully. Now let me draw the attention of the House to the first portion of sub-clause (*1*) (*a*). There, so far as the words "obstructs, uses violence and intimidates" go, I have absolutely no objection. Such kinds of acts may be punished by the existing sections in the Indian Penal Code. In my opinion, sections 341, 352 and 503 are sufficient to deal with cases that come under these three kinds of intimidation. But if we take into consideration the other part of the sub-clause, we will find that it is so vague that it will certainly lead to injustice.

My Honourable friend over there, Mr. Sorley, compared the provisions of this clause to the provisions of the Trade Disputes and Trade Unions Act of 1927, section 3 (17 & 18 Geo. 5, c. 22). The fundamental difference, in my humble opinion, between the provisions of section 3 of that Act and this clause is this. By this clause we are creating a new definition of intimidation. There the definition of intimidation is intact. He has placed his argument before us to the effect that that section too contains the words "watching" and "besetting" and the words in this clause are also similar and, therefore, there can be no objection to accepting this clause. Sir, if we closely examine section 3 of the Trade Disputes and Trade Unions Act, we will see that that section clearly retains the definition of intimidation. That definition includes, as it here includes, only more serious things. For the benefit of my friend over there, let me read a few lines from that section:

"It is hereby declared that it is unlawful for one or more persons * * * to attend at or near a house or place where a person resides or works or carries on business or happens to be, for the purpose of obtaining or communicating information or of persuading or inducing any person to work or to abstain from working, if they so attend in such numbers or otherwise in such manner as to be calculated to intimidate any person in that house or place, or to obstruct the approach thereto or egress therefrom, or to lead to a breach of the peace; and attending at or near any house or place in such numbers or in such manner as is by this sub-section declared to be unlawful shall be deemed to be a watching or besetting of that house or place within the meaning of section seven of the Conspiracy and Protection of Property Act, 1875."

Therefore, this clause does not stand any comparison with that section. Sir, I am personally convinced that though picketing in certain cases leads to excesses, it can be controlled by enlightened public opinion and propaganda in the press; and, I am sure, after so much experience public opinion will not favour any excesses on the part of Congress workers.

We must, I think, look to the main object in picketing. Picketing certainly is not a political weapon; it is meant only for the purpose of encouraging Swadeshi and doing away with certain social evils.

Then, Sir, let me go to the *Explanation*. My Honourable friend, Diwan Bahadur Harbilas Sarda, has fully dealt with the *Explanation*. In my humble opinion also, it is as good as not being there; it is simply axiomatic. It says that what is not an offence under this clause is not an offence. Certainly it was very creditable on the part of the Honourable gentlemen who worked in the Select Committee to have introduced this *Explanation*. It allows us to carry on our propaganda with regard to Swadeshi and temperance, sitting all alone in our rooms and perhaps burning the midnight oil.

Then I go to sub-clause (*2*) which also has been added by the Select Committee. There I take exception to the words in the last sentence, "by a police officer not below the rank of officer in charge of a police station". Sir, it is a common experience that very often the officer in charge of a police station is only slightly better than an ordinary constable. A head-constable can sometimes be an officer in charge of a police station. Can we arm such an official with these wide powers? That I leave to the House to decide.

Then let us go to the procedure which is provided under this clause. We will find that it is considered to be one of the most heinous offences. In the first place, it is not bailable; and, secondly, the accused may be arrested without a warrant, and the parties are not allowed to compound it, that is to say it is not compoundable. The accused may be arrested without warrant and the parties are not allowed to compound it. It is not compoundable. If a particular person is aggrieved by the act of the accused, why should it not be kept open for that individual to compromise the case with the accused? What is the heinousness in this offence I for one cannot understand. I expect some explanation from the Honourable the Law Member with regard to this stringent provision so far as the procedure is concerned. Then, my Honourable friend, from Bombay, Mr. Sorley, gave a number of illustrations and he referred to some incidents that took place in the city of Bombay. As a matter of fact, I happened to be present at the time when one of them took place. It was the case of the Parsi lady who had made purchases in the Hornby Road; I was looking over there from the window of my hotel, and I want to bring to the notice of the House what happened in that case. The picketers concerned were two young boys, one of about 14 years of age and another of about 16 years. It is reasonable that we should make proper allowance to the tender age of the boys. Unfortunately the movement has attracted young boys and girls; we cannot help it; but how many are such cases? Such cases are few and far between and by simply exaggerating these cases we should not enact this clause which would go to prevent and almost give a death blow to the Swadeshi movement and the temperance movement and, above all, curtail the liberty of individuals of this country. Therefore, I am in full agreement with the Honourable the Mover of this amendment and wholeheartedly support him.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 30th November, 1932.