

# THE BIHAR LEGISLATIVE ASSEMBLY DEBATES.

*The 31st March, 1938.*

**Proceedings of the Bihar Legislative Assembly assembled under the provisions of the Government of India Act, 1935.**

The Assembly met in the Assembly Chamber at Patna on Thursday, the 31st March 1938, at 11 A.M., the Hon'ble the Speaker, Mr. Ram Dayalu Sinha, in the Chair.

## SHORT NOTICE QUESTION AND ANSWER.

**POLICE HIGH-HANDEDNESS WITH REGARD TO THE ARREST OF A LEADING LAWYER AT GAYA.**

**3. Mr. BIRENDRA BAHADUR SINHA :** Will Government be pleased to state—

(a) whether their attention has been drawn to the publication in a local Daily of the 15th instant of a report of alleged police high-handedness with regard to a leading lawyer of Gaya ;

(b) whether Government are aware that on a complaint made concerning an offence which was entertained in the morning of the 5th March, 1938, a respectable and leading lawyer of Gaya was arrested at 9-30 P.M. the same day in his house ;

(c) whether opportunity was denied to the said gentleman to dress and whether he was dragged from his office-room by force inspite of expressing his willingness to go peacefully ;

(d) whether his request for being taken on his car or in a hackney carriage was disregarded and he was taken in a procession through the streets with a *posse* of 20 or 24 constables armed with *lathies*, who were asked to hold his arms and hands, and whether, the said procession stopped at every convenient crossing and the gentleman was loudly and openly abused and insulted by the sub-inspectors who had effected the said arrest ;

(e) whether the complainant and his friends and associates accompanied the said procession and jeered at the arrested gentleman in a revengeful manner ;

(f) whether at the *thana* the said gentleman was instantly hustled in the lock-up, and before he was made to deliver his spectacles and put off his shoes, he was searched in a very insulting manner ;

(g) whether after the said gentleman had been consigned to the lock-up, the complainant and his friends were allowed to peep in and jeer at him, and although he tried to hide himself in a dark position of the cell, he was insultingly ordered to stand in the lighted part in order to be insulted and humiliated ;

(h) whether all prayers for bail were refused by the Officer-in-charge of the thana, though, very respectable persons, such as the Government Pleader and others, tried for the same ;

(i) whether the brother of the said gentleman (who is himself a high Government official) was not at first allowed entrance in the thana, and later on was threatened with arrest ;

(j) whether the orders of the Sadr Subdivisional Magistrate regarding bail were not heeded to, and reply to his enquiries was purposely delayed ;

(k) whether as a last resort the District Magistrate had to be approached at midnight by telephone and his intercession was required for getting the said gentleman released ;

(l) whether it was known to the officer effecting the arrest that the marriage ceremonies of the daughter of the arrested gentleman were due to start on the morning following the arrest ;

(m) whether there was any, and if so, what particular necessity for making the arrest at night when approach to the Subdivisional Magistrate or the District Magistrate would be difficult ;

(n) why the personal recognisance of the said gentleman was not taken as sufficient during the investigation by the police ;

(o) the necessity for parading the said gentleman under arrest throughout the streets of Gaya ;

(p) the reason for delaying the arrest till 9-30 P.M. in the night when the investigation had been started during the day time ;

(q) the reasons for the refusal of bail by the Officer-in-charge of the Kotwali and the detention of the said gentleman in the lock-up for three hours ?

**Mr. KRISHNA BALLABH SAHAY :** (a) The answer is in the affirmative.

(b) Government are informed that a pleader named Babu Balindra Lal Das was arrested at 9-30 P.M., on the 5th March, at his residence by the police.

(c) to (q) As the matter is at present under judicial enquiry, Government are not in a position to make a statement.

**Mr. BIRENDRA BAHADUR SINHA :** What is the offence he is said to have been charged with ?

**Mr. KRISHNA BALLABH SAHAY :** The allegations are the same as have been noted in the question; these allegations are being enquired into.

**Mr. BIRENDRA BAHADUR SINHA :** What is the nature of the allegations, Sir?

**Mr. KRISHNA BALLABH SAHAY :** The lawyer was charged under section 452.

**Mr. BIRENDRA BAHADUR SINHA :** What is the substance of the offence?

**Mr. KRISHNA BALLABH SAHAY :** I want notice of that question, Sir.

**Mr. JADUBANS SAHAY :** Is the offence non-bailable, Sir?

**Mr. KRISHNA BALLABH SAHAY :** The offence is bailable, Sir, and, therefore, he was ultimately granted bail.

**Mr. JAMUNA PRASHAD SINHA :** Has the charge-sheet been submitted against him?

**Mr. KRISHNA BALLABH SAHAY :** These questions do not arise, Sir. The question was with regard to the conduct of the police sub-inspector and the way in which the arrest was made.

**Mr. JAMUNA PRASHAD SINHA :** Is it a fact that bail was granted after midnight?

**Mr. KRISHNA BALLABH SAHAY :** That is not relevant, Sir, because it is a matter in which the conduct of the police is under judicial enquiry.

**The Hon'ble Mr. SHRI KRISHNA SINHA :** Sir, the complaint is that the police effected the arrest in an objectionable manner and that matter is under judicial enquiry.

**Mr. UPENDRA MOHAN DAS GUPTA :** Who is the officer enquiring into the matter?

**Mr. KRISHNA BALLABH SAHAY :** I cannot give the name of the officer, but it must be enquired into by a first class magistrate.

**Mr. UPENDRA MOHAN DAS GUPTA :** Is it an enquiry with which non-officials will be associated?

**Mr. KRISHNA BALLABH SAHAY :** Whenever a serious allegation is made against a police officer, then under Article 50A of the Police Manual, a judicial enquiry is made into the conduct of the officer concerned, and this enquiry is being made under that article.

**Mr. JAMUNA PRASHAD SINHA :** At what hour in the day the enquiry was made and completed ?

**The Hon'ble the SPEAKER :** To which enquiry does the hon'ble member refer ?

**Mr. JAMUNA PRASHAD SINHA :** To the enquiry about the complaint filed against Babu Balindra Lal Das which led to his arrest.

**Mr. KRISHNA BALLABH SAHAY :** Will the hon'ble member please let me know from what part of my answer this question arises ?

**Mr. JAMUNA PRASHAD SINHA :** From clause (b) of the answer. My point is, Sir, that if the enquiry was made during the earlier part of the day, why was it that the arrest was made long after the enquiry was completed ?

**The Hon'ble Mr. SHRI KRISHNA SINHA :** Sir, these are the things which are under enquiry.

**Mr. JAMUNA PRASHAD SINHA :** May I know, whether it is proposed by Government to give answer to our questions when the judicial enquiry is over ?

**The Hon'ble Mr. SHRI KRISHNA SINHA :** After the enquiry, if hon'ble members will want to have a fuller statement, it will certainly be given.

**The Hon'ble the SPEAKER :** This is an *ad interim* reply. So I do not think there is any necessity for so many supplementary questions at this stage. Government have said in their reply that the conduct of the police in this matter is under judicial enquiry and, therefore, they are not prepared to make any statement at this stage, but that a final reply will be made hereafter.

**Mr. JAMUNA PRASHAD SINHA :** So far as I know, the police have already submitted their report.

**The Hon'ble Mr. SHRI KRISHNA SINHA :** If my hon'ble friend could be satisfied only with the reply given by the police, certainly Government's task become easy. But the fact is that certain grave allegations are made against a police officer in effecting the arrest of a respectable gentleman of Gaya and certain local officers there have

decided to make a judicial enquiry into the matter. That enquiry is being made and after it is over, if hon'ble members will want a fuller statement, they will have it.

**Mr. JAMUNA PRASHAD SINHA :** Are Government aware that instances of high-handedness and ill treatment by the members of the police have increased at many places since the advent of the Congress Government ?

**The Hon'ble the SPEAKER :** That question does not arise.

**Mr. JAMUNA PRASHAD SINHA :** Are Government aware of a very serious charge of high-handedness made against the police of Gaya during the recent Shia-Sunni riots ?

**The Hon'ble the SPEAKER :** That question does not arise.

**Mr. RAMCHARITRA SINGH :** Will the police officer concerned be removed from Gaya ?

**The Hon'ble Mr. SHRI KRISHNA SINHA :** Will it not be anticipating the result of the enquiry by transferring him before the enquiry is completed ?

**Mr. RAMCHARITRA SINGH :** Government say, Sir, that the enquiry has been entrusted to a first class magistrate. May I know if such an enquiry can preclude the House from demanding interpellations with respect to the conduct of the police ?

**The Hon'ble Mr. SHRI KRISHNA SINHA :** Sir, I am not concerned with the fact whether a particular member can be precluded from putting such a question or not. My reply is only this in answer to such questions : Government is not ready to make any statement at present because a judicial enquiry is being made into the whole affair.

**Mr. GORAKH PRASHAD :** May we have an idea of the time this enquiry is expected to take, Sir ?

**The Hon'ble Mr. SHRI KRISHNA SINHA :** I think my hon'ble friend is a lawyer and will be able himself to anticipate what time it is likely to take.

**Mr. UPENDRA NATH MUKHARJI :** Is it lawyer's time or Government's time ?

**The Hon'ble Mr. SHRI KRISHNA SINHA :** The enquiry is not being made by Government but by judicial officers with which the lawyers are concerned.

**Mr. MAHESH PRASHAD SINHA :** What is the meaning of the word "*sub judice*," used in the reply made by Government ?

**The Hon'ble Mr. SHRI KRISHNA SINHA :** The article of the Police Manual, under which this enquiry is being made, means that when any particular allegation is made against a police officer which discloses that a certain offence has been committed by that police officer then a judicial enquiry is made, and if the Deputy Magistrate or the Sub-divisional Officer thinks that the police officer has committed an offence disclosed in that allegation, a criminal case is brought against the police officer concerned. So any enquiry under this article is a *sub judice* matter, because this enquiry is a preliminary enquiry with a view to start prosecution against the police officer if the allegation proves to be true.

**Mr. MAHESH PRASHAD SINHA :** Sir, my question is this : Government say that a judicial enquiry is going on and so they are not in a position to make any statement on the facts about which questions have been put, but my contention is, that if the matter is under judicial enquiry, and after the report is submitted to Government, even then, the matter remains *sub judice* and in that case Government may say that the matter is being referred to the court and so no statement could be made until a judgment was arrived at by the court of law.

**The Hon'ble Mr. SHRI KRISHNA SINHA :** Sir, if, as a result of the judicial enquiry, the Magistrate comes to the conclusion that the police officer is to be proceeded against, then, certainly the police officer will be proceeded against in a court of law. Before that the members of the House will not be entitled to put any question. If the officer comes to the conclusion that the police officer has committed any offence, then certainly it will not be a *sub judice* matter and the members of this House will be entitled to put their questions.

**Mr. MAHESH PRASHAD SINHA :** Are we to understand that the members are entitled to say anything only after the case is disposed of by the Magistrate ?

**The Hon'ble Mr. SHRI KRISHNA SINHA :** If the Magistrate holds that the police officer has committed that particular crime which was suggested against him, then, certainly there will be a criminal case, and the members will not be able to know anything from the Government till the trial is over.

**Mr. RAMCHARITRA SINGH :** Sir, I am satisfied with the answer of the Hon'ble the Prime Minister that the matter is under enquiry, and so we should not hasten about it. But I differ from him when he says that we should treat such cases as *sub judice*. Under the Government of India Act, *sub judice* has nothing to do with such a case. The House has a right to demand answers to the questions when the conduct of a police officer or other officers is doubtful. It is not a *sub judice* question under the Government of India Act.

**Mr. BALDEVA SAHAY (Advocate-General) :** Sir, the position is that upon complaint against conduct of a certain police officer, the Magistrate empowered to deal with such complaints makes an enquiry under section 202 of the Code of Criminal Procedure. Section 202 of the Code of Criminal Procedure says that upon receipt of a complaint, the Magistrate authorised in this behalf may either put the accused on trial straight away, or make a preliminary enquiry absolutely judicial, in the strict sense of the term, before putting him on trial. The enquiry is going on and upon the result of that enquiry depends the dismissal of the complaint or putting of the accused on trial. Therefore, in the strictest sense of the term, the enquiry under section 202 of the Code of Criminal Procedure is a judicial enquiry. It is not an enquiry of an executive character ordered by Government or by any other officer. There will be a judicial enquiry to see whether there is any *prima facie* case, and if that be so, the man will be put on trial.

**Mr. MUHAMMAD YUNUS :** May I know, Sir, whether Government is satisfied that the judicial enquiry in the conduct of this particular officer is justified or necessary?

**The Hon'ble Mr. SHRI KRISHNA SINHA :** The answer is in the affirmative because in the interest of Government Servants a preliminary Judicial enquiry is provided.

**Mr. MUHAMMAD YUNUS :** I am afraid, Sir, the question is not clear to the Hon'ble the Prime Minister. My question is whether Government is satisfied or is not satisfied that the enquiry is necessary.

**The Hon'ble Mr. SHRI KRISHNA SINHA :** The satisfaction of Government will depend upon the decision arrived at by the judicial court, and so this question does not arise at present. Government is waiting for the decision of the court.

**Mr. MUHAMMAD YUNUS :** My question is : Are Government satisfied with the starting of a judicial enquiry into this particular case?

**The Hon'ble Mr. SHRI KRISHNA SINHA :** Government are satisfied with starting of the judicial enquiry, because judicial enquiry gives always rise to a confidence in the public.

**Mr. MUHAMMAD YUNUS :** Has the officer been suspended pending the judicial enquiry?

**The Hon'ble Mr. SHRI KRISHNA SINHA :** No.

**Mr. KHETRA NATH SEN GUPTA :** May I know, Sir, under what section Mr. Das was arrested?

**The Hon'ble the SPEAKER:** Under section 452 of the Indian Penal Code. That is what Government have just said.

**Mr. KHETRA NATH SEN GUPTA:** May I know the name of the sub-inspector?

**The Hon'ble the SPEAKER:** Babu Rambilas Rai.

**Mr. MAHESH PRASHAD SINHA:** In spite of what the Advocate-General said on this point, my grievance remains as before. I wanted to know at what stages can this House discuss this question. There are two stages in this case—one—when the judicial enquiry is made by a magistrate and the other—when the court will be in possession of the case after the enquiring magistrate submits his regular charge sheet against the police officer concerned. So, virtually, it means that before the disposal of the case we are not entitled to discuss this case.

**The Hon'ble the SPEAKER:** Order, order.

**The Hon'ble Mr. SHRI KRISHNA SINHA:** I do not know why my friend should be so anxious when the matter is already under a judicial enquiry. He is a lawyer and he should be satisfied with the decision of the court.

**Mr. MUHAMMAD YUNUS:** Has Government considered the fact that the holding of an enquiry without the suspension of the particular officer will prejudice the judicial enquiry?

**The Hon'ble Mr. SHRI KRISHNA SINHA:** Certainly, it will not prejudice the enquiry.

**The Hon'ble the SPEAKER:** I agree entirely with the Advocate-General that the judicial enquiry started on the complaint regularly made and duly entertained is an "adjudication by a court of law having jurisdiction in any part of His Majesty's Dominions". In that view of the matter, under the proviso to rule 37 of the Legislative Assembly Rules the matter cannot form the subject of questions here.

### UNSTARRED QUESTION AND ANSWER.

INCLUSION OF THE "AINA" IN THE LIST OF NEWSPAPERS APPROVED BY GOVERNMENT.

**155. Mr. MUHAMMAD SHAFI:** Will Government be pleased to state—

(a) whether an application, dated the 5th March, 1938, from the proprietor of the "Aina", the weekly journal published from Kishanganj, has been received by them for the purpose of including the paper in the recognised list of newspapers;