

[16th February 1933]

LEGISLATIVE BUSINESS.

THE BIHAR AND ORISSA PUBLIC SAFETY BILL, 1933 (BILL NO. 1 OF 1933).

The Hon'ble Mr. J. T. WHITTY : Sir, I beg to present the report of the Select Committee on the Bihar and Orissa Public Safety Bill, 1933.

I now move :

That the Bihar and Orissa Public Safety Bill, 1933, as reported by the Select Committee, be taken into consideration.

Babu SRIKRISHNA PRASHAD : Sir, I beg to move :

That the Bihar and Orissa Public Safety Bill, 1933, as reported by the Select Committee, be re-circulated for the purpose of obtaining further opinion thereon.

Sir, I shall now very briefly explain before the hon'ble members of this House the reasons which have induced me to table this motion for amendment. It is not necessary for me to go over the whole ground of the various provisions contained in the Bill for the purpose of explaining as to why this motion has been tabled by me. It will be sufficient for me to point out that the Bill enacts such provisions of the Emergency Powers Ordinance, 1932, as have been considered by the local Government to be necessary for being adopted into the shape of law. The Legislature is now called upon to take the responsibility of putting this Bill on the Statute Book for the next three years. The question which arises for consideration is whether there are valid grounds for doing the same. The papers that Government were pleased to lay on the table when I asked for the papers in connection with this Bill on the last occasion do not reveal any case of emergency. But the Hon'ble Mr. Whitty was pleased in his introductory speech to observe that the object of the Bill was to end or finish the civil disobedience movement. So far as the object and the intention of the Bill is concerned, I have not got anything to find fault with. So far as we, in this Council, are concerned, we are neither sympathisers of the civil disobedience movement nor promoters of that movement. But the whole thing which we have to consider in connection with this Bill is : Is this Bill going to achieve the object which we all have at heart? And for the determination of this simple question, we have to find out as to whether the provisions contained in the Bill are likely to promote the intentions of the

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mover of this Bill. For such a purpose, it is necessary to bear in mind that the Bill contains drastic provisions and provisions of a very reactionary character, and the object of the Bill is to arm the executive with powers of a very wide character. Who is the person best fitted to answer the question as to whether these provisions are required in the interests of law and order and in the interests of the public welfare? The answer can come only from those who are going to be affected by it. The Bill is not confined to delinquents of the civil disobedience movement. It is extensive enough to include all and sundry of this land who have the misfortune of being the inhabitants of this province. In this circumstance, the opinion of the mass of the people is the only sure guide as to whether such a Bill is required for the purposes of public safety in this province.

If that is the real test of the necessity of this Bill, my submission before the Council is that it is not desirable that a law should be foisted upon the people of this province without ascertaining their opinion. I do not know if any public body or private individuals have been consulted as regards the provisions of this Bill or the principle underlying this Bill. Is it not, therefore, desirable, Sir, that the opinion of the people at large as represented by the public institutions in this province is ascertained before this Bill of such a drastic and reactionary character is enacted into law? It is necessary, therefore, to remember that the best persons amongst the people who are competent to give their opinion in this matter, leaving aside the Congress people, or the people who are advocates of civil disobedience, are the intellectual classes of this province? Is it necessary for me to remind the Council that on previous occasions when any Bill of a character less drastic than this has been introduced in this Council, the opinion of all the Bar Associations in the province has been taken before it has been finally enacted into law? Is there any reason why the same procedure should not be followed in this case, and the opinions of the Bar Associations of this province taken before this Bill gets the sanction and support of this Council? Is it not a fact that the opinions of District Officers have been taken in regard to the provisions of other Bills which have been introduced in the Council? If that is so, why should that procedure be not adopted in this case also. Has the opinion of the High Court Judges who are the highest judicial officers in this province and who administer law and justice been taken in connection with the Bill? If not, is there any justification

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for foisting upon the Statute Book a law which has not got the sanction and support of the highest judicial authorities in this province ?

We have further to find out if the opinions of the landlords of this province, at supporting whose rights and interests one of the clauses of this Bill aims, has been taken. Has the opinion of the Bihar Landholders' Association been taken in regard to the provisions of this Bill ? Not only that, we have now got a new political party in this province, the United Party ; is it not desirable that the opinion of the United Party should also be taken before this Bill is placed on the Statute Book ?

I therefore submit that the case for circulation is a very strong one. This Bill, I understand, has not at all been circulated. The best way of ensuring public support to the provisions of this Bill and to the Act which may emerge out of this Bill would be to get the sanction and concurrence of the people at large. Moderate political opinion in this province should certainly be allied with Government if such a measure is to have any effective control over any movement in this province. Without the support of public opinion, Acts however good they may be, cannot at all be effective in achieving the object which they have in view. The people as a whole cannot be said to be entirely disloyal. And if the situation is such that all the lawyers of this province, all the judiciary, all the executive officers in this province are disloyal to Government, and that they want to support the civil disobedience movement—if the situation be really like that—the provisions of this Bill cannot bring about any change in the public atmosphere.

I have already submitted my opinion when I opposed the principle of this Bill that this Bill cannot achieve the object which it desires to attain. But I do not wish that my opinion or the opinions of some of the Council members should prevail in this matter. What I do desire is that the opinion of the people at large, the opinion of the intellectual classes, the opinion of the politically-minded men of this province, the opinion of the landholders, the opinion of the judicial officers of this province should be gathered. Further, ascertainment of the effects of the powers of the Emergency Powers Ordinance is required before this Bill should be enacted into law. It is necessary to know as to how far the Emergency Powers Ordinance was sufficient to cope with the situation in this province. As I have submitted there have been very few occasions for bringing into

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operation the various clauses of the Special Emergency Powers Ordinance, and I do think that this is an unwelcome guest on the Statute Book which we are now having amongst us in the shape of this Bill.

It is not only unwelcome, it is unnecessary and it will indeed create further complications in the political situation in the country and will not at all improve this situation. The Government must realise that it is impossible to rule this country either by Ordinances or by Bills or enactments in the shape of the Ordinances. The time has come when a real attempt has to be made to win back the people who are wedded to the path of non-co-operation and to bring them round to the path of co-operation by genuine, sympathetic and cordial extension of co-operation on the part of the strong party in this country, namely the Government; and I am sure that people in this country, even those who are wedded to the path of non-co-operation, will realise the futility of that method; and a change of heart on the part of Government will not only convince those who are working in the wrong direction but it will enlist the whole-hearted sympathy and support of all those who care to think politically and who care to realise that the good of this province and the country lies in the path of co-operation, and not in the path of non-co-operation. The time is certainly imminent and any mistake at this juncture instead of improving matters will bring about serious consequences which will be disastrous more to the people than to the Government.

Then, Sir, in the interest of the people, whom we have the honour to represent in this Council, I am placing before this Council my modest request that the Bill be recirculated for eliciting public opinion thereon and if the Government will be pleased to accept this motion there will not be the least necessity on our part to oppose the Bill as a whole either here or hereafter, because it may be that in the light of the public opinion on the subject the Bill may be so moulded as to meet the desires and wishes of the public at large, or it may be that Government convinced of the arguments which we on this side of the House urged the other day against the Bill will abandon altogether the idea of having an enactment of this kind on the Statute Book. I always believe that Government will be responsive to reasonableness and in that hope I am placing this for the consideration of the House and I hope the House will give their whole-hearted support to an amendment of this kind which wants

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more to strengthen the hands of the Government than to weaken them. I may say my motion is not of a dilatory character; I do not want to postpone the evil day. What I desire is only a change of heart on the part of Government and also a reasonable change of heart not only on the part of the people at large but even on the part of those who participate in the civil disobedience movement, and I expect that to strive for a change in both directions is the duty and bounden obligation of every true citizen in this province and if I can ever give my help in that direction I would not budge an inch from doing so, and I hope every member of this Council will move in that direction to bring about a *rapprochement* the necessity of which is being felt increasingly day after day and the postponement of which is not at all calculated to benefit either the people or the Government.

With these submissions, Sir, I place my amendment for the verdict of this Council.

Rai Bahadur SATIS CHANDRA SINHA: On a point of order, Sir, whether the motion for re-circulation for eliciting further public opinion is in order when it was not circulated for eliciting public opinion after its introduction? But I would be mighty glad if it is now circulated for eliciting opinion.

The Hon'ble the PRESIDENT: The motion is in order.

Babu GODAVARIS MISRA: Sir, I rise to extend support to the motion of amendment. The intention of referring a Bill to a Select Committee is that the representatives of the Legislature might be given an opportunity to look more detailedly into the provisions of the Bill and that wherever they think that the provisions are either drastic or unsuitable they should make necessary changes. On this occasion there is very little divergence between the Bill as introduced and the Bill as amended by the Select Committee. The reasons why the Select Committee failed to make many changes in the Bill as introduced are obvious. In most cases, if not in all, Bills are, after introduction, circulated for the purpose of eliciting opinion thereon. Important Bills like the present one are always circulated. The object of circulation is that as much light as is available should be thrown upon the provisions of the Bill. When a Bill is circulated for eliciting opinion, opinion is received from various kinds of people interested in the working of the Bill after its enactment. Opinion is received from officials and from non-officials, the non-officials including in their category, as has been pointed out, legal experts, public bodies and distinguished individuals. This opinion supplies the Select Committee with

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materials which helps it in making necessary alterations and changes in the provisions of the Bill. The circulation of a Bill is, therefore, one of the most necessary and important factors in legislation for it enables the Legislature to be in possession of the opinion of the country at large. It is not possible for representatives of the people in the Legislature to obtain direct opinion from their constituencies in all matters pertaining to legislation which affect the people in general. The most workable method is, therefore, contemplated in the circulation of the Bills. But this method was not availed of on this particular occasion. Therefore, light upon this Bill was shut out from quarters from which it was most expected to come. Then again the Council accepted the personnel of the Select Committee, proposed by the mover of the Bill and did not like to make any addition to that personnel. That also is perhaps a cause why at this stage the Council may like that more light should be thrown upon the provisions of the Bill before it is finally passed.

Sir, as has been rightly pointed out, it is the people in general in the province that will be affected by the working of this piece of legislation and it is desirable that their opinion should be taken in a matter which affects them vitally. It seems certain that the present political movement is on the wane. The verdict really rests with the people who are affected by the movement to say whether the statement that the movement is on its wane is correct or not. If it is really waning it may not be necessary for all the provisions of the Bill to stand and that only the people who are to be affected by the Bill can correctly say. If the Bill were in the first instance circulated, there would have been now no necessity for the hon'ble mover of the amendment to ask the Council to get it re-circulated. In fact, the language used by him "be re-circulated" is not properly applicable. It is really a question of circulation, for the Bill has never been circulated before; but after a Bill has come out of the Select Committee there is no provision in the rule that it should be circulated. He has therefore to come under a technicality and to apply the word "re-circulation". It is necessary now before we proceed further with the Bill that it should be circulated for the purpose of obtaining opinion. I think the Council will consider that the circulation of the Bill at this stage would not have been necessary if it was found that in the Select Committee the Bill underwent a change that should meet the special requirements of the times. Some light was no doubt thrown upon the provisions of the Bill in this Council when a motion was made by the hon'ble mover for its reference to

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select committee. Some of the observations have not perhaps in the Council's opinion been properly considered by the Select Committee for no alteration has been embodied in the Bill. It appears, therefore, all the more necessary now that the Bill should be re-circulated and I hope that the Council will support this motion.

Babu BIMALA CHARAN SINGH : Sir, the amendment which has been made to the Public Safety Bill, I submit, is not justifiable because it defeats the very purpose for which this Bill is intended.

The Hon'ble the PRESIDENT : The motion is that the Bill be taken into consideration. The amendment is on that motion. I think the hon'ble member is not aware what motion is before the House.

Babu BIMALA CHARAN SINGH : I am not aware of it, Sir, as I have just come.

The Hon'ble the PRESIDENT : The Hon'ble Mr. Whitty has moved that the Bill, as reported by the Select Committee, be taken into consideration. To that motion Babu Srikrishna Prashad has moved an amendment that the Bill, instead of being taken into consideration, at once, be recirculated for the purpose of eliciting public opinion. That is the motion that the Council is discussing at present.

Babu BIMALA CHARAN SINGH : Then, Sir, with respect to that my submission is that we should not go on postponing the matter for opinion, because the matter was first considered when the Bill was introduced in the January session. My submission is that we approach the question from a wrong standpoint of view. The object of this Bill is not to have any general remedy, not an insurance against ordinary risks as for that purpose the Penal Code is sufficient. The object of the Bill is to protect or rather to defend the public against malevolent organized danger. If that is the object, then the sooner it is achieved, the better it is. We know that when there has been civil disobedience movement it has been suppressed to a great extent by the strong measure which has been taken against it, and similarly strong measures are absolutely necessary for the protection of the public and any further delay, I think, either for the purpose of eliciting public opinion or for any other purpose may be dangerous. It is not that those persons who are organized to do such unlawful acts will be satisfied by any concession. Concession has produced no satisfaction. It has produced insolence and concession has been returned by outrages ; therefore the

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strongest measures should be taken as soon as possible, though I am quite aware that they would accuse every measure of rigour that is passed by the Council as cruel. But then at the same time what is to be done when, in spite of the fact that leniency is being done, in spite of the fact that in this very Council it was said during the last session that no strong measure should be taken unless the provisions of the Criminal Procedure Code—section 107 or section 144—have been resorted to. The moment they get the least chance, they will persist in their obstinacy. I submit, Sir, that under such circumstances on no ground the present Bill should be postponed. This is my submission at present.

Babu RAM NARAYAN : Sir, I oppose the motion. The law is as much a remedy for the correctness of a wrong as a medicine is a remedy for the healing of a disease. When we are not guilty, we should not be afraid of anything. It is only the guilty mind that is conscious of its guilt and afraid of its remedy. Opinions on the Bill have sufficiently been obtained from the representatives of the masses—i.e. the Councillors—and I do not think it requires any further opinion.

The Hon'ble Mr. J. T. WHITTY : Sir, I oppose the motion for circulation of this Bill on behalf of Government. Although the motion of the hon'ble member is in order, I think that the House will probably agree that it is inappropriate and out-of-date and it ought not to be pressed. The opportunity for a motion for circulation occurred when the Bill was introduced and referred to the Select Committee. That opportunity was not taken at the time by the hon'ble member. The House has now accepted the principle of the Bill and by doing so has agreed that any further circulation on this account is unnecessary. As regards the details of the various provisions of the Bill, it is obvious, I think, that these can be dealt with more appropriately in a Select Committee by members of the House specially chosen for the purpose than by collecting outside opinions.

In any case, it is quite clear that a proposal which would result and is undoubtedly meant to result in delaying the Bill from coming into operation for six months when it is intended to meet an existing situation is in direct opposition to the intention of the House when they referred it to the Select Committee. The delay of six months at the present time would certainly take away a great deal of the value of the Bill.

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I think, Sir, the House is very well aware that Bills of the nature of our Public Safety Bill were introduced into most of the provincial Legislatures some months ago. We delayed doing so because we wished to avoid the trouble and expense of an extra Council session in November and because we hoped to be able to carry on for the few weeks that intervened between the termination of the Special Powers Ordinance and the meeting of our Council in January. It is obvious that if these provisions are needed they are needed at once. We want to be in a position to stop the movement which has caused so much trouble and distress in India, the leaders of which still claim to have a complete organization and many supporters, and to be determined to defy Government, from getting back its strength and troubling India again. This need is specially great at a time when the people of India require peace and order and all their power and resources to deal with the great constitutional changes that are coming, and with the economic crisis. I am afraid I can only suppose that the motion for circulation is intended to delay the Bill, because the hon'ble member who has moved it has more sympathy with the civil disobedience movement in spite of the disastrous effects which he must have seen in his own district than with the maintenance of law and order. It is obvious that if there is an interval of six or seven months when the powers which we ask for are not in operation, the agitators must take advantage of it to stir up trouble. To decide that the Bill which is obviously needed to deal with a particular situation promptly, if it is to be of any value, should be put off over the time when it is likely to be needed most, would be illogical and absurd. I hope the House will not accept this delaying motion for which there is no justification.

Rai Bahadur DWARKA NATH: Sir, I have very carefully listened to the speech of the hon'ble mover of this motion for circulation and also the speech of the Hon'ble Mr. Whitty which has been just delivered to the Council. Sir, the amendment before the House is that the Bill be circulated for public opinion. Now, Sir, it is time for us to see whether the amendments which have been made by the Select Committee are such as will meet with the objections to the Bill which have been made by the members of the Council or not. Another question which should be considered carefully by the members of the Council is whether there would be any harm to the aims and objects of the Bill if the motion of my friend Babu Srikrishna Prashad is carried in this Council. These are the two questions

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and I wish to deal with them. The first point which I want to urge is this that the Bill has met with a strenuous opposition when it was introduced in this Council. The division list will clearly show that even people who are usually on the side of Government—people who cannot be suspected of having the least sympathy with the civil disobedience movement—voted against this Bill when the House was divided. Now, Sir, that ought to have opened the eyes of any popular Government. But, Sir, we have to deal with a bureaucratic Government and not a popular Government. Bureaucracy is always blind (*Mr. Sachchidananda Sinha* : and deaf also) and deaf also, as my esteemed friend Mr. Sinha says. Now, Sir, they have not in the least profited by the discussion in this Council as is quite evident with the tinkering of the Bill which has been effected by the Select Committee. Even an ultra-loyalist like my esteemed friend Babu Chandreshvar Prashad Narayan Sinha, who was a member of the Select Committee, has appended a note of dissent on a very important issue. Sir, when I had the honour of addressing the House when the Bill was introduced in the Council, I submitted that there was absolutely no urgency about the matter. I could have understood the Government's opposition to this motion for circulation if there would have been an urgency as my esteemed friend Babu Bimala Charan Singh apprehends. But is there any urgency? The Ordinance Act has been passed and any Government would have waited and seen whether it would meet the situation or not. Is there any evidence to show that the civil disobedience movement has taken a serious turn even after the passing of that enactment?

Now, Sir, I find in the Statement of Objects and Reasons which has been circulated along with the first Bill that the Government of Bihar and Orissa consider it desirable to introduce the Bihar and Orissa Public Safety Bill which will supplement the Act of the Central Legislature in order to meet local conditions. That is the main object of the Bill. Have the local conditions changed that you require a Bill like that? The Hon'ble Mr. Whitty is absolutely silent on an important point like that. You have to convince us that there is emergency and urgency about this Bill and that the local conditions require it. Would it have mattered in the slightest degree for this Government if this Bill could have been passed in the Ranchi session of the Council; meanwhile you could have judged the effect of the Ordinance Act so far as the activities of the civil disobedience movement were concerned. But, Sir, when I stand in this Council, I want

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to assure you that it is not out of sympathy with the civil disobedience movement. The civil resisters can take care of themselves. They are men of determination. Some of them would, I am quite sure, fill the benches which are now occupied by the Hon'ble Mr. Whitty in the next House. They can take care of themselves. But we want to take care of ourselves. Are not the provisions of the Bill of such a drastic character as to create unrest and anxiety and even dismay in the minds of those who do not belong to the rank and file of the civil disobedience movement? That is the sole question. I say, Sir, any one who reads the Bill can very easily find out that there is a danger to the innocent people. I know, Sir, the Hon'ble Mr. Whitty, for whom I have great regard and respect, will stand up and say, "I assure on behalf of Government that so far as the innocent people are concerned they need not be afraid at all". But, Sir, I shall contradict him immediately and would say that the past activities of the Government of Bihar and Orissa have created an amount of unrest and distrust in the minds of the loyal section of the population. We find, Sir, that when the punitive police, the additional police, has been quartered even some of the most loyal section of the population has been saddled with the cost of it. We find, Sir, that wherever there has been a riot often innocent people have gone to the jail.

The Hon'ble the PRESIDENT: The hon'ble member will confine himself to the point at issue, that is that the Bill should be recirculated for eliciting public opinion. The hon'ble member is speaking really on the merits of the Bill on which he will have a chance to speak later on.

Rai Bahadur DWARKA NATH: Sir, my difficulty is that the Bill is so full of demerits that it is difficult to distinguish between the merits and the demerits of the Bill (*Laughter*).

I was just telling, Sir, that when we want to press this motion before the Council that the Bill be circulated for public opinion we want to consult that section of the population which rightly apprehends that their interests would be seriously jeopardised by the passing of this measure into law. I want them to be consulted and I say, Sir, that there are two ways of consulting them. Either you consult them in the usual way in which you have been consulting public opinion by inviting the leading associations and those official and semi-official agencies which you have always utilized for the ascertainment of public opinion or you do so through their representatives in

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the Legislative Council. So far as the representatives in the Legislative Council are concerned, you have found that there is an influential section in this House which is strongly opposed to this Bill. There is no doubt about it. So far as the leading associations or the high court are concerned there is nothing to show that Government have ever consulted them. My esteemed friend Babu Srikrishna Prashad has asked the Hon'ble Mr. Whitty to say whether they have consulted the Bihar Landholders' Association, the United Party and other leading associations throughout the province on the question and Mr. Whitty could not say that he has done so and he could not justify his not having done so. I would like to know where is the justification for passing this measure in a hurry ; where is the hurry about it ? That is what we want to know.

Now, Sir, the whole object of the Bill is to deal with the civil disobedience movement. Now you have passed an Act which deals with the civil disobedience movement in all its phases. There is a great difference of opinion between the people and the bureaucracy in dealing with the civil disobedience movement. We, on this side in this Council, the people at large, want to deal with it by concessions and by conciliation, by acceding to the cherished desires and aspirations of the people. While you, Sir, want to stifle the movement, to crush the movement and to suppress the movement and to drive sedition under ground as has been so often said on the floor of this House and outside this House. Now there is a marked difference so far as the bureaucracy and the public are concerned. The Hon'ble Mr. Whitty says that it is for the safety of the public that Government want this Bill. People do not want it. People do not apprehend in the slightest degree that their safety is in danger or jeopardised. Otherwise, they would have come in large numbers and asked the Hon'ble Mr. Whitty to introduce a more drastic Bill. My friend Babu Bimala Charan Sinha, only apprehends that his own safety will be in a perilous position if the Bill is not rushed through the Council. That is not the position. I say, Sir, that this is a matter which requires very careful consideration. Now that we are on the eve of a new era, on the threshold of a new era, now that we are inaugurating reforms which according to the Government should have far-reaching effects, it sounds very strange indeed that Government should stifle all public criticism, and all public spirit.

The Hon'ble the PRESIDENT: The hon'ble member is again speaking as regards the merits of the measure.

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Rai Bahadur DWARKA NATH : I am sorry, Sir.

Now, Sir, I say this is high time when Government should consult public opinion on the clauses of the Bill as it has emerged out of the Select Committee before they rush through this measure and I think if public opinion unanimously, or almost unanimously or even substantially supports Government in this measure and if our constituents desire that we should support Government in this measure we would be the first to do our duty towards our constituency and the public. I do not see any hurry about it. I do not see any urgency about the matter and therefore I support the motion of Babu Srikrishna Prashad that the Bill be circulated for public opinion. Thereby we do not kill the Bill. It will simply delay the passing of the Bill. But you have still to show that the slight delay of a few months in the passing of the Bill will imperil public safety. With these words, Sir, I support the motion.

Mr. SACHCHIDANANDA SINHA : Sir, the motion before the House is not, as just now pointed out, in regard to the merits of the Bill, but in regard to a particular suggestion that the Bill be circulated for eliciting further opinion. It is, of course, easy to say that in a province like Bihar and Orissa there is not much opinion to be sought outside the Government Secretariat, because we have got in this province a very weak press, and the only journal in this province has expressed its opinion already in condemnation of the measure, which the Hon'ble Mr. Whitty has introduced. Also, we have not at present in this province many public associations. That is also perfectly true. Then the Congress party will not care to express their views on this Bill. The only other association, that I know of at present, is the Bihar Landholders' Association, to which reference has been made. I did not hear the Hon'ble Mr. Whitty make any statement on the particular point, as to whether he had cared to consult the Bihar Landholders' Association, or given opportunity to that body to express its views. I do not see why it cannot be done. I believe Bills are generally sent to the Bihar Landholders' Association to enable it to express its opinion thereon, and there is no reason why it should not be done in this case.

Apart from that, there is in this province a highly qualified, impartial, independent, learned and cultured body of men, namely the Judges of the Patna High Court, and I believe it is the practice that Government, when introducing important legislation, do refer their Bills to the Hon'ble Judges for their

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opinion and guidance. I would like to know from the Hon'ble Mr. Whitty if in this particular Bill any opportunity was given to the Hon'ble Judges to express their opinion. If it has not been done I do not see why it should not be done even now.

Similarly, there may be other bodies, Sir, in this province. I believe there is the Bihar and Orissa Chamber of Commerce, a body of shrewd businessmen, who do not believe in civil disobedience movement and who are naturally (as commercial men) most anxious that there should be law and order maintained in the province. I do not see why they should not have been consulted about this matter. Therefore, I think that there is nothing outrageous in asking Government to stay their hands at present, and to give an opportunity to all those bodies (including the High Court) to express their opinion upon this particular Bill.

If the opinions received are circulated to us, in due course, with the suggestions made by these associations and bodies, we shall be in a better position to deal with this Bill. I confess I do not see any justification for the great anxiety which the Hon'ble Mr. Whitty is displaying for the immediate enactment of this Bill. His anxiety to do so would have been justifiable in my opinion had there not been on the statute book the potentious Draconian Act passed, but a few weeks back by the Assembly, which covers practically the whole ground which any administration can desire to have done, for the purpose of dealing with any subversive movement. This Bill is only supplementary and its provisions are intended to prevent such offences as the performance of mock funerals, and things of that kind. Surely, Sir, earth and heaven would not fall to the ground if there was a delay of a few months in legislation of this character. I, therefore, join with my friends in requesting Government to reconsider the position, and not to force down the Bill.

Mr. J. THOMAS : Sir, I shall not detain this House for more than a few moments. We cannot alter the past, but we can learn by experience. We cannot predict the future, but we can prepare for it. The hon'ble Rai Bahadur Dwarka Nath seems rather concerned about the past, while we from our point of view are only too anxious for the very near future, when this House will be increased and greater power given to the people. Let us therefore hand over the power given to the peace—let us maintain law and order. If some hon'ble members have questioned the necessity for the urgency of the

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measure, I might give one illustration. If you take a car, you find that brakes are necessary and that the brakes have done you very good work, it would be very foolish not to renew them and to allow them to wear down and wait for a crisis to happen before taking action. Our sympathy is entirely with the people of this province and we should do all we can to maintain law and order in the province for the sake of law-abiding citizens.

It is for this reason, Sir, and for the sake of peace and orderly progress that I oppose the amendment and support the Bill.

Khan Bahadur SHAH MUHAMMAD YAHYA : Sir, it has been conceded not only by my hon'ble friend, Babu Srikrishna Prashad, but almost all the members of this Council that the civil disobedience movement is not dead. It is not only that, but whenever the question of release of political prisoners has cropped in and whenever Government has sought that some sort of guarantee should be given that they would not revive the civil disobedience movement, that guarantee has never been given nor is it likely to be given. It is the duty of Government to see that the movement is checked, and if that be so, then certainly there ought to be some legislation to stop it. Most of my friends are not in favour of civil disobedience movement and certainly stood for election as members of this Council in spite of Congress mandate. That goes to show that they are not at all in favour of civil disobedience movement, otherwise they would not have been here. Now, the Special Powers Ordinance was most probably promulgated in December 1931, and after the passing of that ordinance, this question has been very well discussed not only in this province but all over the country, and on the expiry of this ordinance, legislation has not only been taken up in this province but in all the other provinces also and the matter has been fully discussed in all the papers of the province, by all public men of the province, and most of the provincial legislatures have already passed legislation on the lines which we are now going to take up in this Council. So I do not see any necessity that it requires any further elicitation of opinion as since December 1931 up till now, the Central and other legislatures have passed similar measures and they have been fully discussed there also. It is therefore no use sending it back for the purpose of eliciting further opinion. It has been said that the opinions of the High Court Judges have not been taken. Sir, I am always against it. (*Mr. Sachchidananda Sinha—Oh!*)

[K. B. Shah Md. Yahya]

The Judges have only to administer the law and the legislature is to legislate the laws. Otherwise it is no use having a legislature at all, and it would have been better for Government to pass Acts only on the opinion of the Judges of the High Court. I do not think it is in the interest of the public to take their opinion.

Now, Sir, another question did arise and that is whether opinion has been taken of the landholder's association. Well, they had an opportunity to raise their voice when the all-India legislation on this subject was passed, but they did not do so. That goes to show that this legislation is really in their interest and they do like it. Since the time that this Bill has been introduced in this Council and has been in the Select Committee nobody on behalf of the landholders has ever raised any voice of protest against it though their representatives are in this Council. That goes to show that this legislation has the implicit consent and confidence of the landholders' association.

With these words I oppose the motion which has been tabled by my friend, Babu Srikrishna Prashad.

Mr. P. C. TALLENTS : Sir, I should like to say just a word or two at this stage, because there is a fear that the House may be carried away by the torrential eloquence of Rai Bahadur Dwarka Nath. This is a matter which must be considered in the calm light of reason, and there are therefore one or two points which I should like to make at this stage. In the first place, when the Bill has been referred to a Select Committee, surely the House has thereby committed itself to the principles of the Bill? If a motion was to be put and carried at this stage for circulation, or re-circulation, of this Bill, surely it is not with regard to the principles of the Bill but with regard to the changes introduced into the Bill by the Select Committee that the public would be consulted? On this subject we have heard not a word, except one remark of one member who criticised the Committee for not having introduced more drastic changes. Even if my view is not correct, is it a logical position to be taken up by the Council that, when once it has committed itself to the principles of the Bill, it should again ask the public if they approve of those principles? Is that a position in which the House desires to place itself?

One of the hon'ble members, Mr. Sinha, asked whether the High Court was consulted with regard to this Bill. He paid

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a graceful compliment to the High Court which will be appreciated both in this House and outside it when his speech is read I should like to say that it is not the practice to consult the High Court regarding matters of policy unless the matter is one in which the High Court is specially interested and concerned. Even if the High Court had been consulted on a line of policy such as is embodied in this Bill, I have reason to suppose that they would not have expressed an opinion, because, as the Khan Bahadur has explained, the primary function of the High Court is to administer the Acts and they prefer not to express opinions as to the merits of the Acts which they administer.

Now, Sir, Rai Bahadur Dwarka Nath has said that the public would view this Bill with anxiety and dismay—these are his words—and he spoke of this Bill being a danger to the innocent public. He said that there was no urgency in the matter and asked whether the Civil Disobedience Movement is worse now than it was last year and whether conditions have changed.

Well, as regards the few weeks that have elapsed since the Ordinance has expired, I may say that conditions have not seriously deteriorated. But that does not affect the urgency of this Bill. Hon'ble members will see in sub-clause (2) of clause 1 of this Bill that, when it is passed into an Act, it will not apply to any area until it is extended by a notification. If an emergency were to arise now, we could not cope with it as we could with such emergencies last year. Certain powers which would be conveyed by this Bill would produce most valuable and useful results if emergencies such as those which arose last year were to occur again to-morrow, and we cannot say that they will not occur again and suddenly. If these powers are not restored, the hands of Government will not be so strong as they were last year and we shall not be able to deal with emergencies in so effective a way. Although it is true that present political conditions are not such as would require such powers at the minute, who knows what to-morrow may bring forth? Therefore Government want that this Bill should be passed and the sooner the better—not that they want it for immediate use, but they want to have it as a weapon in their armoury, so that when the emergency arises, it may be dealt with in accordance with the interests of the people of the province.

Babu SRIKRISHNA PRASHAD : Sir, various speeches have been made and I have been vainly seeking for a solid ground of opposition to my amendment in those speeches. The Hon'ble

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Mr. Whitty, to whose opinion I attach very great value in a matter of this kind, has been pleased to state that he will take six months' time to consult public opinion and it would be a very dangerous thing for us to postpone the enactment of this Bill into law for six months. I am extremely sorry not to be able to agree to this dictum enunciated by him. We would have been certainly very much impressed if an announcement had been made before the Council justifying the opinion that there was a danger coming within six months of such a character which must be met by the enactment of this Bill. It has been pointed out by other hon'ble members—and I think, very rightly,—that the Ordinance Act passed by the Assembly gives ample power to the Government to deal with the civil disobedience movement in such a way as not to allow it to spread and to check it considerably, if not altogether in the way in which that movement has been checked. Mr. Tallents has been pleased to tell us that no serious situation has arisen after the expiry of the Special Emergency Powers Ordinance for having recourse to any such provisions as are contained in this Bill. If that is so, is that not an indication of the fact that the situation has improved from the standpoint of Government to such an extent as to entitle us to hold that we should dispense with the provisions of this character? It is certainly desirable in the interests of all that there must be peace in the land not only for the present but for the future, and also to help in the constitutional development of free institutions in this country, and we are certainly grateful to the European member who was pleased at least to show his sympathy with us in this matter. But the whole question is this: Is this solution of such a character as would ensure peace and would really help in the constitutional development of this province or this country? It has been brought to the notice of this Council, and it has been also a cause of fear on the part of Government, that however much these extraordinary powers have enabled to check the growth of the Congress movement or the civil disobedience movement, the spirit behind the movement, namely, the yearning and desire for freedom, which really keeps up the movement of the Congress, is not dead, and is not likely to die ever. If that is so, the remedy is not the piling of one extraordinary power after another and the use of such extraordinary powers, but the remedy really is to meet the situation which arises out of this and to surmount the difficulty in the path of all constitutionalists.

Mr. A. C. DAVIES: On a point of order, Sir, is the hon'ble member discussing the motion before the House?

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The Hon'ble the PRESIDENT : The hon'ble member is really discussing the merits and demerits of the Bill itself which he should not do.

Babu SRIKRISHNA PRASHAD : I am discussing the question of postponement of the Bill. My motion really aims at the postponement of the Bill.

The Hon'ble the PRESIDENT : To say that this Bill will not succeed in quelling the Congress movement is really to say that the Bill is useless. This amounts to speaking on the merits and demerits of the Bill. The hon'ble member should see that it is a motion for circulation and he must confine his remarks to that.

Babu SRIKRISHNA PRASHAD : All right, Sir.

My point is that Government have everything to gain and nothing to lose by circulating the Bill. It is certainly wise to delay it for a few months rather than to show to the people that Government is in a state of nervousness. Nervousness on the part of the people is as bad as nervousness on the part of Government. Certainly a resolute and strong Government need not be so very nervous. The public at large will appreciate the standpoint on the part of Government that it is willing to accommodate public feeling so far as this piece of extraordinary legislation is concerned and that it is not going to rush through an extraordinary legislation of this character without giving an opportunity to those at least who believe in constitutional agitation of expressing their opinion before Government and giving their definite opinion upon the clauses of this Bill.

It has been urged by one member, and of course, it pained me to hear, that the Hon'ble Judges of the High Court should not be consulted on such a matter. A Bill which strikes at the root of the essential and first principle of criminal jurisprudence should certainly be placed before the highest judicial authority for its opinion. Government is free to determine its policy. The High Court Judges will not determine the policy of Government if they give their opinion. But certainly the opinion of the judicial authority would weigh a great deal in the eyes of Government as it has done always in formulating its policy in a matter of such a character which relates to law. It is not a question of legislation relating to a social matter with which the High Court Judges have not much to do. But certainly on a matter relating to law and special legislation which goes at the root of criminal jurisprudence the opinion of the High Court Judges is of considerable value. It is idle to say that

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the High Court Judges would not have given an opinion at all. Why think like that without consulting them? It is your bounden duty to give them an opportunity of expressing their opinion, and if they had declined to express an opinion, nobody would have been in a position to blame Government; everybody would have blamed the High Court Judges in shirking their responsibility in a matter of this kind. Therefore, Sir, my submission is that the High Court Judges were the best persons to be consulted in a matter of this kind. And have they not before this been consulted in matters of this kind? If they have been consulted before in matters of this kind, what is the reason that they should not be consulted so far as the enactment of this piece of legislation is concerned?

Then, it has been suggested by some gentlemen that the Bihar Landholders' Association must be presumed to be in favour of this Bill, because they have not protested against it. I fail to understand the force of this argument. You will not consult the Bihar Landholders' Association. They must of their own accord give their advice gratis for what they are worth and if they do not express any opinion, then it must be presumed that they have given their assent to this Bill! I submit, Sir, that that is a most ridiculous position to take up. If they have been consulted in other matters in connection with other Bills, and if this Bill in one of its provisions relates to their interests, it is certainly desirable that their opinion also should be taken. It is not a question of one or two individuals of the Bihar Landholders' Association. It is a question of having the opinion of that corporate body, and that can be done only if they are consulted regularly in the ordinary course.

Then, Sir, as I said, if the High Court Judges have any hesitation in expressing their opinion, certainly the eminent lawyers of this province will have no hesitation in giving an expression of their opinion. Have any eminent lawyers been consulted in regard to this matter? Has it not been the practice always to consult them? I say so, because I have had the honour of acting as Secretary of the Bar Association on several occasions, and in that capacity I had to devote a large amount of my time in giving opinions on all kinds of Bills coming down from the Government of India and from the local Government. Why should not the Bar Associations which enjoyed the confidence of Government so long be given an opportunity again of expressing their opinion in regard to the provisions of this Bill?

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Unless it be said that we are in a hopeless condition politically in this country and we must at once pass this Bill into an Act in order to have peace and order in this province, there is absolutely no justification whatsoever for denying this very humble request of mine that the Bill be circulated for public opinion. That would have made the passage of this Bill easy in this Council, as I said, and would have disarmed opposition on all hands and from all quarters. But I know that in this country it is hard to convince Government of the reasonableness of any proposal on our side, and it is much better striking against hard rock rather than striking against the Government benches to convince them of the reasonableness and utility, from political considerations, of advice from this side. God alone knows if this contempt for opinion tendered by our side will at all lead much to the advantage either of the people or Government.

I hope that good sense will still dawn upon Government and that they will be pleased to accept an amendment which is of such an innocent character and which does not at all jeopardise the interests of law and order in this province.

The Hon'ble Mr. J. T. WHITTY : Sir, the question before the House is a very simple one, and that is whether having accepted the principle that a serious situation still continues, and that special legislation is necessary, they should now refer the details of the Bill for public opinion. It seems to me absurd and illogical that the House should take up that attitude.

The Bill is intended, as I explained before, to meet a situation which arose a year ago and is continuing, in which a certain party are defying Government and attacking law and order. They are still taking up that attitude, and they are continually, day by day, emphasizing the fact that they intend to defy Government. Government are merely asking now to take powers to meet that situation. The House has accepted the view that powers are necessary, and it is only a question of what these exact powers should be. It seems to me to be entirely unreasonable that the House should now be asked to circulate the Bill for opinion.

I hope, therefore, that hon'ble members will oppose this motion.

The Hon'ble the PRESIDENT : The original question was :

That the Bihar and Orissa Public Safety Bill, 1933, as reported by the Select Committee, be taken into consideration.