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GOVERNMENT OF INDIA.
LEGISLATIVE ASSEMBLY DEPARTMENT.

[PAPER No. I.]

OPINIONS

ON

THE INDIAN STATES (PROTECTION) BILL.

(Introduced by the Honourable Sir Harry Haig.)

Opinions Nos. 1—5.

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No. 1.—BENGAL.

High Court of Judicature at Fort William in Bengal, Appellate Side.

THE Hon'ble the Chief Justice and Judges do not desire to express an opinion on the Bill.

No. 2.—ASSAM.

Government of Assam.

THE Governor in Council agrees with the provisions of the Indian States (Protection) Bill. The only suggestions he wishes to make are:—

- (1) In sub-clause (1) of clause 7 the word 'wilfully' might be inserted before the word 'neglects'.
- (2) To meet the possibility of there being any doubt, following on a disturbance, of what was the established administration in any State, a definition might be inserted, viz., "The administra-

tion of any State in India means an administration recognised by the Governor General."

2. The two Divisional Commissioners and the Political Agent in Manipur were consulted on the subject, and they have no suggestions to make.

3. I am to state that the Bill together with the Statement of Objects and Reasons was published in English on the 24th October, 1933, in the *Assam Gazette* of the 25th October, 1933. The Governor in Council did not think it necessary to publish it in any other language.

No. 3.—BIHAR AND ORISSA.

Government of Bihar and Orissa.

THE local Government have consulted the High Court, a number of judicial and executive officers and certain non-official associations in the province on the provisions of the Bill.

2. The Hon'ble Judges of the High Court did not consider it expedient to express an opinion on the ground that the Bill deals with a matter largely political. The Inspector General of Police also has no comment to offer. The other opinions received were divided more or less equally for and against the Bill. A selection of the more considered replies received is annexed.

3. His Excellency in Council considers that the drafting of clause 5 is altogether too wide. In particular the word "interference" appears to be open to very wide interpretation and therefore to be objectionable.

4. He considers that clause 6 also is open to the same criticism and goes beyond the principle enunciated by the Hon'ble Home Member in the speech in which he moved that the Bill be referred to a Select Committee, that the Bill "seeks to extend to Indian States the same measures of protection from activities directed from British India against their administrations as the Government of British India already enjoy".

5. The Bill was published in Part VIII of the *Bihar and Orissa Gazette*, dated the 25th October 1933 in English.

Commissioner, Bhagalpur Division.

I HAVE consulted the District Officers of my Division and they are all in favour of the Bill.
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2. The District Officer of Bhagalpur (Mr. P. T. Mansfield, I.C.S.) is of opinion that the Bill is reasonable and it does not go beyond what the neighbouring States under a common suzerainty have a right to expect. The District Officer of the Santal Parganas (Rai Bahadur S. C. Mukherji), thinks that the proposed legislation is necessary specially in view of the forthcoming constitutional changes which are going to turn these States into units of Federation. The District Officer of Purnea (Mr. D. P. Sharma, I.C.S.) writes that he is in favour of the proposed Bill. The District Officer of Monghyr (Mr. A. J. Mainwaring, I.C.S.) observes "..... the principles of the Bill appear to be sound and salutary. Some of such measure of protection, undoubtedly, appears necessary where potential centres of subversive agitation exist in British India in close proximity to the borders of an Indian State, e.g., at Jamshedpur. The Bill appears to provide the necessary measure of protection at the discretion of the District Magistrate."

3. The Bill will excite much controversy. It has been already attacked both as regards the objects underlying it and the provisions by which they are sought to be carried out. Though it is not known exactly how Federation in the coming constitution will shape itself and the part that the Indian States will take in it, it is clear that they will be units of the Federation and the Hon'ble Mover has explained why it is desirable that the authorities in British India should have the power to protect them from agitation directed from British India. He has urged that there must be reciprocity in this matter and some members have taken the extreme view that reciprocity will be "to tighten the ropes round the necks of Indian citizens" and it is stated that in accordance with the proposals in the White Paper, while

the representatives of Indian States will have a right to discuss purely British Indian affairs with a right of vote even in a legislation of this kind not applicable to Indian States, there will be no similar reciprocity in the matter of criminal law as will be applicable to Indian States. There is some force in this, but it has to be considered that the Indian States are not absolutely without control by the Paramount Power. It is true that in internal administration the policy of non-intervention is followed, but the Paramount Power steps in when there is maladministration in the State, and the Paramount Power owes a duty to the Indian States to protect them from activities directed from British India. Federation or no Federation (some of the oppositionists say that Federation is a myth), the Paramount Power has a duty to stop all encouragement to disruptive forces against Indian States that may emanate from British India. Another view is taken that a measure like the present one will raise the status of the Chiefs of petty States (which in some cases cover quite small areas) to that allies of His Majesty and make them feel that they are above criticism from British Indian subjects. The citation of section 125 I. P. C. in support of this Bill has probably led to this fantastic view, which does not require any serious consideration. The objects underlying the Bill are sound and no right thinking person can object to them.

4. The provisions by which the objects of the Bill are sought to be carried out have been severely criticised, particularly those relating to the press. The first serious objection—and a legal one—was taken, that it will be *ultra vires* of the Indian Legislature to pass a Bill which has been drafted to protect the administration of Indian States and which is also directed against the subjects of the Indian States and that section 65 of the Government of India Act is a bar to the passing of a Bill of this kind. The President (The Hon'ble Sir Shanmukham Chetty) in giving his ruling on this point has correctly stated the legal position. I agree with the observations made by him and it is not necessary for me to supplement them. He has held that the Bill is *intra vires* including clause (3) of the Bill which was particularly attacked not so much on its merits as on the ground of jurisdiction. The Bill does not apply to acts done outside British India by subjects of Indian States but to acts done by them in British India. Even the subject of a foreign Sovereign Power is liable for an offence against the laws of British India, if it is committed in British India. The President has, however, pointed out that clause (3) of the Bill cannot be limited in its application to offences done in British India (as is the intention of the Hon'ble Mover) in the case of Native Indian subjects of His Majesty, inasmuch as under section 4 of the Indian Penal Code, even if it is committed in any part of the world beyond British India. An excepting proviso will be needed if it is intended to limit the application of clause (3) to acts done in British India only. But I do not think it is necessary to limit it in this way. If a Native Indian subject is liable for all offences under the Indian Penal Code, committed in any part of the world, there is no reason to make an exception for this single one offence which is going to be incorporated in the Code. As for the merits of clause (3), if the object of the

measure is approved, as it should be, it is necessary that there should be some such provision to protect the administration of Indian States.

5. The most intensive objection, however, is against clause (4) of the Bill which introduces the provisions of the Indian Press (Emergency Powers) Act 1931 as amended by the Criminal Law Amendment Act 1932. There is an Act—The Indian States (Protection against Disaffection) Act, 1922—for the substantive offence and the addition now proposed is to give power to Government to demand security and forfeit it and the press in certain circumstances, as is done under the law in force in British India. The Hon'ble Mover has explained why it is necessary to extend this protection to the Indian States and how a mere prosecution for the substantive offence is not a satisfactory remedy. The opposition to any legislation affecting the press may be gauged by the fact that the Indian States (Protection against Disaffection) Act had to be certified by the Governor General, and the proposed incorporation of the provisions of the Indian Press (Emergency Powers) Act as amended by the Criminal Law Amendment Act 1932 has revived the old opposition with fresh vigour and force. The main argument is that the administration of Indian States, with some honourable exceptions, is nothing short of maladministration and even "a bare narration of facts as they exist in Indian States may have the effect of bringing any administration into hatred and contempt", and the measure proposed is an attempt to support the maladministration of Indian States and the autocracy of their rulers. It is even suggested that the situation is being utilised by the Government of India as a strong line of defence for the maintenance of their authority in this country. But apart from extreme views of this kind, moderate opinion is also very strong against this provision in the Bill and reference may be made to the observations made by Mr. C. S. Ranga Iyer and by Sir Cowasji Jehangir. They are weighty arguments and much of them is true, but as observed by the Hon'ble Mover of the Bill, we have to acknowledge the fact that there are forms of Government other than democratic in our midst—deeply rooted in tradition, in sentiment and in facts of history—and they can claim to be protected against attempts to subvert them or to bring them into hatred or contempt. There is much talk about self-determination in these days. The more politic course will be to leave the subjects of Indian States to work out their advancement in their own way, suited to their needs and environments, slowly and steadily. There is danger from the irresponsible section of the British Indian press to force the pace by infusing in their minds ideas too liberal and too advanced and by holding up to ridicule the system of administration to which they are subject. It is easy to raise a political storm but it is another matter to ride it. It is against such irresponsible section of the press that the proposed legislation is intended, and though it may be drastic, it is necessary in the present condition of the country and ought to be supported.

6. The protection sought to be given by clauses (5) and (6) of the Bill may be legitimately claimed by Indian States. Recent events justify these measures. Government cannot allow organisations or associations to combine together and march into an Indian State

to bring down its administration or to overawe it by encouraging disruptive forces. Even some of the opponents of the press clause in the Bill admit that this is one of the "healthy features" of the Bill.

7. In my opinion the Bill is a needed measure and ought to be passed into law.

Commissioner of the Tirhut Division.

Regarding paras. 5-7 of the proposed Bill, I am in favour of the amendment. Even in this province the need for some such power was illustrated clearly if on a modest scale in connection with the artificially engineered agitation in the Jamshedpur area during 1928 against the Mayurbhanj and Seraikela States. Kashmir and Alwar are pertinent cases on a larger scale.

I consider the chances of misuse of the provisions by a District Magistrate are slight, but it might be well to provide for an appeal against such order, and as the order is based on administrative rather than judicial grounds, the appeal should lie to the Divisional Commissioner.

8. Regarding para. 4, and the proposed amendment of the Press Act, I am opposed to the amendment. The arguments used by Sir Cowasjee Jehangir are cogent and well founded. It is perfectly true that a mere dispassionate of some things still done in Native States would raise very profound feeling, and it would be very difficult to say whether this did, or did not, amount to hatred, contempt, and disaffection. I do not consider the Native States can or should be put on a par with British India. Their administration in the majority of cases lags far behind ours. Nor can they be put on a par with Asiatic Allies of the King-Emperor, for the well-being of whose subjects we have in no way made ourselves responsible, and for the protection of whose rulers from the results of mal-administration we are in no way bound to interfere.

Commissioner of the Chota Nagpur Division.

THE Deputy Commissioners of Hazaribagh and Manbhum and the Additional Deputy Commissioner of Dhanbad as well as two leading lawyers of Purulia and the Chairman of the District Board of Manbhum, have no objection to the provisions of the Bill, while Mr. Ward, the Deputy Commissioner of Singhbhum, states that the provisions of the Bill appear to him to be advisable and practicable. Mr. Godbole, the Deputy Commissioner of Palamau, reports that the Bill touches questions of high politics not concerning the ordinary administration of the District and he has no opinion to offer.

Mr. Horsfield, the Deputy Commissioner of Ranchi, reports that he has no experience whatever of any agitation carried on in British India against the administration of any Indian State and in consequence he has no opinion to express on the provisions of the Bill.

The provisions of the proposed Bill seem to me to be necessary and to be carefully designed and I am in favour of the Bill being passed.

District Judge, Cuttack.

Of the three Bar Associations consulted, replies have been received from the Puri Association, to the effect that the Bill is unnecessary, and from the Cuttack Association to the effect that it is an infringement of the elementary rights of the inhabitants both of British India and of the States.

My own view is that the wording "hatred, contempt, or disaffection" is too wide. The scope of the Bill should be limited to speeches exceeding the bounds of constitutional agitation, or to activities directly intended for causing a breach of the peace.

Judicial Commissioner of Chota Nagpur.

THERE is, I think, considerable force in the argument put forward in the debate in the Legislative Assembly that one of the most potent forces making for an improvement in the administration of the more backward States is the pressure on the rulers of enlightened public opinion in British India. At the same time, as no action under the Bill can be taken by district magistrates without the previous sanction of the local Government and as the Bill also provides a right of appeal to the High Court, the apprehensions entertained by some of the speakers in the Assembly are, I consider, largely unfounded.

Bar Association, Hazaribagh.

THE Bill as framed if passed into law will check all criticism against the mal-administration of Indian States which exists in some of them. The object of the Bill is very laudable, namely, the Ruler of a State should not be embarrassed by the unlawful criticism in the press in British India or by unlawful activities of British subjects who sometimes form "Jathas" or assemblies and march into the territories of the States to incite the subjects against their Ruler. My association is in hearty sympathy so far as this aspect of the Bill is concerned, but some provisions in the Bill should be made to allow the publication of fair criticism in the press in British India, against the administration of any State, which is by no means as good as in British India. The States should be asked to pass laws to check disaffection in their territories and to remove the genuine grievances of the raiyats in most of them.

Bihar and Orissa Muslim Association, Patna.

My Association has carefully examined the provisions of the proposed Indian States (Protection) Bill and is of opinion that this Bill if passed will be injurious to the interests of the subjects of those States and will give too much protection to the States. It is a well known fact that subjects of most of the States are kept ignorant about their political rights, etc. Therefore some sort of outside influence is required to get their grievances heard. This Act, if passed, will prevent outsiders and the

press to take up the cause of those unfortunate people however just it may be. On those grounds my Association is opposed to the Bill.

Bihar and Orissa Chamber of Commerce, Patna.

• THERE is no doubt that of late certain movements have taken place of persons who have proceeded from British India into the territories of Native States with a view to interfere with the administration of and to create a disturbance of public tranquillity in the State, and such activities may rightfully be restricted and prevented. My Committee are of opinion that the present laws are sufficient to provide the necessary remedies. Beyond this, my Committee are of opinion that the rights of the subjects of British India or of the residents of Native States in India should not be interfered with.

In the opinion of my Committee the restrictions sought to be placed on the press under clause 4 of the Bill are uncalled for and would be instrumental in preventing any ventilation of the undoubtedly great disadvantages which the subjects of the majority of Native States suffer from. In their opinion the Bill is very premature and should not be enacted. It is only when the Native States join with us on a common platform under the Federation scheme, evince sufficient reciprocity and have improved the methods of administrations and restricted or abolished personal rule, that they can reasonably demand a legislation of the kind proposed modifying the laws of the land. Prior to fulfilment of these conditions any restriction on the press and platform will be uncalled for.

My Committee respectfully suggest that the proposed Bill may be dropped for the time being.

Oriya People's Association, Cuttack.

In the opinion of the Association the proposed Bill will infringe the elementary rights and liberties of both the British Indian subjects and the people of the States and so the proposed Bill ought not to be enacted into law.

Bengalee Settlers' Association, Patna.

THIS Association supports the Indian States (Protection) Bill. We feel that there is a great need at the present time of a Bill of this nature to protect the Indian States from the insidious and mischievous communal propaganda carried out from British India. It is quite fit and proper that the rights of the Indian Princes should be adequately safeguarded, specially so, as they are now asked to join the Indian Federation.

But we venture to submit that some of the clauses and sections of the Bill are vague and misleading and they should be amended in a proper manner before the Bill is passed into law. We beg to suggest that the following amendments are necessary to make the Bill acceptable.

Firstly, we venture to suggest that there should be in the Bill itself a clear provision that ordinary right of citizenship enjoyed by the British subjects shall not be denied to the subjects of the Indian States. Though in some States democratic institutions have been introduced but there are many States in which autocracy still reigns supreme.

Secondly, clause 3 of the Bill seeks to amend section 121A of the Indian Penal Code. The clause as it stands at present is not only vague but misleading, as has been fully discussed in the Assembly debates, therefore this clause should be sufficiently amended in the Select Committee so as to remove all ambiguities therefrom.

Thirdly, we beg to refer to clause 4 of the Bill which will somewhat curtail the rights of the Indian Press. We venture to suggest that if the press is denied the rights of legitimate criticism there will be no hope of the redemption of the lot of the subjects of the majority of the Indian States, bearing in mind the fact that most of the States have no responsible government. Hence it is only by fair criticism and by constantly urging the grievances of the subjects in the Indian press that the desired result can be attained. The British Indian press in most cases is the only means of ventilating the grievances of the subjects and therefore we suggest that this clause should be amended in the Select Committee in such a manner as to have the right of legitimate criticism unimpaired.

Lastly, we beg to draw the attention of the Government to sub-clause 1 of clause 6 of the Bill by which too much power has been given to the District and subordinate executives of the Government. We beg to submit that if this clause is not amended and restrictions placed on the powers of the Executives, great hardships may be entailed on the persons carrying on legitimate constitutional agitation for the development of democratic institutions of the Indian States. We further beg to point out that as there is no enlightened public opinion in most of the States like that in British India, the only way of rectifying the defects is by legitimate constitutional state of British India. Therefore we beg to suggest that this clause should be so amended as no magistrate should take any action against any person unless he is fully convinced that such activities are likely to cause disaffection towards any of the Indian States.

All-Crissa Domiciled Bengalee Association, Cuttack.

In the opinion of the Association it is necessary to foster friendly relations between different units of the coming Indian Federation.

This Association is therefore of opinion that the Bill should be enacted into law with the following modifications:—

That in section 4 of the proposed Bill sub-section (a) the clause "to bring into hatred or contempt or to excite disaffection towards administration" (clause j of the Indian Press Act 1931) should be made more definite so as not to be confounded with the legitimate discussions of the press in British India, with a view to improve the administration of the Indian States.

Orissa Land-holders' Association, Cuttack.

AFTER a careful consideration of the discussions in the Council which throw a flood of light on the different aspects of the Bill, the Association is strongly in favour of the main principle underlying the Bill, which is to prevent effectually such mischievous activities as organising in, and sending Jathas from British India to Indian States with the avowed object of overawing and paralysing the administration of such States. The Association is aware that there is a good deal of maladministration in many States and the people of such States are in great need of such protection as the British Government, as the paramount Power, can give them through pressure being put upon the rulers of such States through the Political Agents. The advice and admonition of Viceroys have often failed and in rare cases only the paramount power had occasion to intervene to effect reforms in the administration of such States. The people of such maladministered States have hardly any other effective means to bring to the notice of the Government their grievances than through the press, but the rulers of such States would hardly tolerate free expression of their

grievances in any press within their States, and hence the people look up to the press within British India to take up and ventilate their grievances. Though the Member in Charge of the Bill has given an assurance that fair criticism in the press would not be interfered with, yet, as a matter of fact, the line of distinction between "disapprobation" and "disaffection" is so very fine that there is a very reasonable ground for the apprehension that the Bill is calculated to stifle the ventilation of the just grievances of the people. The Association is much impressed with the observations of Sir Cowasji Jehangir that "there are cases in the administration of Indian States, the facts of which if related carefully on the strongest of evidence would be held by courts to excite disaffection". In giving the rulers of Indian States adequate protection against mischievous and malicious propagandas organised within British India, the claims of the people of Indian States to protection from maladministration of such States should not be lost sight of. The Association hopes that the provisions in the Bill should be so modified as to protect the Rulers from the malicious and mischievous movements in British India and at the same time to protect the helpless people from the various abuses of power in maladministered Indian States.

NO. 4.—THE CENTRAL PROVINCES.

Government of the Central Provinces.

THE Governor in Council agrees with the principle of the Bill.

2. Copies of selected opinions are enclosed.

3. The Bill was published in the Central Provinces Gazette in English on 9th September 1933 and in Hindi and Marathi on 16th September 1933.

Registrar, Judicial Commissioner's Court, Central Provinces.

* * *

THE officiating Judicial Commissioner is in favour of the Bill but shares the doubts of Mr. Pollock, Additional Judicial Commissioner, as to the expediency of clause 4.

Mr. M. B. Niyogi, Additional Judicial Commissioner.

I AM not in favour of section 4 and I think the expression 'will tend to cause interference with the Administration' of the State occurring in sections 5 and 6 is too vague. Otherwise I agree with the principle of the Bill.

Mr. F. H. Staples, Additional Judicial Commissioner.

I AM in favour of the Bill.

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Mr. R. E. Pollock, Additional Judicial Commissioner.

I MUST confess to some doubt whether section 4 is expedient. Otherwise I support the Bill.

Mr. Vivian Bose, Additional Judicial Commissioner.

I AGREE with Pollock and Niyogi, Additional Judicial Commissioners.

Commissioner, Berar Division.

* * *

THE remarks of the Deputy Commissioner, Akola, I regard as a gross over-statement. It is certainly not true to say that the bill if passed will shut out all criticism of the Administration in Indian States since it has been made clear in the Home Member's speech that whatever criticism is legal in respect of British India will be legal in respect of States, and it cannot be contended that the limits of that criticism are restricted. I am in favour of the principle of the bill as one that allows legitimate criticism but does something to prevent liberty, degenerating into licence and gives rulers of Indian States the protection that they can fairly expect, especially in regard to demonstrations of force on the part of undisciplined bodies of persons.

Deputy Commissioner, Akola.

I AM not in favour of this Bill except in so far as it aims at stopping the taking of jathas from British India into Native States.

2. It is well-known that the vast majority of Indian States are misgoverned and the more criticism there is of such maladministration the better for all concerned. It is no doubt true that some of this criticism is interested, false and may even amount to blackmail, but the ordinary law should be sufficient to deal with it. The position today is that in the territories of the States comment on public affairs even of the most innocuous description is anathema. If therefore the State administration is to improve by the force of public opinion, such opinion will have to be expressed in British India. The passage of this Bill will make that impossible. This bill, if enacted, will inevitably have the effect of strengthening misgovernment in Indian States as it will shut out all criticism of the administration of those States. The law of sedition as defined in section 124-A is so wide that even a mere recital of the acts of oppression committed by a Prince can be brought under it. I do not think it is in the interests of the princes themselves that such a law should be passed. If, however, it should be passed, I am of opinion that provision should be made for revision in every case to the High Court.

Deputy Commissioner, Nagpur.

* * *

It will be seen that the non-official opinion consulted is frightened that the effect of the Bill will be to stifle *bona fide* criticism of the undoubted abuses that disfigure the administration of some Indian States. Rational opinion is however prepared to support legislation on the lines of clauses 5 and 6 of the Bill.

Personally I favour the whole Bill but consider that the public apprehensions should be allayed by re-drafting the Bill so as to make it clear that legitimate criticism will not be penalised. I can see no objection to clauses 1, 2, 3, 5 and 7 of the Bill. Clause 4 seems to me quite safe if the explanations to section 4 (2) of the Indian Press (Emergency Powers) Act, 1931, as amended by the Criminal Law Amendment Act, 1932, make it clear that honest criticism of injustice or maladministration made solely with the purpose of persuading the State concerned to remedy the abuses will not be realised. Unfortunately I have not a copy of the Press (Emergency Powers) Act or the Criminal Law Amendment Act, 1932 with me in camp. I think however that the explanation does not go quite so far as I would to protect honest criticism; honest criticism of maladministration may tend to bring the administration responsible into hatred or contempt; so long however as its main purpose is to get abuses remedied, such criticism should not be penalised.

In Clause 6 the word "interference" seems to me dangerously wide; there might be a series of articles appearing in a newspaper criticising the administration of a State solely in order to get abuses remedied, and it should not be permissible for the authorities in British India to prohibit the completion of the series merely on the ground that it might be construed as interference with the administration of the State concerned.

I note that neither this Bill nor the Indian States (Protection against disaffection) Act of 1922 penalises persons who make any public

speeches, statements about princes, chiefs, or the administration of Indian States which would be punishable if such statements were made in any document. Certain Hindu Mahasabha propagandists for example are constantly attacking the administration of Bhopal and Hyderabad and other Mohammedan States; Bhai Parmanand for example in a public meeting at Nagpur recently stated that in Bhopal State Mohammedan constables were free to molest Hindu women and that in Hyderabad constables were given rewards for every 20 Hindus converted to Islam. Wild statements of this kind made by responsible persons deserve in my opinion to be penalised.

Bar Association, Akola.

THIS Bill of seven sections has evoked keen controversy and as it seeks to further curtail the liberty of the Indian Press it is necessary to give a short resume of the Press Legislation of the Government of India in order to appreciate comments on this bill.

1. In 1910 the late Lord Sinha (then Sir Satyendra Prasada Sinha), Law Member of the Government of India introduced and got through the old Legislative Council the famous Press Act. This Act was passed with the object of checking the writings in the papers like "Sandhya" and "Ugantar". Prosecutions under section 124 (A) of the Penal Code were said to be ineffective to stop those violent writings inasmuch as number of persons were found to take up the place of Editors convicted and sent to Jail under section 124 (A) of the Penal Code. The special feature of the Press Act was a device of demanding security from the keeper of the Printing Press and forfeiting the security if the Press was used for disseminating sedition by writings which had a tendency to create disaffection against the Government of India or the administration of the Native States. Section 4 (1) (c) of the Press Act penalised the writings which tended to create disaffection against the Indian Princes also.

2. After a ceaseless agitation of 12 years this Press Act was repealed in 1922 but Government of India introduced in the Legislative Assembly an Act named 'Indian States (protection from disaffection) Act'. The plea of the Government was that repeal of the Press Act left the Native Princes without any protection from attacks levelled against them in the Indian Press inasmuch as Section 124 (A) of the Penal Code which penalises seditious writings did not apply to Indian Princes. This attempt of the executive was strongly opposed by the popular members of the Assembly and the Bill was thrown out. But it was certified by H. E. the Viceroy as necessary "for peace and good government of India". It was, therefore, passed under section 67 (B) of the Government of India Act with the assent of His Majesty the King Emperor.

3. In 1931 in the days of Civil Disobedience Movement the Government revived the repealed Press Legislation by passing the Act called "the Indian Press Emergency Powers Act, 1931" being Act No. 23 of 1931. The life of the Act was only for one year with a power to the Governor General to further extend its operations for a year more. Its operation also was restricted to writings which excited and

admired attempts at murder and violence. As its title showed, it was an emergency measure and the Government were fully alive to the popular sentiment against the revival of the repealed Press Legislation of 1910.

4. In 1932, however, the operation of the last Act was considerably extended by the passing of the Criminal Law Amendment Act, Act 23 of 1932. Section 15 of the latter Act was incorporated as sub-section (3) of section 1 of the Indian Press Emergency Act by which the latter Act was to be in force till the expiry of the Criminal Law Amendment Act 1932 which was restricted in duration for 3 years only. Section 16 of the Criminal Law Amendment Act was incorporated in section 4 of the Indian Press Emergency Act. By this the scope of section 4 was extended so as to embrace writings which had a tendency to create disaffection against the Government of India.

5. The present Bill seeks to supplement this Criminal Law Amendment Act and the Indian Press Emergency Act so as to bring it on par with section 4 of the Old Act of 1910. This will be clear from section 4 of the present Bill which extends the application of the Indian Press Emergency Act as amended by the Criminal Law Amendment Act of 1932, to the comments directed and creating disaffection against the administration of Native States.

6. The reasons given for this new Bill are that the Indian States Protection from Disaffection Act of 1932 does not give adequate protection to the Princes that prosecutions under the said Act involve long delay and do not prevent the mischief aimed at by the Act of 1922. It is further stated that in the advent of the Federation of Native States and British Indian Provinces it is only just that Princes should have the same protection as is enjoyed by the British Indian side and British Indian Government, of the coming Federation.

7. In the opinion of the Association the Bill is uncalled for and as it is bound to evoke popular resentment it is not worth the while for the Government of India to press this Bill. Government, no doubt, feel the force of the popular sentiment against any revival of the Press Legislation of 1910 even so far in favour of the Government of India. The administration of the Native States is not as efficient and with few noble exceptions borders on positive misrule. Even legitimate comment against administrative measures is muzzled in the territories of the States themselves and constitutional efforts to ameliorate and liberalise the Government of the Native States have to be made from the provinces of British India. While it is true that the Princes must have protection from seditious attacks the greatest and effective remedy against these comments is not to stop them but to impress upon the Princes the desirability of improving their administration as was done by Lord Irwin the Viceroy of India in his speech which he delivered to the Chamber of Princes in 1931. It is not correct to place the Princes on the same level as the Government of India in regard to the immunity from criticism on their administration.

8. Moreover, the Indian Press Emergency Powers Act will expire in 1935 probably before Federation comes into being. As regards the argument that we must give protection to a unit of Federation, viz., Princes, this can be

best done and the Bill introduced in the Federal Assembly so that the representatives of the Princes and the Members from British Indian Provinces can hammer out the proper and suitable enactment to meet their respective needs.

9. As regards that part of the Bill which prevents the Jathas being sent in the territory of the Native Princes there is no objection to have the Bill restricted to this particular object. But here again the order of the Magistrate must be made expressly subject to an appeal to the Sessions Judge and Revision by the High Court.

Bar Association, Hoshangabad.

In spite of the varieties and complexities of treaties, engagements, and Sanads, the general position of the Native States in India is that they are autonomous units of Government with more or less full internal autonomy, acknowledging suzerainty to the British Crown. The only bond between the Princes and the British subjects is that they owe allegiance to the same Crowned head. In other respects the Indian States are as foreign to the people of British India, as Nepal or Afghanistan, or any other foreign power. The British subjects cannot be expected to owe allegiance to any power except the British Crown. Therefore a British Indian subject can never be guilty of an act of treason against a Native Indian Prince or Chief; consequently the proposed Bill imposes on the British Indian subjects an obligation which cannot be justified under the Constitutional Law either of Great Britain or India. Reference to section 125 of I. P. C. is irrelevant. The provision against the waging of war against the Asiatic Powers under section 125 I. P. C. is directed against foreign subjects, who cannot make India the basis of operations against those Powers. As regards Indian subjects abetting or committing the same, they also come under the mischief of the section; but that is due to the mutual internal obligation incurred by the British Parliament with the Asiatic Powers. It is due to reciprocity in international obligations, and not because the British subjects owe any allegiance to any Asiatic Power. In the case of Native States, the question of international obligation cannot arise in view of the fact that the paramount power is the same suzerain British Crown. Thus it will be *ultra vires* of the Legislature to impose an obligation of loyalty on the British subjects, which the constitutional Law abhors, and International Law ignores.

2. The Native States being seats of autocratic power without the pretext or semblance of national rights or constitution the mere catalogue of grievances of the subjects in Native States is sufficient to bring the Native States into hatred or contempt. Therefore the proposed Bill has the effect of perpetuating autocracy in Native States—a desideratum from which even an Indian Legislature should shrink.

3. If federation be the object for this repressive legislation, the future of Native States as visualized in the Joint Report of Mr. Montagu and Lord Chelmsford on page 198, should not be lost sight of. The report proceeds "We believe that the trend of events must draw the Native States still closer into the orbit of the

Empire; we think that the powers need give rise to no alarm lest their internal autonomy be threatened. We need not conceal our conviction that the processes at work in British India cannot leave the States untouched and must in time affect even those whose ideas and institutions are of the most conservative and feudal character." Now the proposed Bill tries to muzzle those very processes by which advance was contemplated.

In March 1931 Lord Irwin, the former Viceroy of India addressing the Chamber of Princes said, "There is no use in disguising from ourselves that the new order of things and the irresistible logic of events are lifting the veil from much that has hitherto been considered of private concern and more and more factors are tending to bring your affairs into publicity. Where there is criticism of any of your administrations, be it based on reasonable ground or be it scurrilous and mis-informed, the best answer on the part of those who have nothing to hide is the issue of full and regular administration report from which the public may learn how your Government is carried on." The people of Native States owing to centuries of oppression are too down-trodden to protest against misrule, and it is the legitimate duty of their brethren in British India to raise their voice against grossest mal-administration, rife in Native States.

The proposed Bill is retrograde and repressive in its character, undesirable and unpatriotic in its intent, wide and sweeping in its scope and mischievous and un-British in effect and therefore it should be rejected as a whole.

District and Sessions Judge, Raipur.

I AM in favour of the principle of the Bill. The chief opposition is in respect of clause 4 and my own sympathies are rather with the opponents thereof, for the reasons appearing generally from the speeches made in the Assembly. It is not possible to avoid facing the fact that there is much mal-administration in many of the States, for remedying which there is very little means within the States, available to the masses. Further as has been pointed out, the very publication of certain facts would in itself tend to bring the Administration of a State into hatred or contempt, or at least to excite disaffection towards it, although the object of publication is a worthy one. The wording of clause 4 would be appropriate to British India, where the Administration is admittedly good, but the circumstances in many States are so different, that the scope of the clause is automatically widened. In my opinion it would be very difficult for honest criticism in many instances to escape the liability of section 4, Indian Press (Emergency Powers) Act, as proposed to be amended. I consider it necessary in making the Act apply in respect of Native States, to modify the amendment so as to include the ingredient of intention.

2. Naturally, in the majority of cases intention would be a matter of inference, and it might be a difficult question to decide. The dividing line between justified and unjustified comment would not be easy to draw, but that is a kind of difficulty not infrequently appearing in the Law of this country, including the Indian

Penal Code. Better this, than a line so drawn as to bring within the bounds of criminality actions which would be justified for the welfare of residents of Native States.

3. Another objection to the proposed amendment is that it may afford too long a handle for exerting of pressure by the Administration of a Native State, which considers published comments in British India as adverse to that Administration. No doubt action would, in many cases, be taken indirectly at the instance of a Native State and therefore it is all the more necessary that the amendment should be limited to a reasonable intention to bring into hatred or contempt, or to excite disaffection. As the amendment stands at present, there might well be friction, owing to difference of opinion, between a Native State and the Government of India or a Local Government.

4. I therefore, am in favour of the proposed Bill, except for modification of clause 4 on lines as discussed above.

Rai Bahadur D. N. Choudhari, Nagpur.

FROM the speech delivered in the Assembly by the Hon'ble the Home Member while introducing the Bill and the arguments of the Secretary, Legislative Council it appears clear that the subjects of His Majesty the King Emperor are required to offer the same allegiance to the Princes of the Indian States as they do to their sovereign in respect of certain matters as specified in the statement of objects and reasons.

The fundamental objections to the above legislation have been very clearly and ably stated by some of the Hon'ble Members who took part in the discussion and particularly by Messrs. B. Das, N. M. Joshi and K. C. Neogy. From the trend of the legislature it appears that all criticisms in the press and by the public in British India pointing out the maladministration in the States, is to be suppressed and made penal. Though there is some thing to be said in favour of the suppression of organisation of movements for the entry into a State of bodies of persons from British India with the avowed object of creating a disturbance there, the evil effects of which were seen recently in Kashmir and Alwar, but the other objects of the bill as described in (a) and (b) in the statement of objects and reasons, are in my humble opinion, objectionable. The Government's policy is not, if seldom, to interfere in the administration of the States and this has encouraged most of the Princes to perpetrate injustice and oppression on their subjects. The latter have no means to bring to the notice of the Suzerain authority the tales of their grievances and any movement to bring them to the notice of their own liege lords is ruthlessly suppressed. The consequence is that these acts of maladministration go on unabated.

It should be borne in mind that many acts of such maladministration were remedied within recent history by the criticisms of the British Indian Press both Anglo-Indian (old style) and Indian. The Princes' Protection Act is already there and there seems to be no reason to amend the same in the way it is sought to be done by the present bill.

There is another very cogent reason why this bill should not now be introduced. The Hon'ble the Home Member has based his reason for the bill on the coming Federation of States with

British India. The objections of Messrs. B. Das and K. C. Neogy to this ground are so weighty that I have no hesitation in adopting them. In fact there will be time enough to introduce such legislation when the Federation becomes a *fait accompli*. The Princes themselves will then form part of the legislature and if they find it necessary to legislate for further protection the matter may be considered then.

I am also of opinion with due respect to the ruling of the President that clause 3 of the bill is *ultra vires*. No amendment of the Indian

Penal Code can be made in section 121-A so as to make a State subject triable by or punishable in the British Indian Courts for any of the offences mentioned in that section if committed within the territory of the State itself. This would deprive the States of their quasi-sovereign authority as they possess now. There are objections to this clause which have been pointed out by some of the Hon'ble members.

On the whole, I am opposed to the enactment of this legislation.

No. 5.—COORG.

Chief Commissioner of Coorg.

THE Chief Commissioner and the officers whom he has consulted have no criticism to offer on the provisions of the Bill.

2. The Bill, with the statement of objects and reasons, was published in English and in Kanarese in the *Coorg Gazette* dated the 1st November and 1st December, 1933, respectively.

No. 6.—UNITED PROVINCES.

Government, United Provinces.

THE Governor in Council fully approves the principles underlying the Bill. Copies of the letters containing the opinions of the Hon'ble Judges of the High Court and of certain Commissioners of divisions, are enclosed. The Hon'ble Judges of the Chief Court were also consulted but they have no opinion to offer.

High Court of Judicature at Allahabad.

THE Hon'ble the Chief Justice, Kendall and King, Judges, see no objection to the Bill. Young, Bennett, Kisch and Bajpai, Judges, agree with the proposed legislation, while Mukerji, Thom and Iqbal Ahmad, Judges, have no opinion to offer.

The opinions recorded by the remaining Hon'ble Judges are as follows:—

Niamatullah, Judge.—"I do not think it is necessary for the Indian Legislature to extend the same protection to the States as it has done in case of British Indian administration. The degree of latitude which the British Indian subjects are given for criticising the administrative actions of the Executive is unknown in the States. On the other hand it is an open secret that maladministration in some States is great. Things are done in some of them which are true but cannot be proved. Any exposure of them in the States themselves is out of the question. Freedom of comment in British India has a great moral effect and indirectly acts as a check by drawing the attention of the Political department to the alleged high-handed action of the State administration. It is true this freedom is sometimes abused but there are laws already on the statute book which afford some measure of protection to the States.

States are very jealous as regards interference in their internal affairs by the authorities in British India. Consistently with this attitude they have no claim to any further extension of protection through the Indian Legislature. The latter cannot legislate so as to bind the State

administrations, there is little justification for the same degree of protection being extended to them. It is only if the States agree to some degree of control by the British Indian Government that they should be placed on the same footing as the British Indian administration. The least that should be insisted upon in return for such a legislative enactment is that a right to petition the Governor General or Governor should be conceded to every person aggrieved by any of the actions of any State administration and the same right of appeal to Privy Council should be given from the decisions of the highest tribunals in the States as exists in British India.

"It is not fair to State subjects to be deprived of the right to criticise the State administrations even in British India. Section 121 A of the Indian Penal Code which is to be applied to the States is far reaching in its scope. State administrations which are very sensitive will constantly clamour for action being taken against alleged offenders. The demand for prosecutions will be far greater than there is at present by the British Indian administration who are far more judicious.

I am against the proposed legislation unless the States agree to a certain amount of reciprocity."

Rachhpal Singh, Judge.—"I am opposed to the provisions of this Bill. Generally it will be found that people belonging to Indian States, whose grievances are not redressed come to British India in the hope that by giving publicity to their cause they will obtain a hearing from the British Government. I do not see any reason why they should be discouraged from adopting this course. This is one of the remedies, and very often the only remedy, which they have against oppressions by the ruler of a State, and I think that they should be permitted to avail themselves of the same."

Commissioner, Kumaon Division.

My experience in these matters has been confined to the States of Rampur and Tehri-Garhwal.

In the case of Rampur State during my tenure of the office of Political Agent there was no question of any such general grievance as entailed public agitation or any danger of the invasion of the State. I am not prepared however to say that it is not possible that such a condition might arise and it is by no means unlikely that in the case of Federation a communal issue might not give rise to such a situation.

Attacks in the Press were by no means infrequent. These were generally personal attacks on the character of the ruler of a blackmailing nature.

This was a long standing practice and there can be no doubt that the late ruler at all events from time to time had to pay large sums to keep these papers quiet. There was at one time quite a profitable industry in this kind of enterprise and a certain number of papers had probably no other means of subsistence. It seems unlikely that this nuisance will ever be finally killed and I doubt whether this or any other Act will be an effective remedy in cases where the personal idiosyncrasies of a ruler lay him open to attack.

As to Tehri, there has in the recent past been a considerable volume of attack by certain newspapers on the administration and these have been made the subject of a series of actions in the courts.

These have undoubtedly been financed by discharged and disgruntled ex-servants of the State and the expenses though not the other penalties have no doubt been borne not by the newspapers but by the instigators.

Any legislation which could put a stop to this sort of persecution is undoubtedly to be encouraged and it would be a relief if action under the Princes Protection Act could be made simple and less cumbrous.

It is to be hoped that the proposed Act will facilitate such action and anything which will make retaliation prompt and easy is to be encouraged.

There is unfortunately little reason to suppose that any legislative action will finally kill a nuisance which thrives on the willingness of a ruler to pay blackmail as the cheapest way to avoid trouble, but the proposed measure certainly simplifies existing remedies.

As to the question of agitation of a more general kind and the prevention of consequential invasion I entirely agree with the proposed use of section 144. There was not I think any particular danger of their development in the recent disturbance in the Tehri State but there might have been if the internal commotion had not been promptly dealt with. There has more recently been a quarrel on the British border over grazing rights. This is at present on a comparatively small scale but it has been sufficient for the Tehri authorities to suggest to the Deputy

Commissioner of Garhwal that some action under section 144 might be necessary if the agitation developed.

The idea generated by interested persons that the transfer of Badri Nath involved also the transfer of a fairly considerable tract of British Garhwal no doubt to some extent increased the tendency to support this particular agitation, and there is I think, no way more simple of dealing with a problem of this kind.

I agree therefore generally with the principle that it is desirable to strengthen and simplify the procedure for protection of the States. I agree also that in the event of Federation the danger will definitely increase and I have no criticism with regard to the details of the proposals.

Commissioner, Jhansi Division.

I HAVE consulted the Superintendent of Police, Jhansi and Sir Aziz-uddin Ahmad, Diwan of Datia. We have no criticisms to offer to the principle underlying the Bill, or to its details. The view held is that the absence of such a law is a chief cause of the blackmailing which is daily increasing in British India. It is pointed out that when the Ordinances were passed the year before last and included a section protecting the Ruling Chiefs from the attacks of the newspapers the Indian Press entirely ceased making personal attacks on the Princes, but that since the Ordinances expired and the new Act omitted the clause protecting the Ruling Princes the old practice has started again.

Commissioner, Lucknow Division.

My experience of five years at Jhansi from 1926-31 leaves no doubt in my mind that protection is required by the States: legislation is overdue. One of our principal problems at Jhansi was to protect neighbouring Ruling Chiefs and their administrations from the attacks of adventurers through the medium of the Press; these agitators were prompted, not from a desire to refrain abuses, but with the object of extracting black-mail on which the organisers and their presses would live. The proposed legislation will make it possible for the authorities in British India to deal with these and other agitators.

2. I have had no experience of the organisation of movements for the entry into a State by bodies of persons, commonly known as Jathas, for the purpose of creating internal trouble within the territories of the State. The powers, with which it is proposed to invest a District Magistrate, are moderate and reasonable.

No. 7.—BALUCHISTAN.

Hon'ble the Agent to the Governor General and Chief Commissioner in Baluchistan.

THIS Administration has nothing to say against the provisions of the Bill.

No. 8.—THE PUNJAB.

Government, Punjab.

I AM to forward copies of the replies received from the Hon'ble Judges of the High Court, the Law Officers of the Punjab Government, the Commissioner of the Jullundur Division, and the Deputy Commissioners of Ludhiana and Multan.

Speaking generally the opinions received by the Governor in Council are in favour of the Bill, and the Governor in Council himself strongly supports the proposed legislation.

I am to draw the attention of the Government of India to the criticism of clauses 6 and 7 made by the Government Advocate. It is true that an order under clause 6 may be *ex parte*, but service of the order in the manner provided by section 134 of the Code of Criminal Procedure is an essential part of the provisions of clause 6: and this, in the opinion of the Governor in Council, meets the criticism.

The two Deputy Commissioners, whose opinions are enclosed, criticise clause 4 on the general ground that, if the subjects of an Indian State are prevented from airing their grievances, which may well be legitimate, in the press in British India, they have in practice no place where these grievances can be aired. The objection is one which has an appeal from the point of view of abstract justice, but the Governor in Council thinks that the comparison drawn by the Deputy Commissioner, Multan, between the state of the law as it exists in England in regard to criticism of foreign powers and the state of the law, as it is proposed that it should exist in British India, in regard to criticism of Indian States, is invalidated by the peculiar position which the Viceroy holds in his dual capacity as representative of the Paramount Power and as Governor-General. Because of this position it is impossible to regard articles in the press of British India directed against an Indian State with the indifference with which articles in the English press, directed against, *e.g.*, the Nazi regime in Germany, can be regarded. The Governor-in-Council also observes that the initiative for action under the Indian Press Act against presses or newspapers published in British India will lie with the Government of India or with the local Government, and not with the State concerned. This is in itself a safeguard against the use of the proposed legislation to stifle honest criticism.

High Court of Judicature at Lahore.

I AM directed to forward a copy of an opinion recorded by the Hon'ble Mr. Justice Dalip Singh, and to say that the Hon'ble the Chief Justice and the Hon'ble Messrs. Justices Tek Chand, Coldstream, Jai Lal, Agha Haidar, Monroe, Abdul Qadir, Bhide, Currie, Abdul Rashid and Rangi Lal concur with this opinion.

2. I am also to forward a copy of a note recorded by the Hon'ble Mr. Justice Addison.

Hon'ble Mr. Justice Dalip Singh.

As regards the policy of the Bill I do not see that I am called on to express any opinion or

that the Judges of a High Court should with propriety do so. As regards the drafting I point out that section 6 covers acts, etc. much wider than those contemplated in the speech of the Home Member at page 3, *e.g.*, in the paragraph relating to press activities.

Hon'ble Mr. Justice Addison.

I do not think that section 6 of the Bill covers more than what is indicated in the speech of the Home Member.

Legal Remembrancer to Government, Punjab.

I AGREE with the opinion of Government Advocate but suggest that clause 7(1) be redrafted on the lines of section 188, Indian Penal Code.

"Whoever knowing that by an order promulgated under sub-section (1) of section 6, or by such order as altered under sub-section (4) of that section, he is directed to abstain from a certain act, shall, if he disobeys such direction, be punished with imprisonment, etc."

It is for consideration whether the words "or to take certain order with certain property in his possession or under his management," should not be inserted in clause 6(1) after the words "abstain from a certain act" and also in clause 7. To insert these words will bring the clauses into line with section 144, Criminal Procedure Code and section 188, Indian Penal Code, and such uniformity is, I think, desirable.

Government Advocate, Punjab.

I AGREE with the principle of the Bill and am of the opinion that a case has been made out for undertaking legislation of the kind proposed. Under the new constitution, Indian Native States will be an integral part of the federation and it is necessary in the interests of the whole federation that each unit gets protection wherever it can be given against disruptive forces being introduced from outside. As members of the federation I think Indian Princes will be entitled to claim protection of this kind against attacks on their administration even before the federation comes, it seems to me that protection of this kind should be extended to them on the same ground as action is taken in the interests of friendly independent States.

As to the Bill itself, it seems to me that clause 6 should be reconsidered. This provides for an order being passed against a person ~~ex parte~~. Clause 7 provides for punishment of a person who disobeys or neglects to comply with any direction contained in an order passed under clause 6. A provision for punishing a person for disobeying a direction which has not been conveyed to him seems to offend against all modern notions of criminal jurisprudence. Probably the Bill does not intend this but this is how I construe the words as they stand at present, and

the position should I think be clarified. Probably the use of the word "wilfully" between the words "whoever" and "disobeys" will meet the case.

Commissioner, Jullundur Division.

I support the Bill: at the same time there is much in what Mr. Saidullah Khan, I.C.S., Deputy Commissioner, Ludhiana, says about clause 4. In British India we stand a lot from the Press, partly because a British administration is a foreign administration and must therefore exercise great patience: but if clause 4 is passed, the States will not be so patient and they will resent even truthful criticism if it brings the administration of an Indian State into contempt. As the Bill is a series of amendments of Acts which refer to British India, I find no way out of the above-mentioned difficulty. If the Bill had stood on its own feet and had not referred to Act XXIII of 1931, etc., one might have omitted the phrase "to bring into hatred and contempt", or might have so modified it as to make the publication of hard facts non-punishable.

Deputy Commissioner, Ludhiana.

THE principles underlying the Bill are unexceptionable.

2. The paramount power owes the Indian States the duty of protecting them from activities of a subversive nature that may be carried on in British India and no objection can reasonably be taken to clause 3 of the Bill, which aims at attempts at violence, and to clause 5 which empowers the Government to prevent the formation of *jathas* for entering the territory of a State for creating mischief.

3. Clause 4, which would enable Government to confiscate the security of a printing press where documents likely to bring into hatred or contempt or to excite disaffection towards a State administration may be published, however, stands on a somewhat different footing and is not in my opinion really necessary. It is a painful reality that the administration of many States is, to put things mildly, far from good and there may be cases where even a bare publication of some hard facts may fall within the purview of this clause on the ground that it would tend to bring into hatred or contempt the administration of those States. Very few States have got an independent press and the subjects of most of them have not got even ordinary elementary rights, leave alone the rights of having a Legislature and discussing things therein. They have thus no alternative but to ventilate their grievances in the British Indian press and if this legislation is enacted, the British Indian press would be shy of publishing even those documents that contain a true narration of facts. Therefore until and unless the State subjects get the same rights as we enjoy in regard to press criticism of British Indian affairs, the States are not in my opinion entitled to get the same protection which the executive in British India possesses.

As regards violent criticism, the powers conferred by section 3 of the Indian States Protection Act are ample and can be invoked where necessary.

4. I should like to say a few words about clause 6. Its use should in my judgment be restricted by statute to the prevention of formation of *jathas*. It should not, for the considerations advanced in the preceding paragraph, be set in motion for restraining persons from criticising administrations of States—resort being had, in cases of transgression of proper limits, to prosecutions under section 3 of the Indian States Protection Act.

Deputy Commissioner, Multan.

RECENT periods of agitation carried on in British India against Indian States, and recent agitations carried on within the States themselves, have seemed to indicate that such agitations are not initiated or carried on without due cause. From the newspaper reader's point of view, the course of events has always been the same. There has been an agitation carried on both in the State and in British India; the public have been assured that the agitation is completely groundless and everything within the State is beautiful; the agitation, however, has continued; and in every case some sort of enquiry or other action by the supreme Government has taken place, which has shown that the affairs of the State were being conducted in a highly undesirable manner; sometimes the ruler has gone on a tour to Europe; sometimes the ruler has stayed where he is, but the whole administration of the State has been overhauled, usually through the means of officers sent from British India whose task has been to raise the administration of the State to a standard to which the people of British India have got accustomed during the last 2 or 3 generations, and they consider that, whatever the faults of the Government of British India, it is infinitely better than the condition of affairs which it is proposed to alter. In the recent local case of the agitation in Bahawalpur, the Durbar has acceded practically to every request made to it, thus indicating that the methods followed by it hitherto were not justifiable.

The ordinary man in the street in British India can hardly be blamed for feeling that the attitude of the States is: "We are internally independent, and we will not stand any interference from the Government of India, unless we get into difficulties with our people"; and such difficulties appear seldom to have arisen without very good cause. The attitude of the Government of India has been: "We will not interfere with you unless we absolutely cannot help it. But on the occasion on which we have had to interfere, we have obviously had very good cause, and we have done in the past, and we will in the future do, our best to raise your administration to a respectable standard". In short the States want it both ways. Even in India this can surely not be allowed. I therefore find it very difficult not to sympathise with the speakers in the Assembly who criticised the bill from this point of view. I draw your attention to the last few lines at the bottom of page 14/25 of the extract from the Assembly Debates Volume

VI. No. 4, of Friday, September 8th, 1933, and the first two lines of the next page, circulated with the Bill.

As far as I know, a newspaper writer in England can criticise in any manner he likes the Governments of France, or Germany, or any other country. But no party of persons from England can cross over into France or any country with the object of overawing the Government of that country, for such a procedure would be an act of war. I suggest, therefore, that the provisions concerning criticism of State by newspapers in British India should not be enacted. But I consider that the provisions prohibiting the moving of bodies of persons into Indian States with the object of overawing the

administrations of those States may well be allowed to stand. There would then be a reasonable parallel between the conditions of things in India and the condition of things in the rest of the world. Even so, would it not be sufficient to expand the definition of an unlawful assembly as given in I. P. C. 141, part first, by the addition of such words as "The administration of any Indian State", and to expand section 144 of the Cr. P. C. in a similar and suitable manner. I cannot help feeling that these special acts passed to meet special occasions are a bad point in legislation; and that, where possible, it is always better to incorporate what is needed in the existing Acts.

For use of Members only.

GOVERNMENT OF INDIA.

LEGISLATIVE ASSEMBLY DEPARTMENT.

[PAPER No. II.]

OPINIONS

ON

THE INDIAN STATES (PROTECTION) BILL.

(Introduced by the Honourable Sir Harry Haig.)

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No. 9.—BOMBAY.

Government of Bombay.

I AM directed to forward herewith copies of the opinions received from the Honourable the Judges of the High Court, the Judicial Commissioner of Sind, the Commissioner in Sind, the Commissioners of Divisions, the Chief Presidency Magistrate, Bombay, and certain of the District Magistrates on the provisions of the Indian States (Protection) Bill. The Inspector General of Police, the Commissioner of Police, Bombay, and the rest of the District Magistrates, who were also consulted, had no criticisms to offer on the Bill. The Governor in Council did not consider it necessary to consult private persons or bodies.

2. The opinion of this Government on the Bill, when it was in draft form, was communicated to the Government of India in the Home Department in my letter No. *712-Poll., dated the 27th April 1933. The Governor in Council has observed that in the Bill as introduced in the Legislative Assembly, effect has not been given to his suggestion that sub-clause (3) of clause (1) should be amended so as to empower the Government of India, concurrently with the Local Governments, to issue the notification bringing into force clauses 5, 6 and 7. I am to mention this point again for the consideration of the Government of India, as the protection of States against agitation engineered from what is now called British India will in future be mainly the concern of the Government of India, and a position can quite well be imagined under the new constitution under which the Government of India would be pressed by the Administrations of States to protect them from some local threat or annoyance while the Provincial Government, with whom the powers would rest, might refuse to bring the Act into force. The Governor in Council has also observed that the Government of India have partly adopted his suggestion as regards clauses 5 and 6 by inserting the words "Presidency Magistrate", but it is not clear why the powers have not been limited to the Chief Presidency Magistrate, who exercises the corresponding powers under section 144, Criminal Procedure Code. These powers are of an executive kind and the orders would be binding on the whole Presidency Town. The Governor in Council considers that it is not therefore desirable that any Presidency Magistrate other than the Chief Presidency Magistrate should exercise them independently.

3. As regards the difficulty raised by Sir Cowasji Jehangir in the course of the debate on the Bill that if facts about the administration of a State are related they are bound to excite disaffection and so bring them within the provisions of clause 4, to which reference is made in the reports of the Commissioners, Central and Southern Divisions, the point appears, in the opinion of this Government, to be answered completely by the fact that the clause also proposes to amend Explanations 2 and 3 to section 4 (1) of the Indian Press (Emergency Powers) Act, 1931, as amended by the Criminal Law Amendment Act, 1932. This would seem to safeguard the position, since a mere narrative of facts without improper distortion or comment

*See next column.

showing intention to excite disaffection would certainly be held to fall under one or other of the Explanations.

4. The Bill and Statement of Objects and Reasons was published in English on pages 233 to 235 of the Supplement to the Bombay Government Gazette dated the 2nd November 1933, and also on pages 935 to 937 of Part III of the Sind Official Gazette dated the 9th November 1933.

Copy of letter No. 712-Polk., dated the 27th April 1933 from the Secretary to the Government of Bombay, Home Department, to the Secretary to the Government of India, Home Department.

* * * * * The Governor in Council agrees with the principle of the Bill.

2. As regards the details of the Bill, the Governor in Council has no remarks to offer on clauses 2, 3 and 7, but offers the following suggestions in respect of clauses 1, 4, 5 and 6:—

Clause 1.—The Governor in Council is of opinion that sub-clause (3) of this clause should be amended so as to empower the Government of India, concurrently with the local Government, to issue the notification bringing into force clauses 5, 6 and 7.

Clause 4.—The Governor in Council presumes that clause "(j)" referred to in this clause will be subject to Explanations 2 and 3 which have been added to section 4 (1) of the Indian Press (Emergency Powers) Act, 1931, by section 16 of the Criminal Law Amendment Act, 1932, and that "(j)" will be added to "(d)" in these two Explanations.

Clauses 5 and 6.—These clauses confer powers to prohibit assemblies and to issue directions prohibiting certain acts only on District Magistrates and make no provision for similar action to be taken in a Presidency Town. The Governor in Council considers that these powers should be available also in a Presidency Town and that they should be exercised when necessary by the Chief Presidency Magistrate.

Registrar, High Court, Appellate Side,
Bombay.

The Honourable the Chief Justice and Judges have no comments to offer on the bill.

Judicial Commissioner of Sind.

I HAVE the honour to forward a copy of the minute recorded by Mr. Aston, Additional Judicial Commissioner of Sind. Messrs. Rupchand and Dadiba C. Mehta have no remarks to offer.

Mr. A. H. S. Aston, Additional Judicial Commissioner of Sind.

I AM not in favour of the amendments contained in sections 3 and 4 of the proposed Act, which appear to me premature. It will no doubt be necessary hereafter to take special precautions to protect each unit in a federated India. But the need for such legislation does not appear to me to have arisen yet. I am however in favour of the amendments contained in sections 5, 6 and 7 read with the latter portion of section 1 (3).

Chief Presidency Magistrate and Revenue Judge, Bombay.

I HAVE no remarks to offer on the Bill except that in Sections 5 clause (1) and 6 clauses (1) and (4) I would suggest that the word "Chief" be inserted before the words "Presidency Magistrate" to bring the Act in conformity to the Law as it stands today.

Commissioner, Northern Division.

THE District Magistrates in this Division are all in favour of the Bill.

I have found that on many occasions meetings and press agitation against Indian States are organised in British India where the law is at present inadequate to enable preventive measures to be taken. In this Division of the Presidency there is an easy field for this kind of agitation as the States are intermingled with British territory and natural frontiers do not exist. I therefore consider that the Bill is necessary.

District Magistrate, Kaira.

THE Indian States (Protection) Bill seeks the supplement the provisions of the Indian States (Protection against Disaffection) Act 1922. The latter, it would appear, aims at only controlling the issue of literature calculated to be prejudicial to the interests of Indian States. Some provision was, therefore, necessary to control other activities directed against the States and this is provided for by the present Bill. In view of the readiness shown by the Native States in India to assist us during the stormy days of the Civil Disobedience Movement, we do owe to the States also necessary protection against activities carried on by agitators with British India as the base.

Section 4 of the Bill aims at extending the scope of section 4 of the Indian Press (Emergency Powers) Act XXIII of 1931, as amended by the Indian Criminal Law Amendment Act XXIII of 1932. The former Act, however, was brought on the Statute Book for a period of one year only with a reserve provision to extend its life for a period of further one year. [Please vide section 1 (3) of the said Act.] This provision was, however, amended by section 15 of the Indian Criminal Law Amendment Act XXIII of 1932 so as to make it co-extensive with the latter. It may be noted, in this connection

that the latter Act is designed to remain in force for a period of three years from its commencement [section 1 (3) of the Act]. As a result, section 4 of the present Act [Indian States (Protection) Act] will also remain in force till the life of the Indian Criminal Law (Amendment) Act XXIII of 1932.

It is not clear either from the preamble of the Bill or from the statement of objects and reasons thereof that the provisions contained in section 4 of the Bill are meant to remain in effect so long only as the Indian Criminal Law Amendment Act remains in force. I may, therefore, suggest that if that be not the intention of Government, suitable steps may be taken to make the provisions of section 4 of the Act of a permanent nature.

Commissioner, Central Division.

I AM inclined to agree with the views expressed by the District Magistrate, Poona. It is not desirable that the editor of a newspaper should be exposed to the risk of conviction for exciting disaffection amongst the subjects of an Indian State if he brings to light the true facts as to acts done by the administration which, if made known, cannot but excite disaffection.

District Magistrate, Ahmednagar.

THE Bill as drafted appears to be a gesture of encouragement to the Indian States from a Paramount Power anticipating trouble in the future.

I am of opinion that if the Federation is to be a reality there should not be any necessity of further protection for the Indian States, in fact the necessity on account of the forthcoming Federation should be less. I feel doubtful as to the real meaning of the Bill as in the statement of Objects and Reasons the Hon'ble Sir Harry Haig refers to the desirability of protecting units of the Federation yet he states that the experience in recent years has shown that the ordinary law is not adequate in protecting the States independent as they are at present. As stated above it would appear that under the Federation the need for protection would be lessened.

On the other hand, in order to protect the just administration of a State I venture to suggest that instead of "Administration of any States in India" appearing in sections 3 and 4 of the draft Bill, the following may be substituted "Any legal or constitutional Acts of any State in India".

Apart from the question of Federation I am of opinion that the Bill amended as suggested above, will give considerable protection to the States.

District Magistrate, Poona.

I CONSIDER the history of the relations of British India with the Native States for the past few years prove beyond doubt that all the provisions of this Bill are necessary except

possibly section 4—the Press Section. A case certainly has not been made out for this section nor do I think on the whole it is necessary or desirable. Press agitation against a State is I should imagine mostly ineffective and when it is effective it is either desirable or can be dealt with under our present law or the provisions of this Bill.

I should also suggest that the foundation of our support to the Bill should be clearly based on the fact that the administration of the Native State is an internal part of our Government machinery in India rather than on the very doubtful issue of reciprocity which has received a portion of criticism it deserved.

Commissioner, Southern Division.

I AGREE with the view expressed in the first sentence of the Statement of objects and reasons—a view concurred in by all the District Magistrates—that the object of the bill is fully justified.

There is, however, one great difficulty, as recognised by nearly all the District Magistrates, which was expressed in the debate by Sir Cowasji Jehangir in the words “If you relate facts I contend that you are bound to excite disaffection. You cannot help it.” This difficulty I think will have to be met.

The District Magistrate of Kolaba has made certain suggestions as to details. Regarding these, I think that additional directions as to submission of a copy of the order to the District Magistrate or the fixing of a time-limit should not be put in the law except under pressure. They can be provided for, if necessary, by executive order and their presence in the law itself is apt to render the action taken by the District Magistrate to be null and void owing to his having overlooked them. I do not think there is adequate reason for limiting the exercise of the powers conferred by section 6 to District Magistrates specially empowered.

District Magistrate, Belgaum.

I SEE nothing objectionable in the provisions of the Bill except clause 4. I fear that if this clause is passed legitimate criticism of misdoings in an Indian State will be discouraged. Even in the case of British India, the Indian Press (Emergency Powers) Act was passed as a measure of emergency and I do not see why its provisions should be extended to protect State administrations which in many cases are not above criticism and are able within their own boundaries to stifle comments on themselves. It would be in the interest of the population of such states if free scope was given at least to the outside press to criticise their mal-administration wherever such exists.

It is true however that the States deserve to be protected against activities carried on in British India for subverting or interfering with the administration of such states. This is provided for by the other clauses of the bill. But so far as criticism in the press is concerned, I think that protection should be given by a suitable amendment of the substantive law viz., section 124-A of the Indian Penal Code than

by the proposed insertion in section 4 of the Indian Press (Emergency Powers) Act 1931 as amended by the Criminal Law Amendment Act 1932.

District Magistrate, Bijapur.

I AM in favour of the proposed Bill.

It is however suggested that it may be made clear in clause 3 of the Bill that its provisions are intended to deal with conspiracies within British India directed against Indian States and not outside it.

Some of the politically minded people seem to think that there is no immediate necessity of this legislation and that it may as well be postponed for consideration by the Federal Assembly under the new constitution.

Collector of Dharwar.

THE only provision in this Bill which appears controversial is section 4. Should it be rendered impossible to bring rulers of Indian States into hatred and contempt when some of them are notoriously the most contemptible objects?

2. It appears to be part of the price that British India has to pay for the reforms which are now being elaborated. For political reasons, many states are being handed over to Political Agents who live at a distance; and now it is proposed to extend to them a protection against blackmail, which they do not merit. It is regrettable that the reforms involve a waste of time and energy of this sort, but presumably it is inevitable.

Collector of Kanara.

THE Bill appears to be a necessary measure, inevitable if the proposed confederation is to function smoothly. The States in entering into the confederation are faced with one of two probabilities, either the reformed Government in British India will fail to maintain order, in which case the comparative importance of the States will increase but they will be liable to be affected by the disorder in the surrounding ‘British’ territory, or the new Government in British India will by its success encourage the movement for democratic Government in the States. In either case they will have sufficient difficulties within their own borders without the addition of subversive activities organised and paid for outside. This method of attack against established Government has been freely used by Congress which has both in Gujarat and Kanara made most headway in British areas adjoining native States.

The Bill is based on a sound constitutional principle because if the British Provinces and the States are to form parts of a single federation it will become the duty of each part to protect the established Governments of the other parts as much as its own. The passing of the Bill will also give good ground for demanding reciprocal action from the States.

District Magistrate, Kolaba.

I HAVE the honour to suggest as follows:—

- (i) In section 4 (a), proposed clause (j) to Indian Press (Emergency Powers) Act, section 4 (1), the words "to bring into hatred or contempt" may be omitted as otherwise a mere narration of true facts might come under these words.
- (ii) At the end of sub-section (3) of section 5, the words "within 24 hours" may be added to ensure speedy submission of the order to Government.
- (iii) It is not necessary that the powers under section 6 should be exercised by every District Magistrate. So, after the words 'District Magistrate' where it occurs for the first time, the words "specially empowered by the Local Government in this behalf", may be added. Further, after sub-clause (3) a fresh sub-clause (4) may be added directing the Magistrate acting under that section to forward a copy of such order to the Local Government within 24 hours, the following sub-clauses being re-numbered.

District Magistrate, Ratnagiri.

THE proposed Bill is intended to deal solely with activities conducted in British India against the Indian States. With a view to check such activities, the Bill is quite essential and may be accepted, in the interests of Law and Order, as much a neighbourly and reciprocal duty as a discouragement to similar unconstitutional tactics in British India itself.

2. The opposition to the Bill by Non-official members can well be understood, and there are sound reasons for it that would be difficult for anyone to defend in an open discussion. Since, however, the 500 or more States concerned cannot be divided into A, B, C, categories for its application or not (progressive, feudal, tyrannical), some clause will have to be added barring its operation save in times of serious

danger and on the responsibility of the Local Government without delegation of powers.

3. The Bill has appeared before the Assembly at a most inopportune time, and while its passage will not improve any State mismanagement, its rejection will be a public expression of distrust as well as a warning of these troubles in the near future.

4. In these circumstances it will now have to be passed somehow or other, with a saving clause to the effect that States, which do not deserve its protection on account of their notorious foulness, will not benefit by it.

Commissioner in Sind.

THE Commissioner considers that the proposed legislation is desirable and may be introduced.

District Magistrate, Larkana.

CLAUSE 3 of the Bill is open to objection in that it appears to make it possible for a British Court to take cognizance of offences committed against the Administration of a State within the State itself. It should be made clear that British Courts should deal with offences against the Administrations of Indian States only if the offences are committed outside the boundaries of the State concerned.

Clause 4 of the Bill is open to the objection that it will prevent the ventilation of genuine grievances and the criticism of real misgovernment. The clause is necessary to protect the States from irresponsible criticism and scurrilous abuse, but it should be laid down that for any person accused under this clause it should be valid defence to prove that his statements criticising the State Administration were substantially true.

No. 10.—DELHI.

Chief Commissioner, Delhi.

I HAVE the honour to forward a copy of a letter from the Deputy Commissioner, Delhi, together with a copy of a note by the Public Prosecutor and to say that I am in general agreement with the opinion expressed by the Deputy Commissioner.

Deputy Commissioner, Delhi.

THE Senior Superintendent of Police and the District Judge, whom I have consulted, have no opinions to offer on the provisions of the Indian States Protection Bill. I enclose copies of the opinions of the Superintendent of Police, C. I. D., and of the Public Prosecutor. I am in agreement with the views of the Public Prosecutor, and consider that the Bill should be

passed into law as it stands. The introduction of this legislation is, in my opinion, overdue, and the Bill, if passed into law, will provide exactly what is required and will stop the mischievous agitation which is so often carried on in British India by interested persons against the ruling power in some particular State. I do not think that there is anything in this legislation preventing legitimate criticism from reaching the notice of the paramount power. The agitation which this legislation penalises is of the irresponsible kind which has arisen from the desire of the producers of small newspapers to blackmail the rulers of various States. We have had in Delhi recently much experience of newspapers run on these lines which subsist merely out of the money which has been extorted from Indian States. Section 5 of the Act is also necessary to enable effective steps to be taken by the local authorities in instances in which attempts are made to interfere with the administration of a State by action taken in British India.

Public Prosecutor, Delhi.

SECTION 121 of the Indian Penal Code prohibits waging or attempting to wage war or abetting waging of war against the Queen. It did not deal with the question of conspiracies to wage war against the Queen. Section 121-A was introduced so that conspiracies of such a nature may become punishable. It was further introduced with the object that the conspiracies having for their object, the overthrowing of the Government may also be made punishable. The present section 121-A prohibits a conspiracy to overawe by means of a criminal force or the show of criminal force the Government of India or the Local Government. It is intended by this bill that such a prohibition may also extend to "the administration of any State in India". This is the real object of Section 3 of the present bill. In my opinion, it is a perfectly salutary amendment.

During recent years there have been conspiracies of such a nature (so far as the ordinary citizen could see) and when such conspiracies are hatched in British India it is desirable that they should be punishable. It is the British Courts which will deal with these cases. The same principle is followed in Section 4 of the Bill. The object of both these sections is to give protection to the Indian States and in my opinion, the measure is salutary. Section 5 deals with the powers of the District Magistrate. This is also a precautionary measure in order to stop a riot in Indian States. The District Magistrate can interfere when he feels that there is a danger to human life in an Indian State. Public meetings even in India are stopped whenever there is a danger of riot. Section 6 of the bill deals with the powers to issue directions prohibiting certain acts and section 7 describes penalties. The whole bill has my full support.

No. 11.—AJMER-MERWARA.

Chief Commissioner, Ajmer-Merwara.

WITH reference to the Legislative Assembly Department letter No. F-12C-1/33-A, dated the 6th October, 1933, I have the honour to forward copies of the views of certain District officers on the provisions of the Bill.

2. I strongly support the principles of the bill. An act on these lines is especially necessary in the district of Ajmer-Merwara.

Additional District and Sessions Judge, Ajmer-Merwara.

I AGREE generally with the principle of the Bill. I think that the Princes and their Administrations should be protected against any organisations set up in British India to subvert their authority.

2. But I also strongly feel that the States, as they are constituted at present with—in some cases—very crude and weak administrations, and with no means internally for a free expression of opinion—require the healthy check of fair and fearless criticism from the press and platform of British India to keep them going right.

3. The provisions of the bill should therefore be so framed as not to defeat this last mentioned object.

Judicial Commissioner, Ajmer-Merwara.

THE bill does not make it clear whether it is—

(a) Open to a High Court to revise an order passed under clauses 5 or 6.

(b) Open to a person charged under clause 7 with disobeying an order under clause (6) to plead that the order was not a legal one.

I think that the bill ought to make both these points clear.

City Magistrate, First Class, Ajmer.

I AM distinctly of the opinion that the proposed Bill is necessary in the present perturbed conditions of the country.

The recent agitation of British subjects against Kashmere, Alwar, Patiala and Bahawalpur makes it imperative that these ugly manifestations of ill-will against States should be effectually controlled by some legislative enactment and in my opinion the present Bill is well calculated to put down the undesirable form of agitation.

The power to prohibit illegal assemblies and to issue directions in restraint of certain acts have been rightly left in the hands of responsible officers (District Magistrate and Presidency Magistrate) by sections 5 and 6 of the Bill and there is no risk or fear that such powers will be misused.

Extra Assistant Commissioner, Merwara.

I BEG to report that such a protection as this bill proposes to offer, is really required, is in the interest of good administration in Indian States.

No. 12.—BENGAL.

Anglo-Indian and Domiciled European Association, All-India and Burma.

THE Governing Body of this Association is

in accord with the provisions of the bill for the protection of Indian States.

No. 13.—NORTH-WEST FRONTIER PROVINCE.

Government, North-West Frontier Province.

WITH the exception given below, the provisions of the Indian States (Protection) Bill are suitable and welcome in the view of selected officers and other persons in this Province who have been consulted. With this opinion the Governor-in-Council concurs.

2. The Bill and Statement were published in the three issues of the North-West Frontier Province Government Gazette dated 27th October, 3rd of November, and the 10th of November. It is assumed that the Bill, if passed, will apply to the States of Swat, Dir, Chitral and Amb in so far as this Province is concerned.

3. The exception to the general view is provided by the opinion expressed by the Secre-

tary, Bar Association, Abbottabad. He considers that the Press in British India should not be further handicapped in the discharge of its legitimate functions since the subjects of the Indian States do not enjoy even elementary rights of constitutional agitation. He suggests the conflict between the obligations of the Imperial Government to the States and to the Press in India may be set at rest by providing some suitable safeguards in the proposed legislation which would disarm suspicion and deprive subordinate officials of the temptation of making a perverted use of the new law. He further proposes that Section 3 of the Bill should be amended so as not to include within its ambit the activities of subjects of the States residing in the States as the Indian Legislature has no jurisdiction over them.

No. 14.—BURMA.

Government of Burma.

THE Indian States (Protection) Bill as introduced, with Statement of Objects and Reasons, and with extracts from the Legislative Assembly debates regarding the Bill were forwarded for opinion to the Hon'ble Judges of the High Court of Judicature, the Bar Library Association and Commissioners of Divisions. The Hon'ble Judges have intimated that they see no objection to the Bill and have offered no comments on its provisions. I am to attach a copy of the opinion of the Bar Library Association. One Commissioner of a Division, while refraining from offering any views on the question as to whether the restraints which the Bill imposes on the liberty of subjects are really necessary, has expressed the opinion that the expression "interference with the administration of a State in India" occurring in clauses 5 and 6 of the Bill is so wide that the powers conferred by these clauses are liable to be abused; and another Commissioner, without expressing any definite opinion, has raised the question whether the Bill would have the effect of preventing reasonable steps to reform maladministration in Indian States. This is a point which is raised also in the criticism of the Bar Library Association.

2. The Bill hardly concerns Burma and occasion for its use is unlikely to arise; and the justification for the Bill, and the necessity of its detailed provisions must necessarily be judged by conditions and factors which are outside the direct concern of this Government. In these circumstances, His Excellency in Council does not propose to criticise the detailed provisions of the Bill and has no doubt that, if any of these provisions are so wide as to be capable of use to restrain what might be regarded as legitimate agitation against or criticism of the administration of particular Indian States, the necessary modifications will be made in Select Committee or in the course of passing the Bill through the Legislature.

3. The Bill, with the Statement of Objects and Reasons, was published in English in the *Burma Gazette*, dated the 29th October, 1933. His Excellency in Council did not consider it

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necessary to publish the Bill in any other language, but a *communiqué* was issued to all English and vernacular newspapers in the Province briefly summarising the aims of the Bill and intimating that it, with the Statement of Objects and Reasons, was being published in the abovementioned issue of the *Burma Gazette*.

Bar Library Association, Rangoon.

CLAUSE 2 of the Bill does not call for any comment.

Clause 3 of the Bill has been opposed in the Assembly mainly on the ground that it embraces conspiracies entered into by British Indian subjects in the Native States. From the statement of the Home Member it appears that this is not the intention of the Government, but it is difficult to see why a British Indian subject who is in respect of all other offences under the Penal Code, governed by the Code whenever he may have offended, should be treated differently in respect of the offence only.

Clause 4 of the Bill has been attacked mainly on the ground that the state of affairs in certain territories under Indian Princes and Chiefs is so bad that a bare recital of the facts would be sufficient to raise "hatred, contempt or disaffection."

It is very difficult for any person in Burma, far away from those territories to judge if there is any substance in these allegations, but if there is substance in the same, a clause making "truth and public interest" a complete defence should meet the objection. "Truth and public interest", though a complete defence in respect of defamation, is not according to earlier English authorities, a defence in respect of seditious libels, and specific clause making them a valid defence will be necessary to allay the not unreasonable fear of the members of Assembly—provided, of course, there is any substance in the charge against the administration of some of the Indian States.

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For use of Members only.

GOVERNMENT OF INDIA.

LEGISLATIVE ASSEMBLY DEPARTMENT.

[PAPER No. III.]

OPINIONS

ON

THE INDIAN STATES (PROTECTION) BILL.

(Introduced by the Honourable Sir Harry Haig.)

Opinion No. 15.

MADRAS.

PAGES.

No. 15. From the Chief Secretary to the Government of Madras, Public
(Political) Department, No. 4-Ms., dated Fort St. George, the 9th
January, 1934, and enclosures 21—26

No. 15—MADRAS.

Government of Madras.

THE Hon'ble the Judges of the High Court and selected officers have been consulted on the provisions of the above Bill and I am to enclose copies of the opinions received.

2. I am to inform you that, subject to the minor modifications made in the present Bill agreeably to the suggestions contained in the Madras Government's letter to the Government of India, Home Department, No. 274-S.,* dated 21st June 1933, His Excellency the Governor in Council adheres to the views already expressed in that letter and wishes to invite attention in particular to the following:—

- (1) Suggestion of the Inspector General of Police, Madras, as regards the extent of Clause 3 of the Bill—*vide* para. 4 of his letter;
- (2) Suggestion of the Chief Presidency Magistrate, Madras, as regards the substitution of the words "Chief Presidency Magistrate" for the words "Presidency Magistrate" occurring in clauses 5 and 6 of the Bill—*vide* sub-para. 2 of his opinion, and
- (3) Suggestion of the District Magistrate, Salem, as regards the trial of offences under Clause 7 of the Bill by a First Class Magistrate—*vide* para. 2 of his letter.

His Excellency the Governor in Council supports the above suggestions:

3. The Bill was published in the Fort St. George Gazette in English and in the following vernaculars on the dates specified against each:—

Language.	Date of publication.
English	19th September 1933.
Telugu	14th November 1933.
Kanarese	} 21st November 1933.
Malayalam	
Hindustani	
Tamil	5th December 1933.
Oriya	19th December 1933.

Copy of letter No. 274-S., dated the 21st June 1933, from the Chief Secretary to the Government of Madras, to the Secretary to the Government of India, Home Department.

* * * *

In regard to the general principle of the Bill, I am to say that the Madras Government do not feel themselves to be in a position to offer any material comments as the Bill is designed to meet situations of which this Government have hitherto had little or no experience. The majority of the provisions of the Bill are *primâ facie* of an emergent character and would appear to require considerable justification if they are to be made acceptable to public opinion; but the Madras Government are not in a position to judge as to how far such justification is forthcoming. Comments in the local Press on the situation in Kashmir last year and in Alwar recently have been to the effect that greater freedom of interference by the Government of

India, particularly with a view to checking subversive forces working from outside a State, is to be desired; but at the same time the general undercurrent of feeling in the Press toward the State administrations is by no means favourable and the Press will undoubtedly resent any further curtailment of its freedom of speech. While seeing no reason to object to the general principle of the Bill, the Madras Government are unable to insist on its necessity so far as South India is concerned.

In regard to the details of the Bill, I am to offer the following remarks:—

Clause (3).—This Government would support the Advocate-General's suggestion that the words "the Governor General in Council" should be substituted for the words "the local Government" in this clause. A situation of such emergency as to necessitate the intervention of the local Government without reference to the Government of India is most unlikely to arise, particularly in view of the rapidity with which reference can now be made, whether by telegraph or telephone. The Government of India have themselves used the argument of the Governor General's special responsibility to protect the States in justifying the substitution of the Governor General in Council for the local Government in the machinery of the clause dealing with the control of the Press and the Madras Government are of opinion that the assumption of the powers conferred in this clause also by the Governor General in Council alone would be likely to provoke less criticism.

Clauses 2 and 3.—This Government support the amendments to the Indian Penal Code proposed in these clauses.

Clause 4.—The Madras Government are of the view that there is considerable force in the Advocate-General's opinion, that this clause is of so emergent a character as to require a state of emergency to justify its introduction. If, however, its introduction under present conditions, is considered justifiable, the reason for assigning it a limited duration co-terminus with that of the Indian Press (Emergency Powers) Act, is not apparent. The Madras Government, however, doubt whether the clause, differing only as it does, from the Indian States (Protection against Disaffection) Act of 1922, in the machinery whereby penalties are to be enforced, is necessary or advisable. If the clause is allowed to stand, they would support the Advocate-General's suggestion that a safeguarding clause should be added on the analogy of the explanations to section 4 (1) of the Indian Press (Emergency Powers) Act, as amended by the Criminal Law Amendment Act, 1932, and of section 3(2) of the Indian States (Protection against Disaffection) Act, 1922.

Clause 5.—The Madras Government see no reason to take exception to this clause and are unable to appreciate the Advocate-General's objection as to its procedure being cumbersome.

Clause 6.—The Madras Government have no objection to this clause but would invite attention to the minor amendment proposed by the Advocate-General and to the suggestion of the Inspector-General of Police in regard to oral agitation.

*Below.

District Magistrate, the Nilgiris.

THE provisions against "interference with the administration of a State" are very wide. It is obvious that they could be abused. The expectation that they will not is apparently based upon the presumption they will be administered in good faith by Magistrates and Governments. Against this presumption must be put the possibility (to put it no higher) that future Governments and Magistrates may not be incorruptible, and that many of the States, who may desire the application of these provisions, have sufficient wealth to make the bribing of individuals a matter of no account to them. I think it inexpedient to put those in authority in India in the position of being able to grant or refuse a favour to an Indian State, so far as it is possible to avoid this.

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

District Magistrate, West Godavari.

Those who have been in touch with the recent happenings in parts of British India adjacent to some of the Indian States, cannot but be convinced of the necessity for an enactment of the nature of this Bill. Thousands of Muslims from the Punjab and other parts of North India had marched in 'Jathas' into the territory of Kashmir and caused considerable commotion in that State. Similar happenings did take place in Alwar and attempts were made to foment disaffection and rebellion in Bhopal and some other places. In all these cases a virulent agitation was kept up in British India, ostensibly for the reason that there has been mal-administration in such States. But mal-administration was not in fact the sole reason for such happenings. Communal feelings were brought into play and some of the Newspapers in British India, especially the Indian Section of it, played a very conspicuous part in fomenting a virulent crusade against the Administration of the Indian States.

2. It is therefore time that a Bill of this nature is placed on the Statute Book as soon as possible. At the same time, it has to be conceded that the state of affairs in several of the Indian States is far from satisfactory. There is no constitutional Government in several States, and the autocratic doings of some of the princes have come more and more to be resented both by the subjects of the States and by the people of the British India. The increase in communications and the increase in business intercourse between the subjects of the Indian States and those of the British India has brought about a greater

feeling of "camaraderie" between the two sections of the community and that is the reason why any act of misrule or mal-administration in Indian States finds its repercussion in the adjacent British Indian territory.

3. The Bill as published can be divided into two main parts. Sections 2, 3, and 4 of the Bill aim at amending the Indian Penal Code and the Indian Press (Emergency Powers) Act, 1931 while Sections 5, 6 and 7 deal with unlawful assemblies formed in British India with a view to disturb the administration of an Indian State. So far as the second part dealing with 'Jathas' and unlawful assemblies in British India is concerned, there has not been much opposition from the Non-official members in the Legislative Assembly. The main opposition, so far as I could see, is centered round the amendments proposed in the Indian Penal Code and in the Indian Press (Emergency Powers) Act, and it is to be seen how far these amendments would prove prejudicial to the interests of British India or of the Indian States.

4. The main amendment in the Indian Penal Code is for Section 121-A dealing with sedition. A difficulty was expressed that these amendments would have the effect of interfering with the subjects of Indian States who might commit offences within the territories of Indian States outside British India. But this objection was adequately answered, and it was pointed out that any application of the provisions of the Indian Penal Code of which the proposed amendment is to form a part, are limited by the provisions of Sections 1, 2, 3 and 4 of the Code itself and that nothing new or exceptional has been allowed to be brought in by this amendment. But the main point to be considered, in my opinion, seems to be, whether offences of the nature contemplated in Section 121-A committed against the administration of Indian States, should be treated on a par with the offence of sedition committed against the Government of India or any local Government in British India. The offence of sedition is a very serious offence against the State next only to waging war. But an offence committed by a British Indian subject against the Government of another administration, may I think, be treated as an offence of a different category, instead of being treated as of the same nature as an offence of sedition against his own Government. Probably a different section with a lesser degree of punishment may be appropriate.

5. As regards the amendment proposed in the Indian Press (Emergency Powers) Act of 1931, the main question to be considered here is whether the provision sought to be introduced would in any way hamper fair and honest criticism of mal-administration in Indian States. The explanations have been amended so as to cover and protect honest criticism. It is true that honest and good Editors sometimes forget the bounds beyond which they should not go and beyond which any dabbling on their part would result in serious consequences. But in any case, action under this Section 4 of the Indian Press (Emergency Powers) Act, can be taken only by the local Government, and there is no warrant to apprehend that the local Government would take any hasty view on a publication regarding Indian States without considering fully the circumstances relating to the particular case. I consider that this amendment may stand as it

is. Even in British India, where often the criticism against the Government has been rather extremist in complexion, the Government refrained from enforcing the provisions of this Section in several cases, and I do not consider that they would hastily declare the Press to be forfeited for the mere reason that a strong criticism of the administration of an Indian State has appeared in a British Indian Newspaper. I think the fears expressed by the Non-official members are not warranted.

6. The Sections of the Bill with which the District Magistrates will be mainly concerned are Sections 5, 6 and 7. As already submitted, even the non-official members were convinced about the necessity for Legislation of this kind after the recent experiences. Further, under Section (1) clause (3) of the Bill, these sections come into force in any District or area only when, and for such time as, the local Government by notification in the local Official Gazette directs. The order passed by the District Magistrate under clause (1) of Section 5 will be a temporary order, of the nature of an order passed under Section 144 of the Criminal Procedure Code. Under clause 2 of the Section 5, any assembly of five or more persons that is prohibited under clause (1) could be dealt with as an unlawful assembly within the meaning of Section 141 of the Indian Penal Code and the provisions of Chapter VIII of the Indian Penal Code and of Chapter IX of the Code of Criminal Procedure also apply. Thus the object of this Section is to declare as unlawful assemblies, gatherings of five or more persons intended to cause interference with the administration of the State, and once they are so declared they could be dealt with as any other unlawful assembly in British India under the provisions of the Indian Penal Code or the Criminal Procedure Code. But it seems to me that the objects for which an assembly may be declared to be unlawful in this Section are somewhat wider than the provisions contained in Section 141 of the Indian Penal Code. As the clause is now worded, it might look that the British Indian authorities are attempting to interfere with objects which were not warranted in British India under Section 141 of the Indian Penal Code. Then again disobedience to an order issued under Section 144 Criminal Procedure Code is punishable under Section 188 of the Indian Penal Code. In the Bill however a separate penal section (Section 7) has been provided with a slightly different punishment. (There is no limit to fine in this Section while there is a maximum limit for fine under Section 188 Indian Penal Code). It may probably be enough if it is laid down that disobedience to an order made under Section 6 shall be punished as an offence under Section 188 of the Indian Penal Code.

7. In these sections, 5, 6 and 7, there is a blend of Section 141 of the Criminal Procedure Code and Section 141 of the Indian Penal Code. It might clarify the position if the two elements are separated and if the definition of unlawful assembly as given under Section 141 of the Indian Penal Code is made to cover cases of interference with the administration of Indian States also. If that is done, unlawful assemblies could be dispersed and persons who form members of the unlawful assemblies could be prosecuted. In addition, special powers may be given to the District Magistrates to pass orders under Section 144 of the Criminal Procedure Code prohibiting the formation of

such assemblies; and disobedience to such orders could be dealt with as an offence under Section 188 of the Indian Penal Code. If these provisions cannot be conveniently incorporated in the existing Section 141 of the Indian Penal Code and Section 144 of the Criminal Procedure Code, they may be incorporated as separate and independent sections having force and effect only where and when the local Government may, by notification, direct. This probably will tend to make matters more clear.

District Magistrate, South Kanara.

From a perusal of the Bill and the discussion in the Assembly it would appear that the Bill is intended to meet situations which are not now present in South India. At the 36th page of a very discursive discussion (in which Hon'ble members even debated on the floor of the House, their several hotel arrangements when they came up for meetings of the Assembly) the Hon'ble Mr. Muhammad Anwar-ul-Azim observed that the sole purport of the Bill was to amend certain sections of the Indian Penal Code and thereby to empower district officers to prevent jathas entering Indian States with a view to creating trouble there. So far as I can find from the discussion this is the only definite situation that has to be met at present. I need hardly say that on the West Coast it is unknown for jathas to assemble in British India for the purpose of entering Mysore, Cochin or Travancore.

2. I think however that the Hon'ble members when discussing the Bill were not far from the mark when they pointed out that the powers that the Bill would give were very wide and capable of various interpretations. In particular in section 5 (1) it is stated that 'If the District Magistrate is of opinion that there is in his jurisdiction a movement for the promotion of assemblies.....and that the entry of such persons (into a Native State).....will tend to cause interference with the Administration of the said State.....It may well be asked what is a movement? What is interference? There are very subjective words, capable of almost any interpretation and I think that it is unwise to use such vague terms in a penal enactment.

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

I do not think that there can be any doubt that if the Bill were passed into law and section 5 were applied to any area the section could be invoked against even reasonable political agitation, conducted by persons in British India and having as object the modification of the governments of States on more democratic lines.

District Magistrate and Collector of East Godavari.

I SEE no objection to the Bill being passed into law.

District Magistrate, Trichinopoly.

I HAVE no remarks to offer except that clause 3 of the bill as it stands will presumably have to be altered, since in its present form it gives jurisdiction to Courts in British India, to try offences committed by a subject of a State within the territory of a State. This doubt will have to be cleared up.

District Magistrate, Tinnevely.

I AM in full agreement with the spirit of the Bill. There is a tendency among some persons to criticise the Administration of Indian States on the basis of vague, inaccurate, and unauthenticated information, and to launch these attacks from British India, because, as the law stands at present, action cannot be taken against them. The Bill rightly proposes to check activity of this sort. I have no criticism to offer in regard to the provisions of the Bill as circulated.

District Magistrate, Guntur.

I HAVE the honour to state that in my opinion the provisions of the Bill are wholesome.

High Court, Madras.

THE Honourable the Judges have no remarks to offer on the provisions of the bill.

District Magistrate, Kistna.

A BILL to prevent agitation against Indian States by persons in British India is necessary as at present there are no provisions of law under which such agitation can be suitably dealt with.

2. As for the objection raised that the bill will have the effect of penalising agitation made by a State subject within the limits of the State, an offence under Section 121-A, I. P. C. is not included in the Indian Extradition Act and persons who carry on such agitation cannot be extradited and tried for the offence.

As for the objection raised that the police and Magistrates in British India are likely to go

beyond the intention of the Bill in giving effect to its provisions, prosecutions under Section 121-A, I. P. C. at present can be sanctioned by the Local Government under Section 196 Cr. P. C. and this is in itself a safeguard against the abuse of the provisions of the Bill by local officers.

District Magistrate, Madura.

THE provisions of the Bill seem to me salutary and necessary. I do not feel competent to express an opinion on the legal point regarding clause 3 raised by the Honourable the President and I have no other detailed remarks to offer.

Advocate General, Madras.

I HAVE no special remarks to offer.

Inspector-General of Police.

1. THERE are apparently strong political factors behind the Bill.

2. On its merits, the Bill is opportune and its provisions are necessary as well to protect the Indian States as British India. Revolutionary and dangerous activities and widespread disorders in Indian States, which have their origin in British India, are likely to have serious repercussions on the situation in British India itself.

3. The argument that the provision of the Bill will suppress legitimate agitation in Indian States carries no weight. Similar provisions do not have such an effect in British India and in administering the provisions of the Bill the British Courts can be relied on to take a broad view and to deal only with activities of a really dangerous nature. There should be no risk of constitutional activity being suppressed. Further, the argument would apply mainly to clause 4 dealing with the Press, the provisions of which are already found under the existing law—section 8 of the India States Protection Act of 1922.

4. The point raised by the President, as to the extent of clause 3 of the Bill, amending section 121-A, of the Indian Penal Code, has to be considered. The amendment creates a new offence, 'conspiracy against the administration of any State in India'. As it stands it would have the same territorial extent as the rest of the section, that is the extent covered by Sections 2 and 4 of the Indian Penal Code, but the Home Member has said that it was the intention of the Bill to punish the new offence *only if it was committed in British India*—that is to limit its extent to that provided by Section 2 of the Indian Penal Code. The Home Member seems to have made this statement without appreciating fully the extent of the existing section read with Sections 2 and 4 of the Indian Penal Code, which has been brought out in the debate and in the President's ruling. It seems illogical to limit the extent of the amendment, as the Home Member appeared to suggest, and it should have the same extent as the rest of the section, namely, that covered by Sections 2 and 4 of Indian Penal Code.

Bar Association, High Court, Madras.

THE Bar Association is of opinion that the 'Bill to protect the Administrations of States in India which are under the suzerainty of His Majesty from activities which tend to subvert, or to excite disaffection towards, or to interfere with such Administrations' is necessary in view of the impending reforms. The States have forms of Government different from that of British India and unless such forms of Government are recognised and protected by some such legislation, they may not have confidence and be willing to join as partners in the federation.

But in the case of States where there is misgovernment explicit provisions should be made to protect agitation that is constitutional and press criticism that is *bona fide* and proper.

Chief Presidency, Magistrate.

I AM quite in agreement with the principle of the Bill but I desire to make the following suggestions as to the actual drafting of it.

In my opinion whenever the application of the provisions of Section 121-A, arises because of the interference with 'the Administration of any State in India', a prosecution should only be launched with the sanction of the Governor General in Council, and section 196 of the Criminal Procedure Code should be amended accordingly. The Native States in India are under the suzerainty of the Crown and it is the representative of the Governor General in Council who is in charge of these Administrations. It seems therefore logical that this authority and none other should sanction these prosecutions. So far as these States are concerned there ought to be an uniformity of policy in launching these prosecutions which will not be possible if any Local Government is empowered to do so.

Sections 5 and 6.—The powers conferred by Sections 5 and 6 ought to be confined to the Chief Presidency Magistrate in a Presidency Town. These provisions are merely an extension of the provisions of section 144 Cr. P. C. where the power is conferred on the Chief Presidency Magistrate alone. It seems somewhat anomalous that in a Presidency Town where there are no less than 3 or 4 Magistrates the opinion of any one of them should be sufficient for action being taken under the Act. If any one of them refuses to take action there being in his opinion no sufficient reason for so doing, it would be still open to the Police to approach another Magistrate and then a third and a fourth, all of them with co-ordinate jurisdiction. I am not aware that any other piece of legislation in British India contemplates such a state of, what I may call confusion or conflict.

Section 6.—Section 6 in my opinion requires re-drafting. The section should take some such form as this; whenever in the opinion of a District Magistrate or the Chief Presidency Magistrate there is sufficient reason to direct any person to abstain from a certain act if such Magistrate considers that such direction is likely to prevent or tends to prevent interference with the Administration of a State in India or danger to human life or safety or a disturbance of the public tranquillity or a riot or an affray within said State, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 134

of the Code of Criminal Procedure 1898, direct such person to abstain from such Act.

Thus drafted it becomes at once obvious what the section is intended to prevent and follows a logical sequence.

District Magistrate, Anantapur.

I SEE no objection to this purely anticipatory legislation.

As soon as the federal constitution comes into force the laws against sedition and any law restricting the liberty of the press must be federal laws and apply *proprio vigore* to all federal states. I see no objection to anticipating federal legislation. Any objections that may be taken to these provisions applying British Indian legislation to Indian States are objections applying to the original legislation, some of which was of a temporary or unusual character.

District Magistrate, Kurnool.

I AM in full agreement with the views expressed by the Honourable Home Member on the floor of the Assembly and I consider the Bill to be necessary.

District Magistrate, Malabar.

I FIND it difficult to understand the reasons for introducing the "blessed word" Federation into the Statement of objects and reasons of this bill. The object of the bill is primarily to deal with present conditions and its justification must be found in those conditions rather than in a future state of affairs which is admittedly still hypothetical.

2. Sections 1 to 4 of the bill appear to me to be suitable and justified by present circumstances.

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

4. I would suggest that for these two sections there should be substituted an amendment of section 144 Cr. P. C. similar to the amendment of Section 121-A., contained in Section 3 of the Bill. This might be effected by the insertion of the word 'at any place in India' between 'prevent' and 'obstruction' in the latter part of the second sub-paragraph of Section 144 (1) Cr. P. C. Failing this I would urge that at least the word 'illegal' (defined in the I. P. C.) be inserted before the word 'interference' in the bill as drafted.

5. I consider that the amendment of the existing law which I propose would give ample power to deal with jathas.

District Magistrate of Ramnad.

It is unquestionable, I think, that the subjects of Indian States neither enjoy the same elementary rights of citizenship, nor the same standard of efficient administration as the subjects of British India. That being the case, the Bill, as it stands is too rigorous. Section 4 of the Bill, sub-section (A) makes it exceedingly difficult for persons residing in British India to indulge in *true* criticism of the patent defects of any Indian State administration, without running very serious risks. The words 'hatred', 'contempt' and 'disaffection' are difficult of definition, and there is a danger that courts may take a strict view, even where the criticism is well founded, and made in good faith, in public interests.

The Sub Collector, Devakottai remarks as follows:—

"Section 3, as it stands at present, renders an Indian state subject liable to be prosecuted for an offence committed within State limits. I have no doubt this will be modified in Select Committee. For, it would be intolerable if an Indian State subject seeking refuge in British India were tried in British India for an offence committed outside British India."

If the Sub-Collector's reading is correct, I agree with him that such a condition of things is of doubtful desirability.

In general, I do not think it advisable to bolster up the Indian States by too rigorous persecution of their *bona fide* critics. Indian princes today resemble the privileged Tory landlords of England and Scotland of four generations ago. The more unreasonably they cling to obsolescent privilege, the worse will they find the change, when it does take place.

District Magistrate, Chittoor.

I HAVE no comments to make on sections 1, 2, 3, 5, 6 and 7 of the Bill.

2. The provisions of section 4 present some difficulty in my opinion. It is common knowledge that the administration of many of the Indian States is corrupt and mismanaged. If the Press are not allowed to ventilate just grievances no publicity can be given to the existing maladministration in such States. A closer co-operation and mutual reciprocity between the British Government and the Rulers of Indian States are no doubt requisites for the

smooth working of the new Constitution, but I consider that the time for extending the provisions of the Indian Press (Emergency Powers) Act, 1931, as proposed in section 4 of the Act has not yet arrived.

3. I invite the attention of the Government to page 6 of "The Hindu" dated 8th November 1933, where there is a letter publishing the text of an ordinance recently issued by the Nawab Sahib of Banganapalle. It is an interesting document which throws a light on the administration of an Indian State in this Presidency.

District Magistrate of Salem.

I AM of opinion that the bill is necessary. I find that under Sections 5 and 6 of the Bill only District Magistrates and Presidency Magistrates have powers to prohibit assemblies, etc. It is desirable that Sub-Divisional Magistrates also have those powers. The District Magistrate may be very far from the scene of anticipated unlawful assembly and Sub-Divisional Magistrates can be relied upon to deal promptly with the situation.

2. Offences under Section 7 may be made triable by a first class Magistrate.

3. I have no other remarks to offer.

District Magistrate, Tanjore.

So far as I am aware, no occasion has arisen in recent years in this District on which it would have been found necessary for the District Magistrate to have recourse to the provisions of the proposed Bill nor have I personally experienced such an occasion. But it seems to me to be desirable from the point of view of the maintenance of law and order in his own District as well as in the interests of the States concerned that the District Magistrate should have power to deal with subversive activities on the lines indicated in sections 5 and 6 of the Bill. I consider the provisions of the Bill are desirable.

District Magistrate, Coimbatore.

'THE Bill appears to me to be necessary for the safety of the country as a whole. I have no special remarks to offer regarding particulars.

[As introduced in the Legislative Assembly.]

BILL

TO

Protect the Administrations of States in India which are under the suzerainty of His Majesty from activities which tend to subvert, or to excite disaffection towards, or to interfere with such Administrations.

WHEREAS it is expedient to protect the Administrations of States in India which are under the suzerainty of His Majesty from activities which tend to subvert, or to excite disaffection towards, or to interfere with such Administrations; It is hereby enacted as follows :—

1. (1) This Act may be called the Indian States Short title, extent and (Protection) Act, 1933. commencement.

(2) It extends to the whole of British India including British Baluchistan and the Sonthal Parganas.

(3) This section and sections 2, 3 and 4 shall come into force at once; the remaining sections of this Act shall come into force in any district or area only when and for such time as the Local Government, by notification in the Local official Gazette, directs.

2. After section 15 of the Indian Penal Code the XLV of Insertion of new section following section shall be 1860. 15A in Act XLV of 1860. inserted, namely :—

"15A. The word 'India' denotes British India, together with the territories of any Indian Prince or Chief under the suzerainty of the Queen exercised through the Governor General of India, or through any Governor or other officer subordinate to the Governor General of India."

3. In section 121A of the Indian Penal Code, XLV of after the words "or any 1860. Amendment of section Local Government", 121A, Act XLV of 1860. the words "or the Administration of any State in India" shall be inserted.

4. The Indian Press (Emergency Powers) Act, 1931, as amended by the XXIII of Application of Act Criminal Law Amend. 1931. XXIII of 1931. ment Act, 1932, shall be XXIII of interpreted— 1932.

(a) as if in sub-section (1) of section 4 of the Act, after clause (i) the following word and clause were inserted, namely :—

"or

(j) to bring into hatred or contempt or to excite disaffection towards the Administration established in any State in India", and

(b) as if in Explanation 2 and Explanation 3 to the said sub-section, after the word

"Government" the words "or Administration", and after the letter and brackets "(d)" the words, letter and brackets "or clause (j)" were inserted;

and any power which might, by reason of such insertions but not otherwise, be exercised by the Local Government under that Act if so altered, may also be exercised by the Governor General in Council; and for the purpose of enabling the Governor General in Council to exercise such powers, the Act shall be interpreted as if references to the Local Government were references to the Governor General in Council.

5. (1) When a District Magistrate or Presidency Magistrate is of opinion that there is in his jurisdiction a movement for the promotion of assemblies of persons for the purpose of proceeding from British India into the territory of a State in India and that the entry of such persons into the said territory or their presence therein is likely or will tend to cause interference with the Administration of the said State or danger to human life or safety or a disturbance of the public tranquillity or a riot or an affray within the said territory, he may, by order in writing stating the material facts of the case, prohibit within the area specified in the order the assembly of five or more persons in furtherance of the said movement.

(2) When an order under sub-section (1) has been made, and for so long as it remains in force, any assembly of five or more persons held in contravention of the order shall be an unlawful assembly within the meaning of section 141 of Chapter VIII of the Indian Penal Code and of Chapter IX of the Code of Criminal Procedure, 1898, shall apply accordingly.

(3) An order under sub-section (1) shall be notified by proclamation, published in the specified area in such places and in such manner as the Magistrate may think fit, and a copy of such order shall be forwarded to the Local Government.

(4) No order under sub-section (1) shall remain in force for more than two months from the making thereof, unless the Local Government, by notification in the local official Gazette, otherwise directs.

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

(2) An order under sub-section (1) may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex parte*.

(3) An order under sub-section (1) may be directed to a particular individual, or to the public generally.

(4) A District Magistrate or Presidency Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under sub-section (1) by himself or by his predecessor in office.

(5) Where such an application is received, the Magistrate shall afford to the applicant an early opportunity of appearing before him either in person or by pleader and showing cause against the order; and if the Magistrate rejects the application wholly or in part, he shall record in writing his reasons for so doing.

(6) No order under sub-section (1) shall remain in force for more than two months from the making thereof unless the Local Government, by notification in the local official Gazette, otherwise directs.

7. (1) Whoever disobeys or neglects to comply with any direction contained in an order made under section 6, or in such order as altered under sub-section (4) of that section, shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

(2) An offence under this section shall be an offence for which a police-officer may arrest without warrant.

STATEMENT OF OBJECTS AND REASONS.

Experience in recent years has shown that the ordinary law is not adequate to afford States in India the protection they may reasonably expect against activities which may be carried on in British India with the object of subverting, or exciting disaffection towards, or interfering with the administration of such States. The forthcoming constitutional changes, moreover, make it desirable that the authorities in British India should have power to protect units of the Federation from agitation directed against them from

British India. Such agitation may involve (a) attacks in the press, (b) the organization of activities directed against State authority, and (c) the organization of movements for the entry into a State of bodies of persons from British India. It is considered that the administration of the States which are under the suzerainty of the Crown should be given protection against such activities and the Bill has been prepared with that general object.

SIMLA ;

The 22nd August, 1933.

H. G. HAIG.

GOVERNMENT OF INDIA,
LEGISLATIVE ASSEMBLY
DEPARTMENT.

▲

BILL

TO

Protect the Administrations of States in India which are under the suzerainty of His Majesty from activities which tend to subvert, or to excite disaffection towards, or to interfere with such Administrations ; and Annexure.

(The Honourable Sir Harry Haig.)

LEGISLATIVE ASSEMBLY.

WE, the undersigned, Members of the Select Committee to which the Bill to protect Administrations of States in India which are under the suzerainty of His Majesty from activities which tend to subvert, or to excite disaffection towards, or to interfere with such Administrations, was referred, have considered the Bill and the papers

Papers I—IV. noted in the margin and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

2. *Long title and preamble.*—The verbal alteration made here is in consequence of the change made in clause 4.

Clauses 2 and 3.—We are of opinion that the object aimed at by clause 3 of the Bill can more suitably be attained by the creation of a separate offence in this Bill than by an amendment of the Indian Penal Code. This decision renders clause 2 of the Bill unnecessary. We have also provided for the offence now created a penalty somewhat less severe than that imposed by section 121A of the Indian Penal Code for the cognate offence when committed in relation to a government in British India.

Clause 4 (re-numbered clause 3).—We have met certain criticisms levelled against the provisions of this clause by inserting an *Explanation* saving from the mischief of the new clause (j) of subsection (1) of section 4 of the Indian Press (Emergency Powers) Act, 1931, statements of fact made without evil intention. We have also introduced a slight adjustment of section 23 of that Act to meet the circumstances which might arise from the exercise of powers under the Act by the Governor General in Council at the headquarters of the Central Government in respect of a press situated in a province.

Clause 5 (re-numbered clause 4).—We have substituted for the words "movement for the promotion of assemblies" the more explicit expression "attempts are being made to promote assemblies", and have replaced the rather vague expression "cause interference with the Administration" by the more definite expression "cause obstruction to the Administration". We have also confined the exercise of the powers under this clause in Presidency-towns to Chief Presidency Magistrates.

Clause 6 (re-numbered clause 5).—We have amended this clause in consonance with the decisions reached on clause 5, and have inserted the qualifying words contained in section 144 of the Code of Criminal Procedure, 1898.

Clause 7 (re-numbered clause 6).—We have inserted the word "wilfully" to meet certain criticisms received when the Bill was circulated.

3. The Bill was published as follows :—

In English.

Gazette.	Date.
Gazette of India	2nd September, 1933.
Fort St. George Gazette	19th September, 1933.
Bombay Government Gazette	2nd November, 1933.
Calcutta Gazette	
United Provinces Gazette	14th October, 1933.
Punjab Government Gazette	9th September, 1933.
Burma Gazette	28th October, 1933.
Central Provinces Gazette	9th September, 1933.
Assam Gazette	25th October, 1933.
Bihar and Orissa Gazette	25th October, 1933.
Coorg District Gazette	1st November, 1933.
Sind Official Gazette	9th November, 1933.
North-West Frontier Gazette	27th October, 3rd and 10th November, 1933.

In the Vernaculars.

Province.	Language.	Date.
Madras	Tamil	15th December, 1933.
	Telugu.	14th September, 1933.
	Hindustani	} . 21st November, 1933.
	Kanarese	
	Malayalam	
	Oriya	19th December, 1933.
Central Provinces.	Marathi	} . 16th September, 1933.
	Hindi	
Coorg	Kanarese	1st December, 1933.

4. We think that the Bill has not been so altered as to require re-publication, and we recommend that it be passed as now amended.

B. L. MITTER.

H. G. HAIG.

B. J. GLANCY.

S. C. MUKHERJI.

G. N. MUJUMDAR.

*ABDUR RAHIM.

SHER MOHD. KHAN.

*K. C. NEOGY.

*B. L. PATIL.

SOHAN SINGH.

F. E. JAMES.

C. S. RANGA IYER.

NAOROJI M. DUMASIA.

*JAGANNATH AGGARWAL.

NEW DELHI ;

The 14th February, 1934.

* Subject to a minute of dissent.

MINUTE OF DISSENT.

We have signed the Report of the Select Committee subject to the following note :—

We agree that the Indian States Administration should be protected from conspiracies formed in British India in order to overawe such administration and from the formation of *Jathas* or Assemblies of men with the object of marching into a State in order to create trouble there (clauses 3 and 5). Regarding the British Indian Press we are not satisfied that the need has arisen in any way justifying a departure from the normal procedure of a judicial trial and substituting executive action therefor as is proposed in clause 4 of the Bill. Our reasons are briefly as under :—

- (a) An Act of 1922 known as the Indian States (Protection against Disaffection) Act, enacted under the certifying powers of the Governor General, makes the law of sedition under section 124A applicable to writings with reference to a States Administration though we owe no allegiance to the Rulers of such States. That Act therefore fully protects a Prince or a Chief as well as his Administration from malicious attacks.
- (b) We are not satisfied that there is a sufficiently widespread demand by the States Administrations for drastic and summary action of the kind contemplated.
- (c) The provisions of the Indian Press (Emergency Powers) Act, XXIII of 1931, as amended by the Criminal Law Amendment Act, XXIII of 1932, were intended for a grave emergency in British India and even in British India such emergency can no longer be said to exist.
- (d) We are not satisfied that there has been sufficient experience of the working of the Indian States (Protection against Disaffection) Act, 1922, to enable us

to hold that it has really failed in its object as alleged. Nor are we satisfied that objections as to undue delay and publicity which are equally applicable to other trials for similar offences under other penal laws, afford any justification for substituting executive action for the process of Courts. We hold clause 4 should be deleted.

Three of us (Sir Abdur Rahim, Mr. K. C. Neogy and Mr. Patil) are further of the opinion that clause 6 should also be deleted. That clause which is apparently based on the lines of section 144, Criminal Procedure Code, we are told, is intended mainly to authorise the District Magistrate practically at his discretion to prevent the holding of public meetings to discuss questions of general importance in relation to the Administration of an Indian State. For instance, under this clause, if enforced by notification, it would have been open to the Magistrate at Delhi to prohibit the Conference of the States People which was held here the other day. It is very generally believed that section 144, Criminal Procedure Code, has often been resorted to by the authorities to prevent the holding of *bona fide* political meetings in British India though that was never the object of section 144 and it would be setting a dangerous precedent for British India itself, if we agreed to the extension of the summary procedure of section 144, Criminal Procedure Code, to *bona fide* political meetings with reference to the affairs of an Indian State. Further there is no need for such a provision since clause 3 provides against conspiracies to overawe a State Administration and clause 5 would prevent the formation of *Jathas* for the purpose of raiding a State and creating trouble therein. We must also point out that the language of clause 6 is dangerously wide. It would indeed enable a Magistrate to strike at many perfectly legitimate and lawful activities of a citizen besides holding public meetings.

ABDUR RAHIM.

JAGANNATH AGGARWAL.

K. C. NEOGY.

B. L. PATIL.

[AS AMENDED BY THE SELECT COMMITTEE.]

(Words printed in italics indicate the amendments suggested by the Committee.)

BILL

TO

Protect the Administrations of States in India which are under the suzerainty of His Majesty from activities which tend to subvert, or to excite disaffection towards, or to obstruct such Administrations.

WHEREAS it is expedient to protect the Administrations of States in India which are under the suzerainty of His Majesty from activities which tend to subvert, or to excite disaffection towards, or to obstruct such Administrations; It is hereby enacted as follows :—

1. (1) This Act may be called the Indian States Short title, extent and (Protection) Act, 1934. commencement.

(2) It extends to the whole of British India including British Baluchistan and the Sonthal Parganas.

(3) This section and sections 2 and 3** shall come into force at once; the remaining sections of this Act shall come into force in any district or area only when and for such time as the Local Government, by notification in the local official Gazette, directs.

2. *Whoever, within or without British India, conspires to overawe, by Administration of a State means of criminal force in India, or the show of criminal force, the Administration of any State in India, shall be punished with imprisonment which may extend to seven years, to which fine may be added.*

3. The Indian Press (Emergency Powers) Act, 1931, as amended by the ^{XXIII} of Application of Act Criminal Law Amend. 1931. ^{XXIII} of 1931. ment Act, 1932, shall be ^{XXIII} of interpreted— 1932.

(a) as if in sub-section (1) of section 4 of the Act, after clause (i) the following word and clause were inserted, namely :—

“or

(j) to bring into hatred or contempt or to excite disaffection towards the Administration established in any State in India”,*

(b) as if in Explanation 2 and Explanation 3 to the said sub-section, after the word “Government” the words “or Administration”, and after the letter and brackets “(d)” the words, letter and brackets “or clause (j)” were inserted; and

(c) as if after Explanation 4 to the said sub-section the following Explanation were inserted, namely :—

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

and any power which might, by reason of such insertions but not otherwise, be exercised by the Local Government under that Act if so altered, may also be exercised by the Governor General in

Council ; and for the purpose of *the exercise by the Governor General in Council of such powers*, the Act shall be interpreted as if references to the Local Government were references to the Governor General in Council and as if to sub-section (1) of section 23 the following proviso were added, namely :—

“ *Provided that an application under this section against an order made by the Governor General in Council under any of the sections therein specified except section 19 shall lie to the High Court for the local area in which any security required under this Act from the printing press or newspaper concerned was deposited or to be deposited.*”

4. (1) When a District Magistrate or in a Presidency-town the Chief Presidency Magistrate is of opinion that *within his jurisdiction attempts are being made to promote assemblies of persons for the purpose of proceeding from British India into the territory of a State in India and that the entry of such persons into the said territory or their presence therein is likely or will tend to cause obstruction to the Administration of the said State or danger to human life or safety or a disturbance of the public tranquillity or a riot or an affray within the said territory*, he may, by order in writing stating the material facts of the case, prohibit within the area specified in the order the assembly of five or more persons in furtherance of the said purpose.

(2) When an order under sub-section (1) has been made, and for so long as it remains in force, any assembly of five or more persons held in contravention of the order shall be an unlawful assembly within the meaning of section 141 of the Indian Penal Code, and the provisions of Chapter VIII of the Indian Penal Code and of Chapter IX of the Code of Criminal Procedure, 1898, shall apply accordingly.

(3) An order under sub-section (1) shall be notified by proclamation, published in the specified area in such places and in such manner as the Magistrate may think fit, and a copy of such order shall be forwarded to the Local Government.

(4) No order under sub-section (1) shall remain in force for more than two months from the making thereof, unless the Local Government, by notification in the local official Gazette, otherwise directs.

5. (1) Where, in the opinion of a District Magistrate or in a Presidency-town the Chief Presidency Magistrate, there is sufficient ground for proceeding under this

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

(2) An order under sub-section (1) may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex parte*.

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(3) An order under sub-section (1) may be directed to a particular individual, or to the public generally.

(4) A District Magistrate or Presidency Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under sub-section (1) by himself or by his predecessor in office.

(5) Where such an application is received, the Magistrate shall afford to the applicant an early opportunity of appearing before him either in person or by pleader and showing cause against the order; and if the Magistrate rejects the application wholly or in part, he shall record in writing his reasons for so doing.

(6) No order under sub-section (1) shall remain in force for more than two months from the making thereof unless the Local Government, by notification in the local official Gazette, otherwise directs.

6. (1) Whoever *witfully* disobeys or neglects to comply with any direction contained in an order made under sub-section (1) of section 5, or in such order as altered under sub-section (4) of that section, shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

(2) An offence under this section shall be an offence for which a police-officer may arrest without warrant.

GOVERNMENT OF INDIA.
LEGISLATIVE ASSEMBLY
DEPARTMENT.

Report of the Select Committee on the
Bill to protect the Administrations of
States in India which are under the
suzerainty of His Majesty from
activities which tend to subvert, or to
excite disaffection towards, or to
interfere with such Administrations,
with the Bill as amended.