

1921.

GOVERNMENT OF INDIA.
HOME DEPARTMENT.

POLITICAL—A.

Proceedings, May 1921, no. 258 & K.-W.

Proposed Resolution by Mr. Padamji Pestonji Ginwala as to the procedure in promulgating martial law.

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PREVIOUS REFERENCES.

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Political A., May 1921, nos. 211-224. (Confidential).
Political A., September 1920, nos. 109-110. (Confidential).
Political Dep., (Print) July 1920, no. 75. (Confidential).
Political A., August 1919, nos. 436-446. (Confidential).
Political A., June 1919, nos. 22-31. (Confidential).
Political A., May 1919, no. 266.

LATER REFERENCES.

NOTES.

POLITICAL—A., MAY 1921.

No. 258 & K.-W.

PROPOSED RESOLUTION BY MR. PADAMJI PESTONJI GINWALA AS TO THE PROCEDURE IN PROMULGATING MARTIAL LAW.

RESOLUTION BY MR. P. P. GINWALA, NO. 22, DATED THE 17TH FEBRUARY 1921.

Pro. no. 258.

This resolution contains three parts: the first refers to the procedure for declaring martial law, the second to rules for the guidance of officers called upon to administer martial law and the third to publication of the situation under martial law from time to time.

As regards the first point, it has been decided that the next time martial law becomes necessary, it should be promulgated by Ordinance* under the powers conferred by section 72 of the Government of India Act. The papers relating to the draft which has been prepared are put up. Deputy Secretary's note of the 8th July 1920 shows why it is not proposed to resort again to the use of the Bengal Regulation of 1804.

*The Secretary of State knows that we contemplate an Ordinance, *vide* his despatch of 23rd September 1920, in Political A., May 1921, nos. 225-226.

Political A., May 1921, nos. 211—224.

resort again to the use of the Bengal Regulation of 1804.

The Ordinance which has been drafted, declares martial law in a single section. It was indeed not necessary for such a declaration to be contained in the Ordinance, because martial law may be proclaimed in virtue of the inherent authority of Government, *vide* Hon'ble Member's note of 9th July 1920. The point was, however, left to Legislative Department to decide and they put in the declaration in clause 2 of the draft Ordinance. The rest of the Ordinance deals with the authority required for various martial law regulations and prescribe the procedure for the trial of offences. It is thus intended to mitigate the operation of martial law by the military authorities. The question of getting the Indian Legislature to pass an Act on the lines of such an Ordinance has not been discussed, nor has it yet been anywhere suggested that if an Ordinance is passed an extraordinary session of the Indian Legislature should be called to ratify it and replace it by an Act. The proposed resolution is, therefore novel and aims at reducing the power conferred on the Governor General in Council under section 72 of the Government of India Act.

Political A., May 1921, nos. 211—224.

Political A., May 1921, nos. 225-226.

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The next point, regarding the prescription of rules for the guidance of officers, has already

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to a recent question in Council.

The third point may perhaps be accepted as a general proposition; but local Governments will have to be allowed to exercise their own discretion with reference to circumstances that cannot be forecasted.

E. H. F.,—21-2-21.

Please see my note on the file above. It is very doubtful whether the Resolution will ever come off. But in case it does, it is suggested that the line to take should be that the Bengal State Regulation of 1804 is not likely to be employed again for the purpose. The Government of India, however, cannot admit that the promulgation of martial law requires the assent of the Legislature or that an extraordinary meeting of the Legislature should be summoned in order to confirm an act of the Governor General in Council, the authority for which is granted to him by the Government of India Act though, of course, the matter may be subsequently ventilated in the Assembly. The distinction between the actual power of Government to promulgate martial law and the method of administration may be pointed out, and in regard to the 3rd clause of the Resolution, it may be mentioned that instructions have actually been framed for the guidance of the Civil and Military Officers who would be concerned but for obvious reasons these instructions are confidential and cannot be published for general information, nor in a matter of executive instructions of this nature is it the function of the Legislature to interfere.

In regard to the 4th clause of the Resolution, Government may give a guarantee that they will bring this suggestion to the favourable notice of the local Governments.

C. W. GWYNNE,—21-2-21.

This is now down for the 26th. Along with the above note may be read my note on the Poll. A., April 1921, nos. 411—414. linked file.

C. W. GWYNNE,—22-3-21.

(MR. GINWALLA'S RESOLUTION DID NOT COME UP FOR DEBATE.)

Exd. by—P.B.B.

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NATIONAL ARCHIVES OF INDIA

PROCEEDINGS OF THE
HOME DEPARTMENT, MAY 1921.

Proposed Resolution by Mr. Padamji Pestonji Ginwala as to the procedure in promulgating Martial-Law. [Pro. no. 258.]

PROPOSED RESOLUTION BY MR. PADAMJI PESTONJI GINWALA AS TO THE PROCEDURE
IN PROMULGATING MARTIAL LAW.

Pro. no. 258.

Serial no.	By whom.	Resolution.	Date of meeting.	REMARKS.
22	Mr. Padamji Pestonji Ginwala.	<p>This Assembly recommends to the Governor General in Council that if in the future unfortunate conditions arise which necessitate the promulgation of martial law in any part of British India, the following procedure as far as practicable may be observed in its promulgation, viz:—</p> <ol style="list-style-type: none"> (1) If the Indian Legislature is in session at the time, martial law be promulgated under an Act of that Legislature and not under Bengal State Regulation, 1804, or by Ordinances made under section 72 of the Government of India Act. (2) If the said Legislature is not in session at the time it may be promulgated either under the said Regulation or by Ordinance, but steps be taken to summon an extraordinary meeting of the said Legislature as soon as practicable after its promulgation and any Ordinances previously made may be suspended by an Act of the said Legislature. (3) Rules for the guidance of martial law officers with proper sanction attached to their non-observance be made and laid before the said Legislature for consideration. (4) When martial law is promulgated at the instance of a local Government, such Government may be advised to explain from time to time to the Provincial Legislature the situation of the area in which it is being administered. 	5th March 1921.	Notice received on 17th February 1921. Not yet admitted by the President.

Exd. by—P.B.B.

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