



CONSTITUENT ASSEMBLY DEBATES

Book-1

Volume I - 9th to 23rd December 1946

Volume II - 20th to 25th January 1947

Volume II - 28th April to 2nd May 1947

Volume IV - 14th July to 31st July 1947

Volume V - 14th August to 30th August 1947

Volume VI - 27th January 1948

OFFICIAL REPORT

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PREFACE

The Constitution of India was adopted by the Constituent Assembly on 26th November, 1949 and formally signed by the Members of the Assembly on 24th January, 1950. The Constitution came into force on 26th January, 1950 when free India declared itself a Republic. A period of sixty years has gone by since the Constitution came into force. During this period, it worked well and met the needs of an evolving polity. We marvel at the vision, farsightedness and wisdom of the great men who created this dynamic document.

The Constituent Assembly of India first met on the 9th December, 1946 and continued till 24th January, 1950. The historic task of drafting the Constitution of Independent India was undertaken in the Constitution Hall, now known as the Central Hall of Parliament House. After the Constitution of India came into force on 26th January, 1950, the Assembly ceased to exist, transforming itself into the Provisional Parliament of India until a new Parliament was constituted in 1952.

The Constituent Assembly Debates for the period December 9, 1946 to January 24, 1950 were first printed in 1950. The debates were reprinted by the Lok Sabha Secretariat in 1966, 1989, 1999, 2003 and 2009. The complete set of Debates consists of five books with an Index. There is a constant demand for these Debates from parliamentarians, research scholars and others. This has prompted us to bring out this next reprint.

To make this new reprint more useful and easier to consult, a tabular statement showing the Articles of the Constitution of India with corresponding clauses in the draft Constitution together with dates on which the respective Articles were discussed and approved has been added. It finds place in the beginning of the first book. This would enable the readers to locate the debates on various Articles with greater facility. Also, a rare group photograph of Members of Constituent Assembly of India and signatures of the Members of the Constituent Assembly reproduced from the calligraphed copy of the Constitution of India have been included for the first time in the first book.

It is hoped that this publication will be found informative and useful by all parliamentarians, research scholars, political scientists, lawyers and other readers.

NEW DELHI;
May, 2014
Vaisakha, 1936 (Saka)

P. SREEDHARAN,
Secretary-General
Lok Sabha

CONSTITUENT ASSEMBLY OF INDIA

President:

THE HON'BLE DR. RAJENDRA PRASAD.

Temporary Chairman:

DR. SACHCHIDANAND SINHA.

Constitutional Adviser:

SIR B.N. RAU, C.I.E.

Secretary:

SHRI H.V.R. IENGAR, C.I.E., I.C.S.

Deputy Secretary:

MR. B.F.H.B. TYABJI, I.C.S.

Under Secretary:

KHAN BAHADUR S.G. HASNAIN.

Assistant Secretary:

MR. K.V. PADMANABHAN.

Marshal:

SUBEDAR MAJOR HARBANS LAL JAIDKA.

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OF CONSTITUTION OF INDIA**

WITH

**CORRESPONDING CLAUSES IN
DRAFT CONSTITUTION**

AND

**DATES ON WHICH DISCUSSED
AND APPROVED**

ARTICLES OF THE CONSTITUTION OF INDIA

Article in Consti- tution of India	Corresponding clause in the draft Constitution	Dates on which discussed and approved
1	2	3
1	1	} 15th November 1948, 17th November, 1948. } 17th September, 1949, 18th September, 1949.
2	2	
3	3	} 17th and 18th November, 1948. } 13th October, 1949.
4	4	
5	5	10th August, 1949, 11th August, 1949 and 17th August, 1949.
6	5A	10th, 11th and 12th August, 1949.
7	5AA	10th, 11th and 12th August, 1949.
8	5B	10th, 11th and 12th August, 1949.
9 (New)		29th November, 1949.
10	5C	10th, 11th and 12th August, 1949.
11	6	10th, 11th and 12th August, 1949.
12	7	25th November, 1948.
13	8	25th, 26th and 29th November, 1948.
14 (New)		29th November, 1948.
15	9	29th November, 1948.
16	10	30th November, 1948.
17	11	29th November, 1948.
18	12	30th November, 1948 and 10th December, 1948.
19	13	1st and 2nd December, 1948. 16th October, 1949 and 17th October, 1949.
20	14	2nd, 3rd and 6th December, 1948.
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54	43	10th and 13th December, 1948.
55	44	13th December, 1948.
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252	229	13th June, 1949.
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254	231	13th June, 1949.
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270	251	5th August, 1949.
271	252	5th August, 1949.
272	253	5th August, 1949 and 8th August, 1949.
273	254	8th August, 1949.
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276	256	9th August, 1949.
277	257	9th August, 1949.
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279	259	9th August, 1949.
280	260	9th August, 1949 and 10th August, 1949.
281	261	10th August, 1949.
282	262	10th August, 1949.
283	263	10th August, 1949, 9th September, 1949 and 13th October, 1949.
284	263A	9th September, 1949.
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286	264A	16th October, 1949.
287	265	9th September, 1949.
288	265A	9th September, 1949.
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294	270	15th June, 1949 and 13th October, 1949.
295	270A	13th October, 1949.
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297	271A	15th June, 1949.
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325	289A	16th June, 1949.
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327	290	16th June, 1949.
328	291	16th June, 1949.
329	291A	16th June, 1949.
330	292	23rd and 24th August, 1949.
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332	294	24th August, 1949.
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345	301C	12th September, 1949, 13th September, 1949 and 14th September, 1949.
346	301D	12th September, 1949, 13th September, 1949 and 14th September, 1949.
347	301E	12th September, 1949, 13th September, 1949 and 14th September, 1949.
348	301F	12th September, 1949, 13th September, 1949 and 14th September, 1949.
349	301G	12th September, 1949, 13th September, 1949 and 14th September, 1949.
350	301H	12th September, 1949, 13th September, 1949 and 14th September, 1949.
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360	280A	16th October, 1949.
361	302	8th September, 1949.

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363	302AA	16th October, 1949.
364	302AAA	17th October, 1949.
365 (New)		
366	303(1)	16th September, 1949, 17th September, 1949 and 14th October, 1949.
367	303(2 & 3)	Do.
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371	306B	13th October, 1949.
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382	312	7th October, 1949.
383	312A	7th October, 1949.
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385	312C	7th October, 1949.
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388	312F	4th October, 1949, 7th October, 1949 and 11th October, 1949.
389	312G	7th October, 1949.
390	312H	7th October, 1949.
391(New)		
392	313	7th October, 1949.
393	313A	17th October, 1949.
394	314	17th October, 1949.
395	315	17th October, 1949.

Schedule	Date
1	14th October, 1949 and 15th October, 1949.
2	11th October, 1949 and 12th October, 1949.
3	26th August, 1949 and 16th October, 1949.
4 (Schedule III-A).....	17th October, 1949.
5	5th September, 1949.
5 (Part D)	5th September, 1949.
6	5th September, 6th September and 7th September, 1949.
	Para 1, 5th September, 1949, Paras 2—15, 6th September, 1949 and Paras. 16—20, 7th September, 1949.
7	26th August, 1949, 29th August, 1949, 30th August, 1949, 31st August, 1949, 1st September, 1949, 2nd September, 1949, 3rd September, 1949, 9th September, 1949, 13th October, 1949 and 17th October, 1949.
8 (Schedule VII-A)	14th September, 1949.

CONSTITUENT ASSEMBLY OF INDIA

Monday, the 9th December 1946

The first meeting of the Constituent Assembly of India took place in Constitution Hall, New Delhi, on Monday, the 9th December 1946, at Eleven of the Clock.

ELECTION OF TEMPORARY CHAIRMAN

Acharya J.B. Kripalani (United Provinces: General): (in requesting Dr. Sachchidananda Sinha to take the Chair as temporary Chairman, said)—

*[Friends, at this auspicious occasion of historical importance I invite, on your behalf, Dr. Sachchidananda Sinha to be the temporary Chairman of this Assembly. Dr. Sinha needs no introduction. You all know him. He is not only the oldest among us but also the oldest parliamentarian in India, having served, as you know, as a member of the Imperial Legislative Council from 1910 to 1920. He entered the Central Legislative Assembly in 1921 not only as one of its members, but its Deputy President also. He was then entrusted with the portfolio of an Executive Councillor and Finance Member of the Government of Bihar and Orissa. So far as I remember Dr. Sinha was the first Indian who was ever appointed as a Finance Member of a Province. He has a particular taste for education having been Vice-Chancellor of the Patna University for eight years. Over and above all this, Dr. Sinha is the oldest Congressman among us. Up till 1920 he was a member of the Congress, being at one time its Secretary.

After the year 1920 when we started on a new way to gain freedom he parted company with us. He, however, never wholly left us. He has always been helping us. He never joined any other organization and his sympathies were ever with us. Such a person is entitled to be the temporary Chairman of this Assembly. His work is brief but it is all the same most important. It is inaugurating the proceeding of this House. As we begin every work with Divine blessings we request Dr. Sinha to invoke these blessings so that our work may proceed smoothly. Now, I once more, on your behalf, call upon Dr. Sinha to take the Chair.]

(Acharya J.B. Kripalani then conducted Dr. Sachchidananda Sinha to the Chair, which he then occupied amidst acclamation.)

MESSAGES OF GOODWILL

The Chairman (Dr. Sachchidananda Sinha): Hon'ble Members, I shall read out to you this morning three messages which have been received by me from responsible State Officials of America, China and the Government of Australia. The American Charge d'Affaires writes:

"My dear Dr. Sinha,

It gives me great pleasure to transmit herewith a copy of a telegram I have just received from the Honourable Dean Acheson, the Acting Secretary of State of the United States.

The telegram received is as follows:

'From the Acting Secretary of State,
Washington, D.C.

Dr. Sachchidananda Sinha,

Provisional Chairman of the Constituent Assembly,
New Delhi.

With the approach of December 9, I extend to you as Provisional Chairman of the Constituent Assembly, and through you to the Indian people,

*[] English translation of Hindustani speech.

the sincere good wishes of the United States Government and of the people of the United States for a successful conclusion of the great task you are about to undertake. India has a great contribution to make to the peace, stability, and cultural advancement of mankind, and your deliberations will be watched with deep interest and hope by freedom loving people throughout the entire world.'” (*Cheers*).

The next message is from the Embassy of the Republic of China—
“New Delhi.

Dr. Sachchidananda Sinha Provisional Chairman Constituent Assembly: ‘On the auspicious occasion of the opening of the Indian Constituent Assembly I have the honour to extend to Your Excellency in the name of the National Government of China my heartiest congratulations. I sincerely hope that your great Assembly will succeed in laying a solid foundation for a democratic and prosperous India.

WANG SHIH CHIEH,
Minister of Foreign Affairs of the Republic of China.’ ”
(*Cheers*)

The third and last message I have to read out to this Assembly is one from the Australian Government to the Members of the Indian Constituent Assembly.

“Australia has watched with keen interest and sympathy the course of events which have given the people of India their rightful place in the community of nations. The Australian Government, therefore, greets the opening of the Constituent Assembly as an outward sign of a new era for India and offers the delegates of the Constituent Assembly their best wishes for success in their task.” (*Cheers*).

I am sure the House will authorize me and permit me to convey its thanks to the representatives of these Governments who have sent us such cheering and inspiring messages. I may further add that this is a every auspicious sign for the success of your work. (*Cheers*).

ELECTION PETITION FROM KHAN ABDUS SAMAD KHAN OF BRITISH BALUCHISTAN

The Chairman: The next thing which I have to bring to the notice of the House is that I have received an election petition from Khan Abdus Samad Khan of British Baluchistan challenging the validity of the election of Nawab Mohammad Khan Jogazai as a member of the Constituent Assembly representing British Baluchistan. The House will doubtless look into this matter, in due course, after the election of the permanent Chairman. But my ruling at this stage is that the gentleman declared elected will continue to be regarded as a Member of this House until the matter is disposed of, at a later stage, by the House, after the election of the permanent Chairman.

The next item on the agenda is the provisional Chairman’s inaugural address. I will do my best to read out the whole of the address, but if I feel the strain too much, you will kindly permit me to hand over the typescript to Sir B.N. Rau, who has very kindly undertaken to read it for me. But I hope there will be no occasion for it.

CHAIRMAN’S INAUGURAL ADDRESS

HON’BLE MEMBERS OF THE FIRST INDIAN CONSTITUENT ASSEMBLY:

I am deeply beholden to you for your having agreed to accept me as the first President of your Constituent Assembly, which will enable me to

assist you in transacting the preliminary business before the House—such as the election of a permanent President, the framing of the Rules of Business, the appointment of various Committees, and settling the question of giving Publicity to, or keeping confidential, your proceedings—which will ultimately lead you to crown your labours by formulating a suitable and stable constitution for an Independent India. In expressing my sense of appreciation of your great kindness, I cannot conceal from myself that I feel—comparing small things with great—that I am, on the present occasion in the position in which Lord Palmerston found himself when Queen Victoria offered him the highest Order of Chivalry, namely, the Knighthood of the Garter. In accepting the Queen's offer, Lord Palmerston wrote to a friend as follows:—

“I have gratefully accepted Her Majesty's gracious offer as, thank God, there is no question of any damned merit about the honour conferred on me.”

I say I find myself more or less in the same position, for you have agreed to accept me as your President on the sole ground that I am, in age, the senior-most member of this Assembly. Whatever the ground, however, on which you have chosen to have me as your first President, I am nonetheless profoundly grateful to you. I have had, in my fairly long life, several honours conferred on me in recognition of my services as a humble worker in public interest, but I assure you that I regard your mark of favour as a signal honour, which I shall cherish throughout the rest of my life.

On this historic and memorable occasion, you will not grudge, I am sure, if I venture to address to you some observations on certain aspects of what is called a Constituent Assembly. This political method of devising a constitution for a country has not been known to our fellow-subjects in Britain, for the simple reason, that under the British Constitution, there is no such thing as a constituent law, it being a cherished privilege of the British Parliament, as the sole sovereign authority, to make and unmake all laws, including the constitutional law of the country. As such, we have to look to countries other than Britain to be able to form a correct estimate of the position of a Constituent Assembly. In Europe, the oldest Republic, that of Switzerland, has not had a Constituent Law, in the ordinary sense of that term, for it came into existence, on a much smaller scale than it now exists, due to historic causes and accidents, several centuries back. Nevertheless, the present constitutional system of Switzerland has several notable and instructive features, which have strongly been recommended by qualified authorities to Indian constitution-makers, and I have no doubt that this great Assembly will study carefully the Swiss Constitution, and try to utilise it to the best advantage in the interest of preparing a suitable constitution for a free and independent India.

The only other State in Europe, to the constitution of which we could turn with some advantage, is that of France, the first Constituent Assembly of which (called “The French National Assembly” was convoked in 1789, after the French Revolution had succeeded in over-throwing the French monarchy. But the French Republican system of Government had been changed since then, from time to time, and is even now, more or less, in the melting pot. Though, therefore, you may not be able to derive as much advantage from a study of the French system of constituent law as that of the Swiss, that is no reason why you should not seek to derive what advantage you can in the preparation of the task before you, by a study of it.

As a matter of fact, the French constitution-makers, who met in 1789 at the first Constituent Assembly of their country, were themselves largely influenced by the work done but a couple of years earlier in 1787, by the

historic Constitutional Convention held at Philadelphia by the American constitution-makers, for their country. Having thrown off their allegiance to the British King in Parliament, they met and drew up what had been regarded, and justly so, as the soundest, and most practical and workable republican constitution in existence. It is this great constitution, which had been naturally taken as the model for all subsequent constitutions not only of France, but also of the self-governing Dominions of the British Commonwealth, like Canada, Australia, and South Africa; and I have no doubt that you will also, in the nature of things, pay in the course of your work, greater attention to the provisions of the American Constitution than to those of any other.

I have referred above to the self-governing constitutions of the great Dominions of the British Commonwealth being based on, to a large extent, if not actually derived, from, the American constitutional system. The first to benefit by the American system was Canada, the historic Convention of which country, for drawing up a self-governing constitution, met in 1864, at Quebec. This Convention drew up the Canadian Constitution, which was subsequently embodied in what is still on the Statute Book as the British North American Act, passed by the British Parliament in 1867. You may be interested to hear that the Quebec Convention consisted of only 33 delegates from all the provinces of Canada, and that Convention of 33 representatives issued as many as 74 resolutions, which were afterwards duly incorporated in toto in the British North American Act, under the provisions of which the first self-governing Dominion of the British Commonwealth of Canada, came into existence, in 1867. The British Parliament accepted the Canadian Convention's scheme in its entirety, except for making only one drafting amendment. I hope and pray, Hon'ble Members, that your labours may be crowned with a similar success.

The American constitutional system was more or less adopted in the schemes prepared for framing the Constitutions of Australia and South Africa, which shows that the results achieved by the American Convention held at Philadelphia in 1787, had been accepted by the world as a model for framing independent federal constitutions for various countries. It is for these reasons that I have felt justified in inviting your attention to the American system of constituent and constitutional law as one—which should be carefully studied by you—not necessarily for wholesale adoption, but for the judicious adaptation of its provisions to the necessities and requirements of your own country, with such modifications as may be necessary or essential owing to the peculiar conditions of our social, economic and political life. I have done so as according to Munro—a standard authority on the subject—the American Constitution is based on “a series of agreements as well as a series of compromises”. I may venture to add, as a result of my long experience of public life for now nearly half a century, that reasonable agreements and judicious compromises are nowhere more called for than in framing a constitution for a country like India.

In commending to you for your careful consideration and acceptance, with reasonable agreements and judicious compromises, the fundamental principles of the American system, I cannot do better than quote the striking observations on the subject of the greatest British authority namely Viscount Bryce, who in his monumental work, called “The American Commonwealth”, writes as follows, putting in a very few lines the substance of the fundamental principles of the American Constitution:—

“Its central or national- is not a mere league for it does not wholly depend on the component communities which we call the States. It is itself a Commonwealth, as well as a union of Commonwealths, because it claims directly the obedience of every citizen, and acts immediately upon him through its courts and executive

officers. Still less are the minor communities, the States, mere sub-divisions of the Union, mere creatures of the National Government, like the counties of England, or the Departments of France. They have over their citizens an authority which is their own, and not delegated by the Central Government."

It may possibly be that in some such scheme, skillfully adapted to our own requirements, a satisfactory solution may be found for a constitution for an Independent India, which may satisfy the reasonable expectations and legitimate aspirations of almost all the leading political parties in the country. Having quoted the greatest British authority on the great, inherent, merits of the American Constitution, you will, I hope, bear with me a fairly long quotation from the greatest American Jurist, Joseph Story. In concluding his celebrated book, called "Commentaries on the Constitution of the United State", he made certain striking and inspiring observations which I present to you as worthy of your attention. Said Story:—

"Let the American youth never forget, that they possess (in their Constitution) a noble inheritance, bought by the toils, and sufferings, and blood of their ancestors; and capable, if wisely improved, and faithfully-guarded, of transmitting to their latest posterity all the substantial blessings of life, the peaceful enjoyment of liberty, property, religion, and independence. The structure has been erected by architects of consummate skill and fidelity; its foundations are solid; its compartments are beautiful, as well as useful; its arrangements are full of wisdom and order; and its defences are impregnable from without. It has been reared for immortality if the work of man may justly aspire to such a title. It may, nevertheless, perish in an hour by the folly, or corruption, or negligence of its only keepers, THE PEOPLE. Republics are created—*these are the words which I commend to you for your consideration*—by the virtue, public spirit, and intelligence of the citizens. They fall, when the wise are banished from the public councils, because they dare to be honest, and the profligate are rewarded, because they flatter the people, in order to betray them."

To quote yet one more leading authority on the almost ideal Constitution of America, James (at one time Solicitor-General of the United States) says in his highly instructive book, called, "The Constitution of the United States—Yesterday, Today, and Tomorrow"—

"Constitutions, as a governmental panacea, have come and gone; but it can be said of the American Constitution, paraphrasing the noble tribute of Dr. Johnson to the immortal fame of Shakespeare, that the stream of time which has washed away the dissoluble fabric of many other paper constitutions, has left almost untouched its adamantine strength. Excepting the first ten amendments, which were virtually a part of the original charter, only nine others have been adopted in more than one hundred and thirty years. What other form of government has better stood the test of time?"

Hon'ble Members, my prayer is that the Constitution that you are going to plan may similarly be reared for 'Immortality', if the work of man may justly aspire to such a title, and it may be a structure of 'adamantine strength, which will outlast and overcome all present and future destructive forces.

Having invited your attention to some aspects of the question of constitution-making in Europe and America, I may now profitably turn to some aspects of the question in our own country. The first definite reference to a Constituent Assembly (though not under those words or under that particular name) I have found in a statement of Mahatma Gandhi, made so far back as 1922. Mahatmaji wrote:—

"Swaraj will not be a free gift of the British Parliament. It will be a declaration of India's full self-expression, expressed through an Act of Parliament. But it will be merely a courteous ratification of the declared wish of the people of India. The ratification will be a treaty to which Britain will be a party. The British Parliament, when the settlement comes, will ratify the wishes of the people of India as expressed through the freely chosen representatives."

The demand made by Mahatma Gandhi for a Constituent Assembly, composed of the "freely chosen representatives" of the people of India, was affirmed, from time to time, by various public bodies and political leaders, but it was not till May, 1934, that the Swaraj Party, which was then formed at Ranchi (in Bihar), formulated a scheme in which the following resolution was included:—

"This Conference claims for India the right of self-determination, and the only method of applying that principle is to convene a Constituent Assembly, representative of all sections of the Indian people, to frame an acceptable constitution."

The policy embodied in this resolution was approved by the All-India Congress Committee, which met at Patna—the capital of Bihar—a few days later, in May, 1934; and it was thus that the scheme of a Constituent Assembly for framing the Indian Constitution was officially adopted by the Indian National Congress.

The above resolution was confirmed at the session of the Congress held at Faizpur in December 1936. The confirming resolution declared that—

"The Congress stands for a genuine democratic State in India where political power has been transferred to the people, as a whole, and the Government is under their effective control. Such a State can only come into existence through a Constituent Assembly having the power to determine finally the constitution of the country."

In November, 1939, the Congress Working Committee adopted a resolution which declared that—

"Recognition of India's independence and the right of her people to frame their constitution through a Constituent Assembly is essential."

I may add that in the resolutions from which I have quoted above (those adopted at the Congress Working Committee of November 1939, and at the Faizpur session of the Congress of 1936) it was declared that the Constituent Assembly should be elected on the basis of adult suffrage. Since the Congress gave a lead on the subject in 1934, the idea of a Constituent Assembly had come to prevail largely as an article of faith in almost all the politically-minded classes in the country.

But until the adoption of the resolution on Pakistan, in March 1940, by the Muslim League, that political organization had not favoured the idea of a Constituent Assembly as a proper and suitable method for framing a constitution for this country. After the adoption of that resolution, however, the attitude of the Muslim League seems to have undergone a change in favour of the idea of a Constituent Assembly—one for the areas claimed by the League for a separate Muslim State, and the other for the rest of India. Thus it may be stated that the idea of a Constituent Assembly, as the only direct means for the framing of a constitution in this country, came to be entertained and accepted by the two major political parties in 1940, with this difference that while the Congress desired one Constituent Assembly for India, as a whole, the Muslim League wanted two Constituent Assemblies, in accordance with its demand for two separate States in the country. Any way, whether one or two, the idea of a Constituent Assembly being the proper method for the framing of a constitution had clearly dawned by that time on public consciousness in the country, and it was with reference to that great mental upheaval that Pandit Jawaharlal Nehru declared that "it means a nation on the move, fashioning for itself a new Government of its own making, through their elected representatives".

It remains to add that the conception of a Constituent Assembly as the most appropriate method for framing the Constitution of India had also found favour with the members of the Sapru Committee in the report of

which, issued last year (1945), is formulated a definite scheme for the composition of a Constituent Assembly. We are meeting, however in this Assembly today, under the scheme propounded by the British Cabinet Mission, which, though differing from the suggestions made on the subject by the Congress, the League, and other political organizations, had devised a scheme which, though not by all, had been accepted by many political parties, and also by large sections of the politically-minded classes in the country, but also by those not belonging to any political party, as one well worth giving a trial, with a view to end the political deadlock, which had obtained for now many years past, and frustrated our aims and aspirations. I have no desire to go further into the merits of the British Cabinet Mission's scheme as that might lead me to trespass on controversial ground, which I have no desire to traverse on the present occasion. I am aware that some parts of the scheme, propounded by the British Cabinet Mission, have been the subject of acute controversies between some of the political parties amongst us, and I do not want, therefore, to rush in where even political angles might well fear to tread.

Hon'ble Members, I fear I have trespassed long on your patience, and should now bring my remarks to a close. My only justification for having detained you so long is the uniqueness of this great and memorable occasion in the history of India, the enthusiasm with which this Constituent Assembly had been welcomed by large classes of people in this country, the keen interest which matters relating to it had evoked amongst various communities, and the prospect which it holds out for the final settlement of the problem of all problems, and the issue of all issues, namely, the political independence of India, and her economic freedom. I wish your labours success, and invoke Divine blessings that your proceedings may be marked not only by good sense, public spirit, and genuine patriotism, but also by wisdom, toleration, justice, and fairness to all; and above all with a vision which may restore India to her pristine glory, and give her a place of honour and equality amongst the great nations of the world. Let us not forget to justify the pride of the great Indian poet, Iqbal, and his faith in the immortality of the destiny of our great, historic, and ancient country, when he summed up in these beautiful lines:

*Yunan-o-Misr-o-Roma sab mit gaye jahan se,
Baqi abhi talak hai nam-o-nishan hamara.
Kuch bat hai ke hasti mit-ti nahin hamari,
Sadion raha hai dushman daur-e-zaman hamara.*

It means: "Greece, Egypt, and Rome, have all disappeared from the surface of the Earth; but the name and fame of India, our country, has survived the ravages of Time and the cataclysms of ages. Surely, surely, there is an eternal element in us which had frustrated all attempts at our obliteration, in spite of the fact that the heavens themselves had rolled and revolved for centuries, and centuries, in a spirit of hostility and enmity towards us." I particularly ask of you to bring to your task a broad and catholic vision, for as the Bible justly teaches us—

"Where there is no vision the people perish." (*Applause*).

NOMINATION OF DEPUTY CHAIRMAN

The Chairman (Dr. Sachchidananda Sinha): I have a proposal to make to you on purely personal grounds, and I hope you will kindly approve of it. For many years past, under medical advice, I have not been able to do any work in the afternoons, and I do not propose to sit after the luncheon recess. So for the time I am temporary Chairman, while the House is going on with the presentation of credentials and the signing of the register in the afternoon, I propose to request the House to give me the

assistance of a Deputy Chairman, and I propose that Mr. Frank Anthony be nominated by you. (*After a pause*). I declare the motion carried.

DEATH OF MR. PRASANNA DEB RAIKUT

The Chairman (Dr. Sachchidananda Sinha); Next, I am informed that a member of our Constituent Assembly, who had been duly elected, had passed away, Mr. Prasanna Deb Raikut from Bengal, and I desire on behalf of the Constituent Assembly to convey our condolence to his relations. I think I may take it as carried.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The Chairman (Dr. Sachchidananda Sinha): Now I think we shall start the formal business which is the presentation of credentials and the signing of the Register. I will present my credentials to myself. Though Hon'ble Members must pass through certain formalities, I have cut out from the procedure the coming of members to the platform to shake hands with the Chairman after signing the Register. We tested this matter yesterday, and found that it would take about a minute and a half, if not two minutes, if after signing his name each member were to ascend this platform by the circuitous route, and shake hands with the Chairman, and then return to this seat. So, I have thought that that formality may be dispensed with. The Secretary will now call out the names of Hon'ble Members, who will come up, present to him their credentials, sign the Register, and go back to their seats.

The following Members then presented their credentials and signed their names in the Register:—

MADRAS

1. The Hon'ble Sri C. Rajagopalachariar.
2. Dr. B. Pattabhi Sitaramayya.
3. The Hon'ble Sri T. Prakasam.
4. The Hon'ble Dewan Bahadur Sir N. Gopaldaswami Ayyangar.
5. Diwan Bahadur Sir Alladi Krishnaswami Ayyar.
6. Shrimati Ammu Swaminathan, M.L.A. (Central).
7. Mr. S. H. Prater, O.B.E., J.P., C.M.Z.S., M.L.A. (Bombay).
8. Dr. P. Subbarayan.
9. Raja of Bobbili.
10. Sri M. Ananthasayanam Ayyangar, M.L.A. (Central).
11. Professor N. G. Ranga, M.L.A. (Central).
12. Sri T. A. Ramalingam Chettiyar, M.L.A. (Central).
13. Sri K. Kamaraja Nadar, M.L.A.
14. Sri K. Madhava Menon, M.L.C.
15. Sri B. Shiva Rao.
16. Sri K. Santhanam.

17. Sri T. T. Krishnamachari.
18. Sri B. Gopala Reddi, M.L.A.
19. Shrimati Dakshayani Velayudan, M.L.C. (Cochin).
20. Sri V. I. Muniswami Pillai, M.L.A.
21. Sri K. Chandramouli, M.L.A.
22. Sri D. Govinda Doss, M.L.A.
23. Rev. Jerome D'Souza, S.J.
24. Sri Ramanath Goenka.
25. Sri H. Sitarama Reddi, M.L.A.
26. Sri U. Srinivasa Mallayya.
27. Sri Kala Venkata Rao, M.L.A.
28. Sri P. Kunhiraman.
29. Shrimati G. Durgabai.
30. Sri P. Kakkan, M.L.A.
31. Sri N. Sanjeeva Reddi, M.L.A.
32. Sri O. P. Ramaswami Reddiyar, M.L.C.
33. Sri C. Perumalswami Reddi, M.L.C.
34. Sri M. C. Veerabahu Pillai.
35. Mr. T. J. M. Wilson, M.L.A.
36. Sri P. L. Narasimha Raju, M.L.A.
37. Sri S. Nagappa, M.L.A.
38. Sri L. Krishnaswami Bharathi.
39. Sri O. V. Alagesan.
40. Sri V. C. Kesava Rao.
41. Dr. V. Subrahmanyam.
42. Sri C. Subrahmanyam.
43. Sri V. Nadimuthu Pillai.

BOMBAY

1. The Hon'ble Sardar Vallabhbai J. Patel.
2. The Hon'ble Mr. B. G. Kher.
3. The Rt. Hon'ble Dr. M. R. Jayakar, P.C.
4. Mr. K. M. Munshi.
5. Mr. Shankar Dattatraya Deo.
6. Mr. Narhar Vishnu Gadgil.
7. Mr. S. K. Patil.
8. Mrs. Hansa Mehta, M.L.C.
9. Dr. Joseph Alban D'Souza, M.L.A.
10. Mr. M. R. Masani, M.L.A. (Central)
11. Mr. R. M. Nalavade. M.L.A.
12. Mr. B. M. Gupta, M.L.A.
13. Mr. S. Nijalingappa.

14. Mr. R. R. Diwakar.
15. Mr. S. N. Mane, M.L.A.
16. Mr. Khandubhai Kasanji Desai.
17. Mr. H. V. Pataskar, M.L.A.
18. Mr. Kanayalal Nanabhai Desai, M.L.A.
19. Mr. K. M. Jedhe.

BENGAL

1. Mr. Sarat Chandra Bose.
2. Dr. B. R. Ambedkar.
3. Mr. Kiran Shankar Roy, M.L.A.
4. Mr. Frank Reginald Anthony, M.L.A. (Central)
5. Mr. Satya Ranjan Baksi.
6. Dr. Prafulla Chandra Ghosh.
7. Sir Uday Chand Mahtab, K.C.I.E., M.L.A.
8. Dr. Suresh Chandra Banerjee, M.L.A.
9. Mr. Debi Prosad Khaitan, M.L.A.
10. Mrs. Leela Ray.
11. Mr. Damber Singh Gurung, M.L.A.
12. Dr. Syama Prasad Mookherjee, M.L.A.
13. Mr. Ashutosh Mallick, M.L.A.
14. Mr. Radhanath Das, M.L.A.
15. Mr. Promatha Ranjan Thakur, M.L.A.
16. Mr. Hem Chandra Nasker, M.L.A.
17. Mr. Somnath Lahiri.
18. Mr. Rajkumar Chakravarty.
19. Mr. Priyaranjan Sen.
20. Mr. Prafulla Chandra Sen.
21. Mr. J. C. Majumdar.
22. Mr. Surendra Mohan Ghose.
23. Mr. Arun Chandra Guha.
24. Mr. Dhananjoy Roy, M.L.A.
25. Mr. Dharendra Nath Datta, M.L.A.

UNITED PROVINCES

1. Acharya J. B. Kripalani.
2. The Hon'ble Pt. Govind Ballabh Pant.
3. The Hon'ble Shri Purushottam Das Tandon.
4. The Hon'ble Pt. Hirday Nath Kunzru.
5. Shri Govind Malaviya, M.L.A. (Central).
6. Pt. Shri Krishna Dutt Paliwal, M.L.A. (Central).
7. Shri Mohan Lal Saksena, M.L.A. (Central).
8. Acharya Jugal Kishore, M.L.A.
9. Mrs. Purnima Banerji, M.L.A.
10. Shri Sri Prakasa, M.L.A. (Central).

11. Shrimati Sucheta Kripalani.
12. Sardar Jogendra Singh, M.L.A. (Central)
13. Shri Damodar Swarup Seth, M.L.A. (Central).
14. Shri Algu Rai Shastri, M.L.A.
15. Shri Banshi Dhar Misra, M.L.A.
16. Shri Bhagwan Din, M.L.A.
17. Shri Kamapati Tiwari, M.L.A.
18. Shrimati Kamla Chaudhri.
19. Raja Jagannath Bakhsh Singh, M.L.A.
20. Shri Harihar Nath Shastri, M.L.A.
21. Shri Gopal Narain, M.L.A.
22. Shri Feroze Gandhi.
23. Shri Jaspat Roy Kapoor.
24. The Hon'ble Pt. Jawaharlal Nehru.
25. The Hon'ble Mr. Rafi Ahmad Kidwai.
26. Sir S. Radhakrishnan.
27. Shri Dayal Das Bhagat, M.L.A.
28. Shri A. Dharam Das, M.L.A.
29. Shri Gopi Nath Srivastava.
30. Shri Dharam Prakash.
31. Shri Ajit Prasad Jain, M.L.A.
32. Shri Ram Chandra Gupta, M.L.C.
33. Shri Pragi Lal, M.L.A.
34. Shri Phool Singh, M.L.A.
35. Shri Masuria Din, M.L.A.
36. Shri Shibban Lal Saksena.
37. Shri Khurshed Lal.
38. Shri Sunder Lall.
39. Shri Har Govind Pant, M.L.A.
40. Shri R. V. Dhulekar, M.L.A.
41. Shri Vishwambhar Dayal Tripathi, M.L.A.
42. Shri Venkatesh Narayan Tivary, M.L.A.

PUNJAB

1. Diwan Chaman Lall, M.L.A. (Central).
2. Sardar Harnam Singh.
3. Sardar Kartar Singh, M.L.A.
4. Sardar Ujjal Singh, M.L.A.
5. The Hon'ble Mr. Mehr Chand Khanna.
6. Sardar Pratap Singh, M.L.A.
7. Bakhshi Sir Tek Chand.
8. Sardar Prithvi Singh Azad, M.L.A.
9. Pandit Shri Ram Sharma, M.L.A.

10. Rao Bahadur Chaudhri Suraj Mal, M.L.A.
11. Dr. Gopi Chand Bhargava, M.L.A.
12. Chaudhri Harbhaj Ram, M.L.A.

BIHAR

1. The Hon'ble Dr. Rajendra Prasad.
2. Mrs. Sarojini Naidu.
3. The Hon'ble Mr. Jagjivan Ram.
4. The Hon'ble Mr. Shri Krishna Sinha.
5. Mr. Satyanarayan Sinha, M.L.A. (Central).
6. The Hon'ble Maharajadhiraja Sir Kameshwara Singh, K.C.I.E., of Darbhanga.
7. Dr. P. K. Sen.
8. The Hon'ble Mr. Anugrahnarayan Sinha.
9. Mr. Banarsi Prasad Jhunjhunwala, M.L.A. (Central).
10. The Hon'ble Rai Bahadur Sri Narain Mahtha.
11. Mr. Deshbandhu Gupta, M.L.A. (Central).
12. Mr. Ramnarayan Singh, M.L.A. (Central).
13. Mr. A. K. Ghosh, M.L.A.
14. Mr. Bhagwat Prasad, M.L.A.
15. Mr. Boniface Lakra, M.L.C.
16. Mr. Rameshwar Prasad Sinha, M.L.A.
17. Mr. Phulan Prasad Varma, M.L.A.
18. Mr. Mahesh Prasad Sinha, M.L.A.
19. Mr. Sarangdhar Sinha, M.L.A.
20. Rai Bahadur Syamanandan Sahaya, M.L.A., C.I.E.
21. Mr. Brajeshwar Prashad.
22. Mr. Jaipal Singh.
23. Mr. Chandrika Ram, M.L.C.
24. Mr. Kamleshwari Prasad Yadav, M.L.A.
25. Mr. Jagat Narain Lal, M.L.A.
26. Mr. Jadubans Sahay, M.L.A.
27. Mr. Guptanath Singh, M.L.A.
28. Mr. Dip Narayan Sinha, M.L.A.
29. Mr. Devendra Nath Samanta, M.L.C.
30. Dr. Sachchidananda Sinha, M.L.A.

C.P. AND BERAR

1. The Hon'ble Pt. Ravi Shankar Shukla.
2. Dr. Sir Hari Singh Gour.
3. The Hon'ble Mr. Brijlal Nandlal Biyani.
4. Mr. Rustom Khurshedji Sidhwa, M.L.A.
5. Seth Govinddas, M.L.A. (Central).

6. Thakur Chhedilal, M.L.A.
7. Mr. Hari Vishnu Kamath.
8. Mr. Cecil Edward Gibbon, M.L.A.
9. Mr. Shankar Tryambak Dharmadhikar.
10. Guru Agamdas Agarmandas, M.L.A.
11. Dr. Punjabrao Shamrao Deshmukh.
12. Mr. B. A. Mandloi, M.L.A.
13. Mr. H. J. Khandekar.
14. Mr. L. S. Bhatkar, M.L.A.

ASSAM

1. The Hon'ble Srijut Gopinath Bardoloi.
2. The Hon'ble Rev. J. J. M. Nichols-Roy.
3. Srijut Omeo Kumar Das, M.L.A.
4. The Hon'ble Srijut Basanta Kumar Das.
5. Srijut Dharanidhar Basu Matari, M.L.A.
6. Srijut Rohini Kumar Chaudhury, M.L.A. (Central).
7. Babu Akshay Kumar Das, M.L.A.

N.-W. F. PROVINCE

1. Maulana Abul Kalam Azad.
2. Khan Abdul Ghaffar Khan.

ORISSA

1. The Hon'ble Sri Hare-Krushna Mahtab.
2. Mrs. Malati Chowdhury.
3. Sri Biswanath Das.
4. Sri Bodhram Dube, M.L.A.
5. Sri Lakshminarayan Sahu, M.L.A.
6. Mr. B. Das.
7. Sri Nandakishore Das.
8. Sri Raj Krushna Bose, M.L.A.
9. Sri Santanu Kuram Das, M.L.A.

The Chairman (Dr. Sachchidananda Sinha): It has been brought to my notice that there is no Speaker in Sind as there is no legislature there now. Under the circumstances, the Secretary of the Assembly there, has signed the credentials certificates. They may be accepted.

SIND

1. Mr. Jairamdas Daulatram.

DELHI

1. The Hon'ble Mr. M. Asaf Ali.

AJMER-MERWARA

1. Pt. Mukut Bihari Lal Bhargava, M.L.A. (Central).

COORG

1. Mr. C. M. Poonacha, M.L.C.

The Chairman (Dr. Sachchidananda Sinha): If any Hon'ble Member's name has not been called through oversight, he will stand and his name will be called out. He will then come and sign his name in the Register.

(No one stood up.)

The Chairman (Dr. Sachchidananda Sinha): That finishes our agenda for today. Therefore, there will be no sitting in the afternoon. The Assembly will meet tomorrow. A new agenda will be prepared, which is not yet ready. I have asked the Constitutional Adviser's Office to circulate the agenda to Hon'ble Members, if possible by this evening, and I hope it may be done. If you so desire, the Assembly will meet at 11 A.M. or 11-30.

Many Hon'ble Members: 11 A.M.

The Chairman (Dr. Sachchidananda Sinha): We shall meet at 11.

The Assembly then adjourned till Tuesday, the 10th December 1946, at 11 A.M.

CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 10th December, 1946

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eleven of the Clock, the temporary Chairman (Dr. Sachchidananda Sinha) in the Chair.

The Chairman (Dr. Sachchidananda Sinha) : If any Hon'ble Member has arrived since yesterday afternoon, who has not yet signed the Register nor presented his credentials, he may do so now.

(Nobody came forward).

The Chairman (Dr. Sachchidananda Sinha): I shall now take up item No. 2 which is the moving of a Resolution prescribing procedure for the election of a permanent Chairman. I understand that Acharya Kripalani will move this resolution. I invite him to do so.

PROCEDURE FOR ELECTION OF PERMANENT CHAIRMAN

Acharya J. B. Kripalani (United Provinces : General): Sir, with your permission, I propose to move the following resolution prescribing the procedure for the election of the permanent Chairman whom we propose to call as the President of the Constituent Assembly. The resolution runs thus:

“The Assembly hereby resolves that the following rules for the election of Chairman be adopted.

- (1) At any time before 2-30 P.M., today any member may nominate another member for election by delivering to the temporary Chairman or to a person appointed by him a nomination paper signed by the proposer and by a third member as seconder and stating—
 - (a) the name of the member nominated, and
 - (b) that the proposer has ascertained that such member is willing to smallest number of votes shall be excluded from the election.
- (2) At any time to be the temporary Chairman, the temporary Chairman shall read out to the Assembly the names of the members who have been duly nominated together with those of their proposers and seconders and, if only one member has been so nominated, shall declare that member to be duly elected. If more than one member has been so nominated the Assembly shall proceed to elect the Chairman by ballot on a date to be fixed by the temporary Chairman.
- (3) For the purpose of rule (2) a member shall not be deemed to have been duly nominated or be entitled to vote, if he and his proposer and seconder have not signed the Assembly Register as members of the Assembly.
- (4) Where only two candidates are nominated, the candidate who obtains at the ballot the larger number of votes shall be declared elected. If they obtain an equal number of votes, the election shall be by the drawing of lots.

- (5) Where more than two candidates have been nominated and at the first ballot no candidate obtains more votes than the aggregate votes obtained by the other candidates, the candidate who has obtained the smallest number of votes shall be excluded from the election, and balloting shall proceed, the candidate obtaining the smallest number of vote, at each ballot being excluded from the election, until one candidate obtains more votes than the remaining candidate or than the aggregate votes of the remaining candidates, as the case may be, and such candidate shall be declared elected.
- (6) Where at any ballot any of three or more candidates obtain an equal number of votes and one of them has to be excluded from the election under rule (4) the determination as between the candidates whose votes are equal of the candidate who is to be excluded shall be by the drawing of lots."

This resolution for the procedure of election of the President needs no words from me to recommend itself to the House. These are the usual rules applied in all legislative assemblies.

The Hon'ble Pandit Jawahar Lal Nehru (United Provinces : General): I beg to second the resolution.

The Chairman (Dr. Sachchidananda Sinha): The resolution has been duly moved and seconded. I shall put it to the vote now.

Dr. P. S. Deshmukh (C. P. and Berar : General): Sir, may I suggest some verbal alterations?

The Chairman (Dr. Sachchidananda Sinha): The Hon'ble Member is fully entitled to make any suggestions he desires, and we shall consider them after they have been noted down. Will the Hon'ble Member come to the rostrum before making his suggestions?

Dr. P. S. Deshmukh (after having come to the rostrum) I suggest that in paragraph (1), line 4, the word "third" be substituted by the word "another", and that in paragraph 3, in the last but one line of that paragraph the word "and" in both places in that line be substituted by the word "or". I think these changes are, in my opinion, necessary.

The Chairman (Dr. Sachchidananda Sinha): Does, Acharya Kripalani accept these changes?

Acharya J. B. Kripalani: There is no objection.

Sri K. Santhanam (Madras : General) : It means that the seconder may mean a non-member.

The Chairman (Dr. Sachchidananda Sinha): I am not here to interpret it. Interpretation is a most dangerous thing. If the House will permit me. I shall read out the proposed amendments. The first amendment proposed is that in paragraph (1) for the word "third" the word "another" be substituted. Does Acharya Kripalani accept it?

Acharya J. B. Kripalani: So far as I am concerned I accept it; I have no objection.

The Chairman (Dr. Sachchidananda Sinha) : Is there any objection on the part of any Hon'ble Member to the word "third" being changed into, it "another"?

Sri M. Ananthasayanam Ayyangar (Madras : General): I have got objection to this amendment. The inconvenience of accepting this change is this. There are already in the earlier portion of the paragraph the words "another member" in the second line of the paragraph, and if you accept the present amendment, it means that a person who is to be the Chairman, has himself got to be the seconder, and that is an absurdity. I therefore oppose this amendment. The original word "third" should continue and there is no meaning in this amendment.

The Chairman (Dr. Sachchidananda Sinha): Do you desire that the original word in Acharya Kripalani's amendment should stand, and that no change should be made?

Sri M. Ananthasayanam Ayyangar: Yes.

Dr. P. S. Deshmukh: I see the objection to my amendment, and do not press it. But, I think it would sound far better if the first word "another", is changed into "a" and the word "third" altered into "another". I am afraid that it might look as if I am suggesting too many changes. But we are making a constitution, and I do not want that anything should go out of this House....

The Chairman (Dr. Sachchidananda Sinha): It is not a matter of constitution at all. You first made one proposal that the word "third" be changed into "another". If you bring up another proposal before your first proposal is disposed of, that is not fair to the House. Now the only question before the House is, whether the word "third" as put down in Acharya Kripalani's resolution, should be changed into "another". After this is disposed of, you may bring up any other proposal that you like.

Dr. P. S. Deshmukh: This is a consequential suggestion. I will read out to you....

The Chairman (Dr. Sachchidananda Sinha): No.

Acharya J. B. Kripalani: I think the thing as it stands is the best, I accepted the amendment in order to avoid a controversy.

The Chairman (Dr. Sachchidananda Sinha): If I may advise the House, I think there is no substantial difference in the meaning. The word may stand as it is, but it is for the House to decide.

The Hon'ble Sri C. Rajagopalachari (Madras: General): The mover of the amendment is under a misapprehension, I fancy. It is not a matter of elegance of language. The points that are covered by the words as they stand in the original Resolution are these. There should be a proposer distinct from the man proposed. Again, the other point is that the seconder should be distinct from either of these two. Therefore the word "third" is precise and necessary and any change will lead to a mistake.

An Hon'ble Member: When the mover of this Resolution has already accepted the amendment suggested, I don't think any further discussion is necessary.

The Chairman (Dr. Sachchidananda Sinha): But you may certainly permit the mover of a Resolution to change his mind subsequently. It would do no harm. You would not prevent him from doing that. I think as a result of this discussion, which we have had on this point, the word "third" may be left as it is.

An Hon'ble Member. Sir, it was moved formally by Acharya Kripalani that the name of the chairman should be the "President". That was not put to the vote. I don't know if it is necessary to put it to the vote, and if it has been adopted.

The Chairman (Dr. Sachchidananda Sinha): No. It has not yet been adopted. I have been advised by the Constitutional Adviser that according to the procedure in Parliament we have to use the word "Chairman" both for me, as the acting Chairman, and the permanent Chairman, but the Rules Committee, which will come into existence before long, will decide this matter. It will be opened to the Rules Committee to adopt the word "President". Therefore the word "Chairman" may be left as it is for the time being.

We shall now take up the third sub-section of Acharya Kripalani's resolution.

"For the purpose of rule (2) a member shall not be deemed to have been duly nominated or be entitled to vote if he and his proposer and seconder have not signed the Assembly Register as members of the Assembly."

The amendment is that the word "and", in the two places in this particular clause, should be substituted by the word "or". I should like to ask Acharya Kripalani whether he is prepared to accept that.

Acharya J. B. Kripalani: I submit that it makes no difference in the meaning, but "and" is more appropriate here.

The Chairman (Dr. Sachchidananda Sinha): I understand that you would prefer to adhere to the word "and" rather than have it changed into "or", though you say that practically they make the same thing?

Acharya J. B. Kripalani: Yes, Sir. I adhere to the words that are in the Resolution.

The Chairman (Dr. Sachchidananda Sinha): What is the sense of the House?

Some Hon'ble Members: "Or" is proper.

Many Hon'ble Members: No change.

The Chairman (Dr. Sachchidananda Sinha): The sense of the House seems to be that there is no need to change the word "and" into "or", and that the Resolution should stand as it is.

Mr. H. V. Kamath (C. P. and Berar: General): Sir, I wish to say a few words on this Resolution. There is no provision for withdrawal of a contesting candidate.

The Chairman (Dr. Sachchidananda Sinha): I think the Hon'ble Member who has now come to address us wants to say that in all such rules there is provision for withdrawal of a member from an election contest. I think that is true. He says there should be—though necessity may not arise for it—but there should be a provision added that if any member nominated for election desires to withdraw himself from the contest he may do so at some time. I don't think there is any harm in adding that.

Mr. H. V. Kamath: With your permission, Sir, I wish to recommend the insertion of this clause "Where more than one candidate has been nominated, the Chairman will fix a date and time for the withdrawal of one or more of such candidates if he or they so desire."

The Chairman (Dr. Sachchidananda Sinha): Quite right. I shall try to put in clear language as well as I can, the substance of your suggestion. It may be added.

Well now, all the amendments having been disposed of, I put it formally to the House now that Acharya Kripalani's Resolution be carried.

The Resolution was adopted.

The Chairman (Dr. Sachchidananda Sinha) : I declare Acharya Kripalani's resolution duly carried.

PROVISIONAL ADOPTION OF CENTRAL LEGISLATIVE ASSEMBLY RULES AND STANDING ORDERS

The Chairman (Dr. Sachchidananda Sinha): Now I would invite the Hon'ble Pandit Jawahar Lal Nehru to move the first of the three resolutions remaining to be moved.

The Hon'ble Pandit Jawahar Lal Nehru (United Provinces: General): Sir, I beg to move this formal resolution which I hope will facilitate the business of the House, namely—

“That the Assembly do adopt, with such modifications as the Chairman may in his absolute discretion permit, the Rules and Standing Orders of the Central Legislative Assembly pending the framing by the Constituent Assembly of its own Rules of Procedure.”

As the House knows, this Constituent Assembly has started without any rules and regulations made by any outside authority. It has to make its own rules. I am later moving a resolution in the House asking for the appointment of a Committee to make the rules. Presumably that Committee will take two or three days to finish the work. Now we have to function during these few days before our own rules have been made. It is desirable therefore that we should have something to fall back upon. And the easiest method is to adopt the rules of the Central Legislative Assembly in their entirety, not absolutely, because then it might give rise to considerable difficulty. But we should adopt them and give the right to the Chairman to modify them, if necessary, to suit the occasion.

The Chairman (Dr. Sachchidananda Sinha): Will the Hon'ble mover kindly modify the words “the Chairman may in his absolute discretion permit” something to be done. I suppose it means the permanent Chairman.

The Hon'ble Pandit Jawahar Lal Nehru: Whoever is presiding at the time.

The Chairman (Dr. Sachchidananda Sinha): Very well.

The Hon'ble Pandit Govind Ballabh Pant (United Provinces: General): I second the resolution.

The Chairman (Dr. Sachchidananda Sinha): Hon'ble Members may now offer amendments or suggestions, if any.

Sri Biswanath Das (Orissa: General): Sir, I wish to point out...

The Chairman (Dr. Sachchidananda Sinha): May I know if the Hon'ble Member is going to move any amendment?

Sri Biswanath Das: I see certain difficulties in the wording of the Resolution. I wish him to consider the position and see if it is not possible or desirable to withdraw the Resolution.

The Chairman (Dr. Sachchidananda Sinha): I must apologise to you, but I could not follow what you said.

Sri Biswanath Das: I propose to point out certain difficulties, as I see them, in this Resolution in its actual working.

The Chairman (Dr. Sachchidananda Sinha): In other words, you are objecting to the Resolution as drafted and moved.

Sri Biswanath Das: Yes.

The Chairman (Dr. Sachchidananda Sinha) : Directly negating the proposition? I hope the Hon'ble Mover will follow that. The speaker foresees, certain difficulties in the way of carrying out the Resolution moved by the Hon'ble Pandit Nehru and he, therefore though he does not use the word 'oppose', is really opposing the Resolution.

Sri Biswanath Das: I am very sorry I have to undertake a job which is very unusual with me. Need I state in this connection that I have been a silent supporter of the lead given by the Working Committee and by the

Hon'ble Pandit Jawahar Lal Nehru. But I see certain difficulties, in giving practical application to this Resolution. It proposes two or three things. Firstly, it says 'with certain modifications as the Chairman in his absolute discretion permits'; secondly, it says "the rules of the Central Legislative Assembly may be given application". Sir, in the first place, the Rules Committee is going to be appointed very shortly. I believe it, will, at best, take only two or three days to frame the rules and place them before the House. Let me hope that in the meanwhile we do not transact important business. Therefore the temporary proposals will not be very helpful despite the difficulties that are bound to arise in their application with various points of order.

Then, Sir, the Resolution leaves a lot of discretion to the Chair. I would appeal to my leader to consider whether it is not desirable and fair to leave the whole thing—the entire regulation of the business to the chair for two or three days within which period the regular rules will be framed and placed before the House. I suggest that if, in the meanwhile, the House proposes to do any business, let the work be regulated by the Chair in his absolute discretion, is being permitted in the Resolution itself.

Thirdly, it is difficult for us to know the Procedure and the Rules and Standing Orders of the Central Legislature. For myself I do not know and I believe there are many Hon'ble Members here who have absolutely no knowledge of the Rules of Procedure of the Central Legislature. The rules differ in very important respects from Province to Province. It will take two or three days for members to acquaint themselves with the rules of the Central Legislature. Instead of putting the Hon'ble Members to this difficulty, I think it is better, to leave it to the Chair to regulate the business, if any, till such time as our own Committee frames rules.

Lastly, Sir each one of the 220 members of this House may have to be supplied with a copy of the Rules of the Central Assembly. I do not know whether the Central Legislature may be able to supply so many copies of the Rules now, at short notice. In view of these difficulties I believe there is no harm if Pandit agrees to withdraw this Resolution and leave the entire option to the Chair as it is proposed in the Resolution. I have nothing more to say. I am very sorry that I have to 'oppose' it as you, Sir, put it though it is not my purpose to do so.

The Chairman (Dr. Sachchidananda Sinha): I may inform Mr. Biswanath Das that, whatever term it might suit him to use, I, as Chairman, have no option but to call his attitude as one of opposition.

Sri Biswanath Das: That may be so; but I have not spoken in any spirit of opposition.

Shri Sri Prakasa (United Provinces: General): I would like to support the Resolution moved by the Hon'ble Pandit Nehru. If my Hon'ble Friend Mr. Biswanath Das were to read the Standing Orders and Rules of the Central Legislature he will find that they are almost perfect. They cannot be improved upon. I am sure when our own Committee has sat and deliberated in the matter, it will find that it cannot make any changes therein Sir, if your Secretary will circulate a copy of the Rules and Standing Orders of the Central Legislature to Hon'ble Members,—it does not cost very much—Mr. Biswanath Das and everyone else will find that the Rules that are good enough for the Central Legislature will be good enough for us also. I think it will be mere waste of time if we adjourn the business of this House in order to frame our own Rules of Business. I do not think you, Sir, as temporary Chairman, will find that these rules do not cover all possible contingencies that might arise in the course of our debate. I support my Hon'ble Friend, Pandit Jawahar Lal Nehru.

The Chairman (Dr. Sachchidananda Sinha): I am more concerned with knowing whether anyone is supporting Mr. Biswanath Das. (*Laughter*). I

am concerned with the technical aspect of the question that the proposal of Mr. Biswanath Das has not even been seconded. I think, the sense of the overwhelming majority of the House is that Pandit Jawahar Nehru's Resolution be adopted.

Mr. N. V. Gadgil (Bombay: General): I want to make a request that all the members of the Constituent Assembly be supplied with a copy of the Manual of Rules of Business and Standing Orders of the Central Legislative Assembly.

The Chairman (Dr. Sachchidananda Sinha): I do not know whether there are as many copies available. We may not have; however, I shall try my best to meet your wishes.

I now put the Resolution of Pandit Nehru to the vote..... I declare it carried.

Now I shall request Pandit Nehru to move the next resolution, No. 6.

CONFIRMATION OF EXISTING ORGANISATION OF CONSTITUENT ASSEMBLY OFFICE

The Hon'ble Pandit Jawahar Lal Nehru (United Provinces: General): Mr. Chairman, Sir, I beg to move the following resolution, namely:—

“That this Assembly do confirm the existing Organisation of the Office of the Constituent Assembly, pending the final decision of this Assembly.”

The House probably knows that for the last many months the Office of the Constituent Assembly has been functioning and has organised all that has gone before us, before the meeting of this Assembly. Much of their work has been completely behind the scenes and possibly few members realise the hard work that has preceded this meeting. In any event, the Office has to continue till the Assembly decides otherwise. Some kind of Office obviously the Assembly is going to have. It may choose to continue this Office, it may choose to expand it or to vary it but it must continue, and my Resolution is in a sense to legalise the continuation of this Office until such time as the Assembly thinks otherwise. I beg to move, Sir.

The Chairman (Dr. Sachchidananda Sinha): Is this Resolution seconded?

The Hon'ble Mr. M. Asaf Ali (Delhi): I have very great pleasure in seconding this resolution of Pandit Nehru.

The Chairman (Dr. Sachchidananda Sinha): I have very great pleasure in putting it to the vote. (*Laughter*). Am I not entitled to make any observation without provoking laughter? (*Renewed laughter*).

I would like to say, in support of your observations, Pandit Nehru, that in the few days that it has been my privilege to work with Sir B. N. Rau and his staff, I have received the greatest possible assistance, and I am sure they will continue to give the same valuable assistance to my successor..... I declare the Resolution carried.

Acharya Kripalani will now move resolution No. 7.

COMMITTEE ON RULES OF PROCEDURE

Acharya J. B. Kripalani (United Provinces: General): Sir, we have assembled here, having no Rules of Procedure. Therefore it was that Pandit Jawahar Lal Nehru moved his first resolution so that till we are able to make our rules, the rules that apply in the conduct of business in

the Central Assembly may be applied in any resolution that we might discuss here before we have made our rules. These rules require very careful consideration. For that purpose I propose that a Committee be appointed. I therefore beg leave to move the following resolution that...

“This Assembly resolves—

(1) to appoint a committee consisting of a Chairman and 15 others members to report on the following matters:

(a) Rules of Procedure of the Assembly.”

You will find in the copy you have got the words “Sections and Committees”. Sections and Committees are part of this Assembly, and the words therefore appear to me to be superfluous. I have therefore taken them off. So—

“(a) Rules of Procedure of the Assembly;

(b) Powers of the Chairman;

(c) Organisation of the work of the Assembly, including the appointment and powers of Office-bearers other than the Chairman; and

(d) Procedure for the declaration of the Committee;

(2) that the Chairman shall be the Chairman of the Committee;

(3) that the Members of the Committee be elected in the manner prescribed in the Schedule; and

(4) that, pending the decision of the Assembly in that behalf, the Chairman shall—

(a) fix the allowance of the Members of the Assembly;

(b) in the case of the servants of the Government of India or any Provincial Government whose services are placed at the disposal of the Assembly fix their salaries and allowances in consultation with the Governments concerned; and

(c) fix the salaries and allowances of all other persons recruited for the business of the Assembly.

Schedule

1. The Members of the Committee shall be elected according to the principle of proportional representation by means of the single transferable vote. The election shall be conducted as nearly as possible in accordance with the regulations in force in this behalf in the Central Legislative Assembly.

2. The Chairman shall fix and announce a date and time for the holding of the election (if necessary) of the Members of the Committee.

3. Notice may be given by any member desirous of proposing a member or members for election to the Committee. Notice shall be given in writing addressed to the Secretary and signed by the Member giving notice and shall be left at the Notice Office before 12 noon on a day to be fixed by the Chairman. The member giving notice must satisfy himself that the Members he proposes are willing to serve if elected.”

After this I have added another paragraph. It runs as follows: It is not given in the paper you have got but it may be added:

“If within the time appointed by the Chairman any candidate proposed desires to withdraw his name, he shall be free to do.

4. If the number of candidates so nominated is less than the number of vacancies to be filled, the Chairman will appoint a further period within which the notice aforesaid may, be given and may thereafter appoint additional further periods until the number of candidates is not less than the number of vacancies to be filled.

5. If the total number of candidates nominated is equal to the number of vacancies to be filled, the Chairman shall declare all the candidates to be duly elected.

6. If the total number of candidates nominated exceeds the number of vacancies, an election shall be held in the manner prescribed in rule 1.

7. For the purpose of these rules, a member shall not be deemed to have been duly nominated or be entitled to vote if he and his proposer have not signed the Assembly Register as members of the Assembly.”

An Hon'ble Member: No seconder required for these nominations? All that is mentioned is the proposer and the candidate.

Rai Bahadur Syamanandan Sahaya (Bihar: General): The Rules just now proposed do not include a seconder. I just wanted to make it clear if a seconder is required for these nominations or a proposer will do.

The Chairman (Dr. Sachchidananda Sinha): Rai Bahadur Syamanandan Sahaya wants to know whether the nominations to be made to the election of the Committee will require only a proposer or also a seconder.

Acharya J. B. Kripalani: Sir, no seconder is necessary.

The Chairman (Dr. Sachchidananda Sinha): Very good.

Mr. H. V. Kamath. (C. P. and Berar: General): I submit, Sir, that here again there is a pretty serious lacuna with reference to the disposal of election petitions. This Assembly, in my opinion, Sir, must appoint a Tribunal for the disposal of election petitions, where such elections have been challenged by Hon'ble Members. For instance, yesterday, the Baluchistan election was challenged. That was an the Agenda yesterday. But there is no provision for the appointment of a Tribunal.

The Chairman (Dr. Sachchidananda Sinha): The Committee, I understand, will frame certain rules for that purpose. I advise them to keep in mind, that they should frame rules also for going into election cases.

Dr. Suresh Chandra Banerjee (Bengal: General): Is it the intention of the Mover that the Rules should also apply to Sections? In my opinion 'Section' should be specifically mentioned here because you know there are difficulties with particular Sections.

Dr. Syama Prasad Mookherjee (Bengal: General): I also support the proposal made by Dr. Suresh Chandra Banerjee. I think it will be safer to accept it. If it is the intention of the Mover that the Rules Committee will also frame rules for Sections and Committees, it is desirable to include Sections and Committees specifically in the Resolution, so that it may read like this "Rules of Procedure of the Assembly, including Sections and Committees."

The Chairman (Dr. Sachchidananda Sinha): Dr. Syama Prasad Mookherjee is making a suggestion to you that you may kindly accept his proposal to include or add one word there.

Acharya J. B. Kripalani: I think that the Rules of Procedure of Assembly, Sir, include the rules for Sections and Committees and I do not see why this superfluous addition be made in the draft as I have presented before the House.

Dr. Syama Prasad Mookherjee: May I just explain, Sir, that it is very necessary that the words 'including Sections and Committees' should be mentioned here? When the Sectional Assemblies will meet each may frame its own Rules of Procedure. The question may then arise whether the Constituent Assembly as such had the authority to frame Rules of Procedure for the Sections at all. Reference has then to be made to the Resolution which gave authority to the Rules Committee to frame rules and then the only mention which will be found will be that this Committee was appointed to frame Rules of Procedure of the Assembly. It will then be a question of interpretation whether the Rules Committee was at all entitled to frame rules for the Sections. If your intention is that this Rules Committee will also frame rules for the Sections, why not say specifically 'including Sections and Committees' so that there may not be any ambiguity or doubt whatsoever when Sections start doing their work.

The Hon'ble Shri Purushottamdas Tandon (United Provinces: General): I support the amendment of Dr. Mookherjee.

The Chairman (Dr. Sachchidananda Sinha): Have you any objection to substituting or adding that word 'including' there to make, as they contend, the sense clear still?

Acharya J. B. Kripalani: I think if there are additional rules necessary for the Sections, it will be laid down that the Sections will not make any rules inconsistent with the rules of the whole Assembly. My submission, Sir, is that this Rules Committee will make general rules of a very broad nature and these will apply to Sections and Committees. If any Committee or if any Section wants any additional rules, they shall be made by it subject to this that such rules shall not be inconsistent with the general rules that this Committee has made. Therefore, I would like this section of the Resolution to stand as it is.

Sardar Harnam Singh (Punjab: Sikh): Mr. Chairman, I have got two points to put before this House regarding the Resolution proposed by Acharya Kripalani. One relates to para. 1(a) of the resolution. I agree with Dr. Syama Prasad Mookherjee that instead of the words in para. 1(a) of the resolution, "Rules of Procedure of the Assembly" it should be "Rules of Procedure of the Assembly, its Sections and Committees". That is my first proposal. The Cabinet Mission in their elucidations always referred to the Sections as Sections of the Constituent Assembly. Therefore, my proposal is that in para. 1 (a) of the rule must be read as "Rules of Procedure of the Assembly, its Sections and Committees".

Now there is another matter. Acharya Kripalani, in moving the Resolution stated that the words, "Sections and Committees", were superfluous and therefore he was for deleting them. In the proposed Rules of Procedure for the Assembly, it is therefore understood that the Rules of Sections and Committees are included. One of the Committees that you will be setting up in this preliminary session is the Advisory Committee for certain purposes outlined in paragraph 20 of the Cabinet Mission's proposals. The Cabinet Mission have clearly stated that the Advisory Committee must have full representation of the minorities. Now, when the Rules of Procedure for that Committee are to be framed by a Committee which is to be elected by this House, according to paragraph 1 of the Schedule, I fear that minorities will not have any say in the Rules which are to regulate the procedure of the Advisory Committee. Therefore, my second proposal is that para. 1 of the Schedule, must read "Ten of the members of the Committee shall be elected according to the principle of proportional representation by means of the single transferable vote" and I wish to add a second para. That second para. would be, "The remaining five shall be nominated by the Chairman of the Assembly so as to give adequate representation on the Committee to important minorities." Otherwise, I fear the work of the Advisory Committee might be regulated in such a way as may go to the detriment of some important Sections of this House, namely, the minorities. These are my two proposals and I submit that clause (1) may be amended as suggested and an additional para. may be added to the Schedule as para. 2 and instead of seven paragraphs in the Schedule, we may have eight.

Mr. K. M. Munshi (Bombay: General): Mr. Chairman, I rise to support the amendment moved by Mr. Suresh Chandra Banerjee and supported by Dr. Syama Prasad Mookherjee. The business of this Assembly, to borrow the phraseology of the House of Commons, would naturally include the business of its Sections and Committees. Therefore, if the words stood as they are, "Rules of Procedure of the Assembly," there would be strictly no need to mention Sections and Committees. There is no doubt about that. But at the same time, we have not yet a clarification of the State Paper about this matter and it would be extremely unwise, I submit, Sir, to omit the words "Sections and Committees" because that would show

that this Constituent Assembly is not a self-determining and self-governing institution which we insist it is. We may lay ourselves open to the argument that any part or any section of it or any Committee of it can function independently or frame its own rules. Acharya Kripalani himself mentioned that if we left the thing as it is, rules could be made, whereby we can lay down that the Sections and Committees will not have the power to make rules which are contrary to or inconsistent with the rules made by this Committee. That argument itself shows that it is competent for this Procedure Committee to regulate to some extent the procedure of the Sections and Committees. In view of the discussion which has already taken place here, it is much better that the words 'Sections and Committees' should stand rather than their absence lead to further discussion on the interpretation of our Resolution. I envisage a point of order. Suppose this Procedure Committee starts considering questions about Sections or even incorporating a rule, as Acharya Kripalani desired, a point of order is sure to be raised whether the word "Assembly" includes 'Sections and Committees'. At that time, it would be the Chairman of the Procedure Committee who will have to give the ruling. It is better that that point should not be left merely to the decision of the Chairman of the Procedure Committee, who may be the permanent Chairman. It should be laid down definitely by this House that the Constituent Assembly is one and indivisible, that the sections as already pointed out are Sections of the Assembly, and that they do not form independent bodies which can provide for procedure inconsistently with the rules of the Constituent Assembly. I therefore submit that it is necessary, particularly now as the question has been raised on the floor of this House, that the scope and extent of this resolution should be made clear by adding the words "Rules of Procedure of the Assembly including its Sections and Committees".

The Hon'ble Srijut Basanta Kumar Das (Assam: General): Mr. Chairman, Sir, much of what I was going to say has been anticipated, by Mr. Munshi. I would like to raise at this stage a point of order on the fundamental question as to whether this Constituent Assembly will have any right to scrutinize the work of the Sections and of Advisory Committees. This is necessary, Sir, in view of the principle that underlies the amendment that has been moved for including the Sections and Committees within the scope of the Resolution. Different functions have been allotted to the Sections and to the Advisory Committees. A Section will form from the Provincial Constitution and also a Group Constitution. The Advisory Committee will advise on the fundamental rights of citizens, on the way as to how the interests of minorities are to be protected and as to the scheme to be formulated for the administration of Excluded Areas. Now whatever the Section and the Advisory Committees do, they may say that this Constituent Assembly, the Plenary Session will have no right to scrutinize their acts. I would therefore request you, Sir, to give a ruling on this point as to how far the Constituent Assembly will be entitled to give direction or to examine the work of the Sections and of the Advisory Committees. Therefore, Sir, before this Resolution is adopted and before all the points that have been discussed in connection with the Resolution and the amendments moved on it, are further discussed, I would like to ask from you a ruling on this point.

The Chairman (Dr. Sachchidananda Sinha): I have no desire that my ruling should be dragged into the Federal Court. Therefore, instead of giving a ruling which I have no desire to do, I shall invite Pandit Jawahar Lal Nehru to express his views.

The Hon'ble Pandit Jawahar Lal Nehru (United Provinces: General): Mr. Chairman, Sir, this Resolution was considered to be a formal resolution but from the trend of the discussions held, it seems there is a certain

[The Hon'ble Pandit Jawahar Lal Nehru]

misapprehension in the minds of Hon'ble Members. Some hold strong views about it. Undoubtedly anything that is done in the Sections will have to be considered by this House. I think the original draft was a Proper draft but when this matter was brought up in the shape of an amendment, then obviously it becomes entirely a different matter. There is opposition and an amendment has been asked to be carried out. If that becomes the expression of the view of the House because that amendment is opposed to the Resolution as originally drafted, it was supposed to give full powers to that Committee to consider the matter. Now an Hon'ble Member from Assam brought in the Advisory Committee into the picture. The Advisory Committee obviously and patently has to report to the Constituent Assembly. There is no doubt about it. I do not think anybody else will have any doubt about it and I take it that all Committees of this House should report to this House. Therefore I wish only to suggest to this Hon'ble House that this is hardly a suitable time at this stage for us to consider the whole scope of this matter when the House is agreed on the main issue. I would therefore suggest that the mover of this resolution, Acharya Kripalani, do accept the amendment that has been put forward.

Acharya J. B. Kripalani: I accept the amendment.

Shri R. V. Dhulekar (United Provinces: General): *[Mr. Chairman, I desire to the amendment that the intended Procedure Committee]

The Chairman (Dr. Sachchidananda Sinha): *[May I respectfully ask whether the Hon'ble Member does not know English.]*

Shri R. V. Dhulekar: *[I know English, but I want to speak in Hindustani.]*

The Chairman (Dr. Sachchidananda Sinha): *[Many of the members such as Mr. Rajagopalachari do not know Hindustani.]*

Shri R. V. Dhulekar. *[People who do not know Hindustani have no right to stay in India. People who are present in this House to fashion out a constitution for India and do not know Hindustani are not worthy to be members of this Assembly. They had better leave.]*

The Chairman (Dr. Sachchidananda Sinha): *[Please say what you wish to say.]*

Shri R. V. Dhulekar: *[I desire to move that the Procedure Committee should frame all rules in Hindustani which may be translated into English.]*

The Chairman (Dr. Sachchidananda Sinha): *[Order, order! you are not permitted by me to address the House on the question of bi-lingualism, and printing of papers in two or more languages. You are completely out of order. You came to speak on the amendment to Acharya Kripalani's resolution.]*

Shri R. V. Dhulekar: My amendment is that the Procedure Committee should frame rules in Hindustani. They may then be translated into English. When a member discusses a rule he will read its Hindustani version and demand a decision on the basis of that version and not English. I am sorry...]*

The Chairman (Dr. Sachchidananda Sinha): Order, order!

Shri R. V. Dhulekar: *[I am moving an amendment to Acharya Kripalani's resolution. As a member of the House I have a right to do so. I move that the Procedure Committee should frame rules in Hindustani and not in English. As an Indian I appeal that we, who are out to win freedom for our country and are fighting for it, should think and speak in our own language. We have all along been talking of America, Japan Germany, Switzerland and House of Commons. It has given me a

*[] English translation of Hindustani speech.

headache. I wonder why Indians do not speak in their own language. As an Indian I feel that the proceedings of the House should be conducted in Hindustani. We are not concerned with the history of the world. We have the history of our own country of millions of past years.]*

The Chairman (Dr. Sachchidananda Sinha): Order, order!

Shri R. V. Dhulekar: *[I request you to allow me to move my amendment.]*

The Chairman (Dr. Sachchidananda Sinha): Order, order! *[I do not permit you to proceed further. The House is with me that you are out of order.]*

Acharya J. B. Kripalani: I submit that if it will help the House to cut short the discussion, I would accept what has been suggested.

The Right Hon'ble Dr. M. R. Jayakar (Bombay: General): I want to say a few words on this Resolution. I am not sure whether the views I am now putting before this Assembly will not be regarded as too cautious, but I am bound to point out a few considerations which I want the House to note carefully. These considerations are against the express mention of the words "Sections and Committee". My view is no doubt actuated by a feeling of caution, which I think is desirable at the present stage. Remember the word "Sections". You are asked by express terms to legislate for them in advance of their future formation. Remember "Sections" include 'B' and 'C' Sections. Remember further that in 'B' and 'C' Sections there is likely to be—almost certainly to be—a preponderance of a certain group of men who are not present here today and who may be present at the late when these Sections begin to function. That group of men are not present here today under a feeling of suspicion, if not hostility. Would you like to legislate for them in advance at this stage, or would you not let the matter remain where it is, namely, that as the word 'Assembly' *prima facie* would include 'Sections' no rules can be framed by Sections 'A', 'B' and 'C' which are in conflict with the rules of the Assembly? This would be the usual constitutional rule. Would you not rather let matters rest at this, or would you go further and rub the point in by making an express mention of Sections implying thereby that we here today, in the absence of that group, make it obligatory by express words that the rules framed by the Assembly shall apply to the Sections. Such rubbing in is absolutely unnecessary, because the rules of the Assembly would *prima facie* include rules of the Sections. Remember that this group of men is not present here today and is, besides, watching these proceedings with jealousy and suspicion to discover whether you are taking anything out, of their hands and deciding it finally in advance of their arrival? If you do so may it not interfere with their future arrival here in a friendly and trustful atmosphere? I therefore suggest that the words as they stand in the original Resolution of Acharya Kripalani, may be accepted instead of going further to make an express mention of Sections and Committees.

Mr. Debi Prasad Khaitan (Bengal: General): Mr. President, Sir, I had no desire to speak on this motion, but in view of one word used by Mr. Munshi in the course of the amendment, namely, to add the word "its" and the subsequent speech delivered by my estimable friend, Dr. Jayakar, I felt inclined to speak a few words. I shall first deal with the suggestion made by Mr. Munshi, namely, the inclusion of the word "Its". I hope that the Hon'ble Mover of the amendment, Dr. Syama Prasad Mookherjee, will not accept that suggestion. The use of the word "its" in the course of this Resolution might put upon it an interpretation which is not intended either by Dr. Mookherjee of Acharya Kripalani. It might be interpreted

*[] English translation of Hindustani speech.

[Mr. Debi Prasad Khaitan]

to mean that the word "its" limits the scope to Committees appointed by the Assembly and not appointed by the Sections. Therefore, I suggest, Sir, that the amendment as moved by Dr. Syama Prasad Mookherjee, namely, "Assembly including Sections and Committees" be accepted by this House.

As regards the fear expressed by Dr. Jayakar, I would only suggest, as explained by Pandit Jawahar Lal Nehru and Acharya Kripalani, that this Assembly is one entitled to make rules governing the procedure not only of the Union Constituent Assembly as such but also governing the procedure of all Sections and Committees that may be brought into operation by it. I have not the slightest doubt that, whether any group of members be present in this House or not, this Assembly has got to proceed with its work in its entirety. Irrespective of the question whether that group decides to join or not to join, we have got to carry on our work, and I do hope that as time passes that group of men will see fit to serve the interests of the country as a whole by joining it and advising us how to shape the destiny of the country. But, so long as they are not here, I repeat my submission that we should go on with our work, with our heart in it and looking to the interests of the country as a whole. I therefore hope that no fears will be felt or expressed. Let us include in this Resolution the words "Sections and Committees" to avoid future complications. I hope the House as a whole will accept that amendment.

Mr. S. H. Prater (Madras: General): Mr. Chairman, I would like completely to support what was being said by Dr. M. R. Jayakar. I feel that while this House might frame general Rules of Procedure it ought not at this stage to interfere with or frame rules for Sections. Dr. Jayakar has pointed out the implications of that, and it would be good politics to follow what Dr. Jayakar has said. We all want to do these things, but not at this stage. There is time for it. Therefore I wholeheartedly support that the Resolution as originally moved by Acharya Kripalani do stand.

Mr. Sarat Chandra Bose (Bengal: General): Mr. Chairman, I think it would conduce to clarity if the words suggested by my friend Dr. Suresh Chandra Banerjee, and which suggestion was supported by my friend Dr. Syama Prasad Mookherjee, were introduced into this Resolution and accepted by the House.

An Hon'ble Member: The words "including its Sections and Committees".

Another Hon'ble Member: Not "its".

Mr. Sarat Chandra Bose: The word "its" does not improve the position and I am quite satisfied if the words "including Sections and Committees" are introduced into the Resolution. Acharya Kripalani in moving the Resolution said that it was his intention that the Rules of Procedure of the Assembly should govern the Sections and Committees as well. But as the point has been raised from different sides of the House, whether it should be done or not done, I think it will settle all future disputes if we accept the addition of these words. I would desire to refer in this connection to what Dr. Jayakar said. I do not think it would introduce any conflict at all in future if this Assembly were to lay down Rules of Procedure which would govern not only the main Assembly but its Sections and Committees as well. On the contrary, I feel that it would resolve many a conflict in advance. I do not desire to say more than this that if we are thinking that any conflicts would arise between the main Assembly and the Sections, we had better resolve the conflict here and now by introducing the words "including Sections and Committees".

The Chairman (Dr. Sachchidananda Sinha): I think we have discussed this long enough.

The Hon'ble Mr. B. G. Kher (Bombay: General): I have a suggestion to make

The Chairman (Dr. Sachchidananda Sinha): I hope the Hon'ble Member's suggestion will not be accompanied by a long speech.

The Hon'ble Mr. B. G. Kher: I am not very anxious to make a speech at all. We ought not to leave doubt in the minds of this Assembly or the world outside that this Assembly is supreme in so far as its Sections and its procedure are concerned. After the debate and the various fears that have been now expressed, I think it would be impolitic to refuse to accept the words "Sections" as also "Committees". We are not at all certain to-day whether the Sections are coming in or whether the Sections are going to sit. A good way out of it would be to add the words "with power to co-opt", so that when other people do come, if these rules are not acceptable or if these rules are required to be amended, or if any suggestions are made, it would be possible to amend them. I suggest, therefore, that it would be best to give the Committee which we are now going to appoint power to co-opt so that they may from time to time be able to suggest amendments and alterations which could be afterwards confirmed, ratified or rejected by the House. So that I think we should at present accept the amendment of Dr. Sayama Prasad Mookherjee with this further addition "with power to co-opt". If that is done, I feel that we shall meet the needs of the situation much better.

Mr. Jairamadas Daulatram (Sindh: General): I do not wish to take much time of the House at this late stage of the debate. I will say very briefly whatever I have to say. I think everybody should take the stand that this Constituent Assembly is the supreme body. It must have the right to frame rules for its Sections and Committees. I do not think that it is wise to keep simply the word "Assembly" and then leave it to be interpreted that we intended the word to include Sections and Committees. "Intentions" and their "interpretations", as experience has shown us, are a dangerous thing. We ought to make everything as clear as possible. At the same time we have got to deal with the possibility of those friends who are absent to-day joining us at a later stage. If that development does take place we may provide for it. Therefore, I support what my friend, Mr. Kher has said. At the same time, the word "including" is, in my opinion, inappropriate. If the original form is retained, then the little rubbing in which the word "including" involves would also be removed. Again we need not frame all the rules at once. It may be that with regard to the Sections, rules may have to be framed later, or we frame rules now with this understanding that if any changes or amendments become necessary, they will be made by the Procedure Committee, and if it has got the power to co-opt additional members, all the difficulties and possible developments will have been met.

Acharya J. B. Kripalani: There seems to be some misapprehension about the scope of the work of this Committee and also the time for which this Committee will be in existence. As I pointed out, while submitting this resolution before you, the rules that are required to be made are for the conduct of business now and here. We have absolutely no rules, we are writing on a clean slate. I also said that the rules would be more or less such as guide the proceedings of all Assemblies, and these would be of a general nature. There is no doubt in my mind that more rules will have to be framed by Committees themselves and by Sections. They may be called by-rules or by any other name. This Committee will not frame exhaustive rules. As for the question of co-option, it need not arise at this stage. This Committee is not going to be permanent. When any section of the House that is absent today decides to come in, then, if they have any objection to the rules that have been framed, this House can always order that they be revised. Therefore this question of co-option also does

not arise. I think it is a bad method to appoint a Committee and to give it powers of co-option when that Committee has been formed by the method of the single transferable vote. I do not know, Sir, whether you have admitted an amendment that ten people be selected by single transferable vote and five be co-opted from minorities. We have already made provision that the members of this Committee be selected by the method of the single transferable vote. That should bring in all Minorities. It is not good that minorities should be appointed by a body of ten people. Therefore I oppose that amendment if you, Sir, have allowed it.

As for including the words 'including Sections and Committees' as there is a large body of opinion in favour of it, I accept it. (*Cheers*)

The Chairman (Dr. Sachchidananda Sinha): A resolution was moved by Acharya Kripalani. Dr. Suresh Banerjee has moved an amendment to it. There has been prolonged discussion over these and all aspects of the question have been fully thrashed out. Acharya Kripalani has now declared in his final reply that he accepts the amendment proposed by Dr. Suresh Chandra Banerjee. I will now put the proposition to the vote of the House.

Sardar Ujjal Singh (Punjab: Sikh): What about the amendment about nomination by the President or co-option by members?

The Chairman (Dr. Sachchidananda Sinha): That has not been moved. I do not think I can permit at this stage any amendment the text of which is not before me.

The amendment before the House now is this: In clause (a), after the word 'Assembly', insert the words 'including Sections and Committees'.

The amendment was adopted.

Sardar Ujjal Singh: Sir, I move:

"That in line 2, after the words '15 other members'. the words 'with power to co-opt' be added."

In moving this amendment my object is this: Under the method of proportional representation, certain important minorities may not be represented. Acharya Kripalani was pleased to say that that method had been provided to give representation to all minorities. Perhaps he has overlooked the fact that out of a House consisting of 212 members, you have to elect 15 and that if a group consists of only four or five members, it may not get representation at all. A member of that group may not get the necessary quota and it will not possible for that group to find a seat on the Committee. The only means of giving representation to that small minority will be either nomination by the President or co-option. With that end in view, I propose this amendment. I thought it would be quite suitable if this question of addition of members of certain groups that are unrepresented is left to the Chairman. That would be enhancing the power of the Chairman. But if that is not possible or acceptable to the House, I would suggest that this power be given to the Committee itself. A 'similar procedure exists in various bodies wherein it is not possible to give representation to the various interests to be represented. With these few words I move my amendment.

The Chairman (Dr. Sachchidananda Sinha): The Amendment proposed by the Mover is to the effect that, after the word 'Members' in line 2, the words 'with powers to co-opt.' be added.

Sardar Harnam Singh (Punjab: Sikh): I suggest, Sir, that we add, if necessary, 'not more than five'.

Sardar Ujjal Singh: I accept the amendment to my amendment.

Mr. S. H. Prater: I second the amendment.

The Chairman (Dr. Sachchidananda Sinha): Mr. Mohanlal Saksena, who has given notice of an amendment, will kindly move it briefly.

Shri Mohan Lal Saksena (United Provinces: General): *[I move the amendment that in para. 4 of the Schedule.....]*

The Chairman (Dr. Sachchidananda Sinha): *[Which para. does the Hon'ble Member mean?]*

Shri Mohan Lal Saksena: *[I move that in para. 4 after the word 'Chairman' the following may be added:]*

“To the members.....”.

[The present proposal is that if the number of nominated members is less than those of the elected members, a fresh nomination shall be allowed and the process shall continue until such time as the number of nominated member fills up or exceeds the vacancies. The usual method of such cases is that if the number of nominated members falls, short, Members who are already nominated are taken as elected and for nominated seats, fresh proceedings are undertaken. This is the object of my amendment. I hope the House will accept it. Acharya Kripalani has agreed to it]

The Chairman (Dr. Sachchidananda Sinha): The amendment proposed by Mr. Mohan Lal Saksena is that in paragraph 4 of the Schedule after the word “Chairman” the following words be added “shall declare the persons so nominated as duly elected and for the remaining vacancies”.

Is any one seconding it?

An Hon'ble Member: I second this amendment, Sir. It is important and necessary.

Mr. F. R. Anthony (Bengal: General): I did not hear the last part, Sir.

The Chairman (Dr. Sachchidananda Sinha): You could not hear the last part. Sir B. N. Rau will kindly read it out.

Sir B. N. Rau (Constitutional Adviser): After the word ‘Chairman’ in paragraph 4 of the Schedule, the following words be added: “shall declare the persons so nominated as duly elected and for the remaining vacancies”. if you like me to read the amended paragraph, I would be glad to do so.

The Chairman (Dr. Sachchidananda Sinha): Yes, Sir Narsing.

Sir B. N. Rau: The paragraph as amended reads: “If the number of candidates so nominated is less than the number of vacancies to be filled, the Chairman shall declare the persons so nominated as duly elected and for the remaining vacancies will appoint a further period within which the notice aforesaid may be given and may thereafter appoint additional further periods until the number of candidates is not less than the number of vacancies to be filled”.

Mr. F. R. Anthony: On a point of information, Sir. I do not know exactly what happened to the amendment proposed by one of my Sikh colleagues.

The Chairman (Dr. Sachchidananda Sinha): That was carried.

An Hon'ble Member: “With power to co-opt not more than five” was carried.

*[] English translation of Hindustani speech.

Acharya J. B. Kripalani: Sir, I was never consulted in the matter, whether I accept that or not.

The Chairman (Dr. Sachchidananda Sinha): You were never consulted on the amendment to your resolution?

Acharya J. B. Kripalani: I did not know that the amendment had come before the House. It was only proposed and seconded but that has not been carried by the House.

The Chairman (Dr. Sachchidananda Sinha): Carried by the good sense of the House.

Acharya J. B. Kripalani: Even that was not allowed. (*Interruptions*).....

The Chairman (Dr. Sachchidananda Sinha): Order, order. The amendment was adopted.

Dr. P. C. Ghosh (Bengal: General): That was not put before the House for voting at all. You simply stated from your Chair that it was carried.

The Chairman (Dr. Sachchidananda Sinha): The work of the House must necessarily be carried on with a certain amount of speed, and if the Hon'ble Member is not sufficiently vigilant, he will have to thank himself.

I am reading out the amendment of Mr. Mohan Lal Saksena. I hope I will not be charged with rushing the business of the House through again as has been done this time. I read it out once, and it was read out again by Sir B. N. Rau. If the House desires, I shall read it out again. In paragraph 4 of the Schedule after the word "Chairman" the following words be added: (*Interruption*).....

When I am in the midst of addressing the House, I do not like to be interrupted. The amendment is: "the Chairman shall declare the persons so nominated as duly elected and for the remaining". Whatever it may mean, that is the amendment. Those who are in favour of it will kindly raise their hands to express their assent to the proposition. Will you kindly count, Mr. Iengar?

The Hon'ble Pandit Jawahar Lal Nehru: It is not necessary unless anyone is opposed to it, Sir.

Mr. H. V. R. Iengar (Secretary of the Constituent Assembly): 50 for.

The Chairman (Dr. Sachchidananda Sinha): How many against it?

Mr. H. V. Kamath: I have submitted a verbal amendment. May I come.

The Chairman (Dr. Sachchidananda Sinha): Your verbal amendments 1. The amendment was adopted.

Mr. H. V. Kamath: I have submitted a verbal amendment. May I come along?

The Chairman (Dr. Sachchidananda Sinha): Your verbal amendments are more dangerous than other people's formal amendments. You desire that in clause 1(c) after the word "appointment's" add the word "functions". The clause will read as follows:

"(c) Organisation of the work of the Assembly, including the appointment functions and powers of Office-bearers other than the Chairman."

Also that in Clause (d) after the word "filling" add the word "in". You, will kindly come along. You generally succeed in carrying your point by making very short speeches.

Mr. H. V. Kamath: Sir in clause (c) I desire that after the word "appointment" the word "functions" may also be inserted so that the clause will now read thus: "including the appointment, function, and powers of Office-bearers other than the Chairman".

The next amendment that I wish to make is in clause (d). With due deference to the framer of this Resolution, I submit, Sir, that the more correct phrase is "filling in" and therefore move that the clause should read—

"procedure for the declaration and filling in of vacancies in the Assembly." and in the Schedule accordingly some corrections might have to be made wherever "fill" "filled" or "filling" occurs. I submit with due deference again, Sir, to the framer of the Resolution that the correct phrase is "filling in".

An Hon'ble Member: Why not "filling up"?

Another Hon'ble Member: I would like to make one amendment.

The Chairman (Dr. Sachchidananda Sinha): Mr. Kamath's amendment, which I read out, and which he has again read out, has been duly seconded. Is there any serious opposition to it?

Mr. K. M. Munshi: We have not heard it.

The Chairman (Dr. Sachchidananda Sinha): I am a fairly loud speaker. If you did not hear me, I will again read it out once more.

Diwan Chaman Lall (Punjab: General): I am opposed to the use of the phrase "filling in" of vacancies. It is neither correct, nor is it found in the Rules of Procedure adopted by other Assemblies. The expression "filling" of vacancies is perfectly correct. Again, in regard to the amendment of my hon'ble friend that after the word "appointment" the word "functions" should be included, there can be no difficulty about that although it is obvious that the powers of Office-bearers will also include the functions of the Office-bearers. If it is sought to be made more clear, there can be no objection to it. The objection to the "filling of vacancies" cannot be accepted as I do not think we can start off with ungrammatical or unidiomatic expressions.

The Chairman (Dr. Sachchidanada Sinha): Mr. Munshi, I think, would like to have the proposition read out again.

In clause (c) of rule 1 after the word 'appointment' add 'functions' so that the clause will read 'the appointment, functions and powers of Office-bearers other than the Chairman.' The addition is proposed for the word 'functions' which means between the words 'appointment' and 'powers'. The House, if I am not wrong in interpreting its mood, is not unwilling to accept this amendment..... I declare it carried.

There is a second amendment of Mr. Kamath in Clause (d). After the word 'filling' add the word 'in' so, that it may read 'filling in of vacancies'. It is a question of filling in.

Many Hon'ble Members: No, no.

The Chairman (Dr. Sachchidananda Sinha): The sense of the House is against it. It is not accepted. Any other amendments?

Mr. H. J. Khandekar (C. P. and Berar: General): In Clause 7 after the word 'he', there should be 'or she' because there are lady members in the House and nothing is mentioned about them. The meaning of "Member" conveys the impression that there are no lady members and therefore after the word 'he' there should be 'or she' and after the word 'his' should be 'or her'.

The Chairman (Dr. Sachchidananda Sinha): The amendment sought to be proposed is that we should make our position clear as regards the lady members of this House by using the specific word 'she'. My ruling is that 'he' includes 'she'.

The Hon'ble Pandit Jawahar Lal Nehru: Sir, the Resolution as a whole has not been put to the vote.

The Chairman (Dr. Sachchidananda Sinha): That is what I was saying. The amendments having now been disposed of, I am putting to the vote, but not reading it for a second time the long Resolution. If he so desires, Acharya Kripalani may read it out again. We have discussed these fully, and I declare it carried with all the amendments made.

ANNOUNCEMENT REGARDING NOMINATIONS FOR CHAIRMAN
AND COMMITTEE

The Chairman (Dr. Sachchidananda Sinha) I have two announcements to make today. Firstly, the nominations for this Committee will be by 12 noon on the 11th of December in the Secretary's room (Mr. Iengar's). All nominations should be filed by 12 o'clock tomorrow at the latest, and the date and time for the election shall be 4 p.m. tomorrow in the Under Secretary's room. I do not know the reason why the Secretary's room is intended for One purpose, and the Under Secretary's for another. Perhaps the Secretary's room is larger, I do not know. The ballot boxes are there, and I shall be absent at the time. Mr. Anthony will kindly be present on my behalf.

The only other announcement I have got to make is about the nominations for the permanent Chairman. The nominations for that purpose, namely, for the election of the permanent Chairman, is fixed today at 2.30 p.m. in the Secretary's room, and if the election would be necessary, arrangements will be made for that. That finishes our work today. There is no work in the afternoon.

Mr. Sarat Chandra Bose (Bengal: General): As regards the nomination of a permanent Chairman, the Resolution says that the nomination paper has to be delivered to you or to a person appointed by you.

The Chairman (Dr. Sachchidananda Sinha): I have appointed the Secretary, Mr. Iengar, to receive the nomination papers.

Bakhshi Sir Tek Chand: Up to 2.30 today or tomorrow?

The Chairman (Dr. Sachchidananda Sinha): Today. It is now just 1 o'clock and one and a half hours remain for the purposes of nomination. The time for withdrawals shall be 2 p.m. today. Tomorrow the House will meet as it suit you at eleven or half past eleven.

Many Hon'ble Members : 11 o'clock.

The Chairman (Dr. Sachchidananda Sinha): The House is adjourned till Eleven of the Clock, on Wednesday, the 11th December 1946.

The Assembly then adjourned till Wednesday, the 11th December 1946, at 11 A.M.

CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 11th December, 1946

The Constituent Assembly of India met in Constitution Hall, New Delhi, at Eleven of the Clock, the temporary Chairman (Dr. Sachchidananda Sinha), in the Chair.

The Chairman: If any Hon'ble Member has not yet presented his credentials nor signed the Register, he may do so now.

(None)

REPLY TO MESSAGES OF GREETINGS TO THE CONSTITUENT ASSEMBLY

The Chairman: Though it is not in the agenda, I thought it best, on my own responsibility, to bring before the House the reply which I propose to send to the Governments of the United States of America, the Republic of China, and the Australian Government, in reply to the messages received from them, through their representatives in Delhi which messages, I read out to you on the opening day of the session. My draft is subject to your approval, of course.

“On behalf of myself, and of the Constituent Assembly of India, I desire to thank you most warmly for your exceedingly kind message of good-will and good wishes which has been highly appreciated by the Constituent Assembly, and the country. It is a source of great encouragement to us to feel that the Government and the people of the United States, China and Australia (as the case may be) are watching our deliberations with keen and sympathetic interest; and we feel sure that their sympathy will stand us in good stead in evolving a democratic constitution for India.”

Subject to your approval, Hon'ble Members. (*Applause*).

ELECTION OF THE PERMANENT CHAIRMAN

The Chairman: The next item of today's agenda is the election of the permanent Chairman.

I have received the following nomination papers:—

“I propose the name of Dr. Rajendra Prasad, Member Constituent Assembly, for the Chairmanship of the Constituent Assembly. I have secured the consent of the nominee.

Proposer.—J. B. Kripalani.

Seconder.—Vallabhbhai Patel.

I agree to the nomination. Rajendra Prasad”

This nomination paper is valid, and is in order. There is another nomination paper.

“I propose Dr. Rajendra Prasad as Chairman of the Assembly and I have ascertained that he is willing to serve if elected.

Proposer.—The Hon'ble Shri Harekrushna Mahtab.

I second the above. Nand Kishore Das.”

This nomination also is in order.

The other two proposals received are invalid. One of them sent by the Hon'ble Mr. Prakasam was sent in beyond time, and I do not see the name of any seconder.

Similarly, I have got before me another proposal by Sir, S. Radhakrishnan. That also, I fear, is not in order, because it has no seconder;

and neither of these two documents (the one sent by the Hon'ble, Mr. Prakasam and the other sent in by Sir S. Radhakrishnan) has got any endorsement from Dr. Rajendra Prasad that he is willing to serve. However, as the other two proposals are perfectly valid and in order, and there is no other nomination paper before me, I hereby declare the Hon'ble Dr. Rajendra Prasad, as the duly elected permanent Chairman. (*Cheers*).

My next duty as temporary Chairman is to request that Acharya Kripalani and Maulana Abul Kalam Azad Sahib will kindly approach, on behalf of the Constituent Assembly, the duly elected President of this House now, and bring him up to the platform to sit on the chair by my side. (*Cheers*).

(The Hon'ble Doctor Rajendra Prasad was conducted to the chair by Acharya Kripalani and Maulana Abul Kalam Azad Sahib).

The Chairman: Hip hip hurrah, hip hip hurrah.

Hon'ble Members: *Inquilab Zindabad, Inquilab Zindabad. Jai Hind, Jai Hind.*

The Chairman: Now that the permanent elected Chairman of the House has taken his seat, it is open to Hon'ble Members to offer to him their congratulations. I call upon Sir S. Radhakrishnan to be the first speaker.

CONGRATULATIONS TO THE PERMANENT CHAIRMAN

Sir S. Radhakrishnan (United Provinces: General): Mr. President, Sir, I consider it a great honour to be called upon to be the first speaker after the election of the permanent Chairman of the Constituent Assembly. I offer to him, on behalf of this House, our most respectful congratulations on the unique honour that has been conferred on him.

This Constituent Assembly has met here to frame the constitution, to effect the withdrawal of British control, political, economic and military and to establish a free independent India. If successful, this transfer of authority will be the biggest and the least bloody of all transfers in human history (*Cheers*).

The first Britisher to arrive in this country was a Jesuit Missionary in 1579. He was followed by merchants who came to trade but stayed to rule. In 1765 the authority was transferred to the East India Company. Later it was gradually subordinated to and replaced by the authority of Parliament and it has been continuing till now on the famous principle enunciated by Cecil Rhodes—the principle fundamental to imperialism, philanthropy *plus* 5 per cent. On that principle it has worked. Right through however there were protests against the British rule. All these protests became canalized when the Indian National Congress was established in 1885. It adopted mild methods till the advent of Mahatma Gandhi when it became aggressive and dynamic. In 1930 the Resolution for the Independence of India was passed at Lahore and we are now here to give effect to that resolution. The British are empirics from beginning to end. It was Lord Palmerston who said 'we British have no eternal principles, we have only eternal interests'. When they adopt any particular line of action you may take it that it is not a willing surrender of power or authority but it is a response to the historic necessities of the case. When the discontent grew up they gave us the Morley-Minto Reforms and they introduced the principle of communal electorates and these communal electorates were intended to keep, the people apart. The higher mind of Britain advised the local officials that they would betray the trust placed upon them if they foisted communal electorates. They would inject a poison into the very body politic which could be removed if at all, at the cost of a civil war. We know how those anticipations are

getting realized today. We had after that the Montford Reforms and then the 1935 Act, the Cripps' proposals and now the Cabinet Plan. The latest Statement of His Majesty's Government on this question indicates how it is not in human nature to surrender power easily. (*Hear, hear*) Playing off one section against another is unworthy of a great people. It is much too clever to be permanent and would embitter the relations of this country and Great Britain. (*Hear, hear*). It is essential for the British to understand that if an act is done it must be done with the utmost grace. All the same we are here assembled to draw up a constitution for future India. A constitution is the fundamental law of the nation. It should embody and express the dreams and passions, the ideals and aspirations of the people. It must be based on the consent of all, and respect the rights of all people who belong to this great land.

We have been kept apart. It is our duty now to find each other. We all deplore—speakers yesterday and day before yesterday deplored—the abstention of the representatives of the Muslim League from this Constituent Assembly. We take it that it will only be temporary, for their cooperation is absolutely essential for the success of any constitution which we may lay down. But in approaching these matters our attitude should be one of realism. Take the problems from which we suffer; our hunger, our poverty, our disease, our malnutrition—these are common to all. Take the psychological evils from which we suffer—the loss of human dignity, the slavery of the mind, the stunting of sensibility and the shame of subjection—these are common to all; Hindus or Muslims, Princes or peasants. The Chains may be made of gold but they are still chains that fetter us. Even the Princes will have to realise that they are slaves in this country. (*Hear, hear*): If they have a sufficient sense of self-respect and exercise a little self-analysis, they will find how much their freedom is fettered.

Again, the, people—whether they are Hindus or Muslims, Princes or peasants,—belong to this one country. Earth and Heaven have combined to make them belong to one another. If they try to disown it, their gait, their cast of countenance, their modes of thought, their ways of behaviour, they will all betray them. (*Hear, hear*). It is not possible for us, to think that we belong to different nationalities. Our whole ancestry is there.

It is essential for any constitution which is drawn up to make all the citizens realise that their basic privileges—education, social and economic are afforded to them; that there will be cultural autonomy; that nobody will be suppressed; that it will be a constitution which will be democratic in the true sense of the term, where, from political freedom we will march on to economic freedom and equity, Every individual should feel that he is proud to belong to this great land.

Apart from all these, a nation does not depend on identity of race, or sentiment, or on ancestral memories, but it depends on a persistent and continuous way of life that has come down to us. Such a way of life, belongs to the very soil of this land. It is there indigenous to this country as much as the waters of the Ganges or the snows of the Himalayas, from the very roots of our civilization down in the Indus Valley to the present day, the same great culture is represented among Hindus and Muslims, we have stood for the ideal of comprehension and charity all these centuries.

I remember how Anatole France went up to the Musée Guimet on the first of May 1890 in Paris and there in the silence and simplicity of the gods of Asia reflected on the aim of existence, on the meaning of life, on the values which peoples and Governments are in search of. Then his eyes fell on the statue of the Buddha. France felt like kneeling down and praying to him as to a God, the Buddha, eternally young, clad in ascetic

robes, seated on the lotus of purity with his two fingers upraised admonishing all humanity to develop comprehension, and charity, wisdom and love, *prana* and *karuna*. If you have understanding, if you have compassion, you will be able to overcome the problems of this world. Asoka, his great disciple, when he found his Empire inhabited by men of all races and religions said—

“*Samavaya eva sadhuh.*”

“Concord alone is the supreme good”.

India is a symphony where there are, as in an orchestra, different instruments, each with its particular sonority, each with its special sound, all combining to interpret one particular score. It is this kind of combination that this country has stood for. It never adopted inquisitorial methods. It never asked the Parsis or the Jews or the Christians or the Muslims who came and took shelter there to change their creeds or become absorbed in what might be called a uniform Hindu humanity. It never did this. “Live and let live”—that has been the spirit of this country. If we are true to that spirit, if that ideal which has dominated our cultural landscape for five or six thousand years and is still operating, I have no doubt that the crisis by which we are faced today will be overcome as many other crises in our previous history have been overcome. Suicide is the greatest sin. To murder yourself, to betray yourself, to barter away your spiritual wealth for a mess of pottage, to try to preserve your body at the expense of your spirit—that is the greatest sin. If we therefore stand out for the great ideal for which this country has stood, the ideal which has survived the assaults of invaders, the ideals to which the unheeding world today is turning its attention, if we are able to do it, the flame which has sustained us in overcoming foreign rule, will fire our efforts to build a united and free India.

It is not an accident that our temporary Chairman, Dr. Sachchidananda Sinha and our permanent Chairman, Dr. Rajendra Prasad, both come from Bihar. They are both impregnated with the spirit of the *vihara*—the invincibility of gentleness, the gospel of India. The Mahabharata says:

Mrduna darunum hanti, mrduna hanti adarunam nasadhyam mrduna kinchit tasmāt tiksnaram hi mrduth.

Gentleness can overcome the hardest things; it can overcome the softest things. There is nothing impossible to be overcome by gentleness, and therefore the sharpest weapon we have is gentleness.

Softness, gentleness,—that is the greatest weapon which will wear out the highest kind of opposition. We have not been true to it. We have betrayed and done wrong to millions of our own fellow beings. It is now time for us to make atonement for all our past guilt. It is not a question of justice or charity, it is atonement—that is how I would put it.

In Dr. Rajendra Prasad we have one who embodies this spirit of gentleness. (*Cheers*). He is the soul of goodness, he has great patience and courage, he has suffered. It is not an accident that this year which remarks the sixtieth year of the Indian National Congress, is also the year of the opening of the Constituent Assembly. We have to remember with gratitude all those great souls who worked and suffered for the freedom of this country, for the dawn of this day. Thousands died, more thousands suffered privation, imprisonment, and exile, and it is their suffering that has cemented and built up this great edifice of the Indian National Congress. (*Hear, hear*). We have to remember them all, Rajendra Prasad is

the suffering servant of India, of the Congress, who incarnates the spirit for which this country stands. I only hope that this spirit of amity, concord and harmony which has come down to us from the image of Siva in the Indus civilization down to Mahatma Gandhi and Dr. Rajendra Prasad, will inspire our efforts. (*Applause.*)

Shri Sri Prakasa (United Provinces: General): May I know who is the Chairman?

The Chairman (Dr. Sachchidananda Sinha): I am the Chairman.

The Hon'ble Diwan Bahadur Sir N. Gopaldaswami Ayyangar (Madras: General): Mr. Chairman, I desire to add my small tribute to Dr. Rajendra Prasad who has been elected unanimously by this Assembly as the permanent Chairman. My tribute, I dare say, will sound prosaic after the eloquence of my friend Sir S. Radhakrishnan, one of the foremost Indian orators in the English language.

Dr. Rajendra Prasad's election is a supreme mark of the unstinted confidence that this Assembly and the country as a whole repose in him. It is not so much an honour to him; he is really honouring us by accepting the invitation that we have extended to him. (*Cheers.*) We have therefore really to felicitate ourselves on his allowing himself to be persuaded to take the Chair of this Assembly as permanent Chairman.

Dr. Rajendra Prasad is taking over a very onerous responsibility. His life has been a life of dedication—dedication to the service of the country. It has been consecrated by unique sacrifice. It is unnecessary for me to speak of his great erudition, deep scholarship, wide knowledge of men and affairs,—qualities which fit him eminently for the task in which he will have need for requisitioning all this equipment in the solution of the many baffling and intricate problems that are sure to confront him. I have known him in person and have come into contact with him personally only during the last few days. That has made me regret that I had not known him earlier and more intimately than I do. But I have known about him, I had read about him, and during the few days that I have since seen of him. I have seen enough to realise that, while all his great qualities of brain and his knowledge have commanded and will continue to command the respect and admiration of his countrymen, what really has established and will maintain the unique hold he has on the affections of his countrymen, irrespective of community, class and creed, are his great human qualities. His innate courtesy, for instance, the manner of his approach to problems, which manner almost compellingly disarms in controversy people inclined to develop temper or heat, the soft word that turned away wrath—these will be inestimable assets in contributing to the success of the task that he has so willingly, perhaps after some reluctance, taken upon himself.

With his election to the Chairmanship, the Constituent Assembly may be said to have really started on its fateful career. Before it accomplishes its full task, it is bound to be confronted by situations and difficulties which will try the capacity even of so uniquely equipped a person as Dr. Rajendra Prasad. He will no doubt, and we have every confidence that he will, conquer them all. He will of course maintain the dignity and prestige of this Assembly and the privileges of its members—that goes without saying. But the most onerous of his tasks will be to defeat all attempts, direct or indirect, at weakening or whittling down the sovereign Powers of this Assembly. This is not the occasion for me to develop in any elaboration the proposition that, for the task which this Assembly has taken upon itself, it is sovereign in every sense of the word. That its members have been brought together by a machinery employed by the present Government of India does not detract from that sovereignty.

(*Hear, hear*): The task of the Assembly is, in the not very elegant word that the Cabinet Mission has employed in its Statement, the “settling” of the constitution for all India—all India, including not merely the Union but the units and, if this Assembly and its Sections should so decide, the Groups, if any, are to be formed at all.

The statement of the Cabinet Mission, I would describe as the law of the constitution of this Assembly. That constitution derives its authority not from the fact that its authors were three Members of His Majesty’s Government but from the fact that the proposals made therein have been accepted by the people of this country. Any limitations on the powers of this Assembly which are indicated in that Statement are thus self-imposed—imposed by ourselves on this Assembly; and the document, and its subsequent exposition by its authors have made it clear that this Assembly has got the constituent power of amending this constitution, of varying or adding to what is provided for in that document, not excluding even what are declared to be its fundamentals.

The law of the constitution of this Assembly does not vest in any outside authority, Judicial or otherwise, the interpretation of any of its provisions. In one single instance alone does it require that the Chairman should obtain the advice of the Federal Court at the request of the majority of either of the major communities in the Assembly before he takes a decision on the issue. It follows therefore that the decision of all questions of interpretation of the law of the constitution of this Assembly will be in the Chairman’s hands, subject to such directions as this Assembly itself may give. Reference to an outside authority for decision or even advice in respect of other matters could be made only on authority given by a decision of this Assembly and no such decision could be binding on this Assembly unless it has agreed to abide by it. The idea, therefore, adumbrated in a recent statement of His Majesty’s Government, that ‘either side’, those are the words used, is free to ask an outside authority to decide matters of interpretation and that the Assembly should accept whatever decision it may give, cannot be implemented except on the authority of a resolution of this Assembly. (*Hear, hear*). The suggestion made in this statement, if implemented without an affirmative resolution of this Assembly, would detract from its sovereign powers and I have no doubt that Dr. Rajendra Prasad will resist such an attempt to his utmost. (*Applause*) :

I would, before closing, refer only to one other aspect of this idea of the sovereignty of this Assembly. The task before the Assembly is not merely one of settling of the constitution, it also includes deciding the method of its implementation so far as India and her people are concerned. In other words, we have to take over power from those who are in possession of it: the method of that taking over of power will be one to be decided by this Assembly. The fact that His Majesty’s Government claim to decide the mechanics of the transfer of power, to which in substance they are already committed, does not, in my view, detract from the sovereignty of this Assembly so far as its task is concerned. I do not wish to take any more of the time of this Assembly.

Sir, we are proud to have you as the permanent Chairman of this Assembly and we wish all success to you during your term of office in that capacity. (*Loud cheers*).

The Chairman (Dr. Sachchidananda Sinha): Two of the most eminent Members of this House, our greatest philosopher and educationist, Sir Sarvapalli Radhakrishnan, and the highly distinguished administrator, Sir N. Gopalaswami Ayyangar, have addressed the House congratulating Dr. Rajendra Prasad, and they have incidentally expressed their views on

certain aspects of the question which Dr. Rajendra Prasad will be concerned with. I will now ask the other speakers who follow to speak briefly mainly about Dr. Rajendra Prasad (*laughter*) and leave the Constitution to take care of itself.

I will now call upon Mr. F. Anthony to address the House.

Mr. F. R. Anthony (Bengal: General): Mr. Temporary Chairman, it was only a few minutes ago that I was asked whether I would join in giving a message of welcome and congratulations to Dr. Rajendra Prasad, I very gladly and cordially accepted that invitation.

Sir, I have not had the privilege of knowing Dr. Rajendra Prasad personally; but I have known of him and it is not necessary for me to comment on his qualifications and his widely-known very able record of work. The Office to which he has been unanimously elected is not only a unique and high office, but I believe it is equally onerous also. It will be his continuing duty and care to hold the scales evenly between the different interests which go to make up this great country. What we require today in our leaders, more than anything else, is tolerance, breadth of vision and liberality of outlook. I believe from what I have heard of Dr. Rajendra Prasad, that he is one of those leaders who possesses these qualities in a pre-eminent degree. I believe also that it is the natural and fervent impulse of every Indian, irrespective of community, to strive increasingly for the increasing greatness of our mother country. (*Applause*). I also believe that whatever difference of language, of community or of social life that must inevitably exist in a great country such as ours, leaders possessing the quality of liberality and breadth of vision will succeed ultimately in joining all these different communities into one stream which will carry on its course, surging forward irresistibly, enabling this country to take her place, her rightful place in the vanguard of the great nations of the world. Finally, I believe I am expressing the consensus of opinion in this House when I express the belief that Dr. Rajendra Prasad will fill this high Office to which he has been elected not only with dignity, but with Distinction. (*Applause*).

Sardar Ujjal Singh (Punjab: Sikh): Mr. Chairman, Sir, I have very great pleasure in associating myself with the chorus of tributes paid to Dr. Rajendra Prasad on his unanimous election to the Presidentship of this Assembly. In fact, I believe, no better choice could have been made for the Presidentship of this unique and historic Assembly. By his unparalleled service and sacrifice, his learning, his ability, his gentleness and above all, his spotless character, he has become the idol not only of the people of Bihar but of the whole of India. I feel certain that this House will have a sense of satisfaction that with Dr. Rajendra Prasad in the Chair, no limitations on the sovereignty of this Assembly will be allowed to be placed beyond those which we have already accepted. A man of his unimpeachable honesty, character and humility can command and, I feel certain, will command the confidence of one and all in this House. I know there is a party which is not present in this House today, but I can say that even that party whose members may be called Dr. Rajendra Prasad's political opponents, can rely upon his sound and good judgment and his impartiality in conducting the business of this House. Sir, I hope and trust that under his able guidance and inspiration this House will succeed not only in framing a constitution but establishing an independent and sovereign state of Indian Republic. I pray the God may give him strength to carry on his onerous duties and heavy responsibilities as Food Member and as President of this unique and historic Assembly.

The Chairman (Dr. Sachchidananda Sinha): I will now request Lt.-Col. Sir Kameshwara Singh, Maharajadhiraja of Darbhanga, to speak.

The Hon'ble Maharajadhiraja Sir Kameshwara Singh of Darbhanga (Bihar: General): Mr. Chairman, this is indeed a proud day for all of us. The accredited representatives of our countrymen have chosen Dr. Rajendra Prasad, an illustrious son of India, to be the custodian of the dignity and power of this august Assembly. In doing so, they have paid the highest tribute not only to his own greatness but also to our province whose brightest jewel he happens to be. I rejoice at this recognition. His character, ability, tact, scholarship, culture, services and sacrifices, and above all, his self-effacement in the cause of our motherland can never fail to attract people to him, and he commands as love, respect and admiration of even those who, strictly speaking cannot be described as his political adherents. I salute him as one of those rare saints who are honoured by all even in their own homes. I realise that the task before him is stupendous. From bondage he shall have to lead this country to freedom. He shall have to help us to proceed on the right path and cross the innumerable hurdles that lie on our way. He shall have to protect us whenever there may be any encroachment on our rights and privileges from any quarter and make everyone feel the force of his justice, impartiality and firmness. Knowing as I do his personal charm, devotion to duty, broadmindedness, and other great qualities, I have no doubt that he will satisfactorily manage the affairs of the high Office—perhaps one of the highest offices in the gift of the people of this country—in which he has been, by common consent, installed. May God grant him health and long life so that he may successfully discharge his onerous duties and enjoy the fruit of his labours. Sir, I congratulate him, wish him luck, and hope that he will have the loyal co-operation of everyone of us who have assembled here to work under his guidance for the achievement, by peaceful means, of our cherished goal, Swaraj.

The Chairman (Dr. Sachchidananda Sinha): Dr. Joseph Alban D'Souza.

Dr. J. A. D'Souza (Madras: General): Mr. Chairman, I join with pleasure in the chorus of congratulations to Dr. Rajendra Prasad on his election as the permanent Chairman of this historic Assembly. The temporary Chairman, Dr. Sachchidananda Sinha, with his keen grasp of essentials, his happy diction and above all his entrancing and fascinating humour has finished his work magnificently during the last two days. He has navigated the good ship "Constituent Assembly" through the harbour, with waters none too easy. He has brought the ship on to the high seas of political constitution and handed it over to our permanent Chairman. I have said high seas of political constitution. What these seas are going to mean and what they are going to be, it is difficult for us at this stage to say or to define. There is no doubt that the permanent Chairman has before him a role of a most responsible nature.

I am and probably will always be an ardent believer in the true and good old saying, "every cloud has a silver lining". Clouds, varying in density, have appeared over the constitution of this Assembly. Yet because of the silver lining I am confident of the future of India, proximate and remote.

Dr. Sachchidananda Sinha has stated that it will not be for those who succeed the first two speakers to refer to anything historical or constitutional. May I crave his permission to make one small reference?

May I submit that this Constituent Assembly and the work it has before it—the framing of a constitution for India, was presaged if not prophesied more than a hundred years ago? I say "Presaged" and not "Prophesied" because a prophecy connotes something favourable to the prophet as well as to the people but presaging signifies a sort of warning. It was presaged more than a hundred years ago when Burke, referring to the imperial control of England over her Indian Empire, applied to it

the doctrine of trusteeship. He declared that as soon as the child India comes of age the trusteeship must end.

The question therefore arises: Has India not come of age? Is India still a minor? When I cast a glance along the first benches of this great Assembly I note that there are great personalities who could play the role of a Churchill or a Roosevelt or a Stalin and not only play the role but even go one better. This is so far as the top ranks of the citizenship of India is concerned. What about the lowest ranks, the ryot in the villages? If our leaders were to go now to the ryot, who some years ago was steeped in abysmal ignorance in regard to his rights, privileges and needs, and speak to him of independent India, he would turn round and tell them: "if you are unable to achieve this for us, we shall do so on our own". He realises that it is due to him. He knows it is his birth-right.

This Constituent Assembly, to my mind, is a celebration of India's coming of age and as such it ought to be a subject matter over which all India, Hindus, Muslims, Sikhs, Christians, Parsees, Scheduled Classes and all, ought to join hands and work with one sole idea: of achieving, independency as early and as soon as it possibly can be obtained.

And in this work I am sure, the permanent Chairman we have selected will lead us and help us. During the short period he has worked in the Interim Government he has already given us an earnest of his capability by his masterly control of the food situation in India. He has given us an earnest of the zeal and ability with which he will conduct the affairs of the great Assembly: On behalf of you all I wish our permanent Chairman, health and energy in order to carry on with the stupendous work he has undertaken in accepting the Chairmanship of this Assembly.

Sir V. I. Munishwami Pillai (Madras: General): Mr. Chairman, I feel it a proud privilege to stand before this august Assembly and convey to you. Sir, the greetings and affectionate Congratulations on your unanimous election to the Chairmanship of this sovereign body. I convey to you, Sir, on behalf of the 60 millions of untouchable classes, the tillers of the soil and hewers of wood, who, have been in the lowest rungs of the ladder of political and economical Status of this country. It was in 1890, when one of our revered leaders of our Province sent in open letter to the Hon'ble Members of the House of Commons showing the helplessness of the untouchable classes but it was given to Mahatma Gandhi, Sir, in the year 1932 to chalk out in what way these communities could be helped. It was on that memorable occasion, Sir, that I came in contact with you and came to know the sympathy you have towards these Scheduled-Castes. From that time, Sir, I know, as a matter of fact and all those who represent the Harijans in this august Assembly will bear testimony to the great services you have done to these Harijan communities. On behalf of these people, Sir, I feel that the position to which you have been elected will give equal status in the sovereign body and see that whatever constitution may be framed for this great continent, that the right place for the Harijan is given and I know you will hold this position with great honour and dignity and do justice to these Scheduled Classes so that they may be equal in all status with other communities. Sir, the 60 millions of untouchables form the backbone of Hinduism and I am sure, that in your deliberations In framing the constitution you will see that all the disabilities of the Harijans are taken note of and remedied in a manner that they may enjoy equal privileges in this great country.

Khan Abdul Ghaffar Khan (N.W.F.P.: Muslim): [Mr. Chairman, Brothers and Sisters: I had no intention of taking part in the debates of this Assembly. You all know that I do not like making speeches and praising persons; but some of my brethren have compelled me to say something

*[English translation of Hindustani speech begins.

at this occasion I congratulate Babu Rajendra Prasad on your behalf and on behalf of North-West Frontier Province for the great honour done to him by this House.

I know Babu Rajendra Prasad well. People who happen to live together in prisons and in other places of pain and sorrow get good opportunity to know each other. I am proud that I have lived a long time in prison with Babu Rajendra Prasad. I know him well. I know his habits and I can say that the greatest quality he possesses, and which every Indian should possess, is that his mind is free from communal bias. Unfortunately, people in India have different prejudices. You all know of Hindu food and Muslim food. Babu Rajendra Prasad is free from all prejudices.

I feel with great sorrow the absence from this House of our Muslim League brethren. I regret to say that my Muslim brethren are displeased with the people of the North-West Frontier Province, especially with me. They say that I am not with them. Many a time while travelling in the train I am told such things, I always tell them that I am always with Muslims, never separating myself for one moment from them. Where, however, they say that I am not with the League, I tell them that the League is a political party and it is not necessary that one should be with it. Every man is free to have his own opinion. No one should be compelled in ways which are employed these days. Everybody has a right to do what he honestly considers good for his country and people. Nobody has got the right to ask me why I am on the side of the Congress. I admit that the people of the North-West Frontier Province are much behind you in literacy and in wealth. Our Province is a small one while yours are larger but I can say that the people of the North-West Frontier Province, if not ahead, are in no way behind you in many things.

When we read the history of India prior to the advent of the British and compare it with the conditions prevalent now, I find the villagers of this once prosperous India steeped in poverty and want. One thing, which causes me great sorrow is that whenever we try to do something for the welfare of our countrymen, impediments are placed in our way. The country and its people are being exploited and ruined. This has caused disappointment to the people of the North-West Frontier Province and they feel utterly helpless. We have been forced to think that we can do nothing for the good of this unfortunate country until we make it free. I desire to tell my Indian brethren why we are with (Mahatma) Gandhi. We believe that the Congress is trying to free this country and that the Congress can remove the poverty of this country. We are with the Congress because we are tired of slavery. It is true that we are behind you in education but in the war of non-violence of 1942, only our Province fought it in non-violent ways. You all know we possess more weapons of violence than any other part of India and yet we adopted non-violent methods. Why? There are many responsible people present here and I see that even the Congress people are being swayed by violent feelings. That is why we walk the way of non-violence. Let us see what violence is and what is non-violence. I tell you that whether we are Hindus or Muslims we can win the people only by being non-violent because violence breeds hate and non-violence creates love. You cannot bring peace to the world by violence. One war will compel us to fight a second war more disastrous than the first. Violence begets hate in the minds of people. I am glad Babu Rajendra Prasad believes in non-violence and I am sure that, if he guides this House to tread the path of non-violence, he will guide it to success. Before I finish I desire to speak briefly to my brethren in the House and to Babu Rajendra Prasad about our Province. I will not go into details. Our Province is the only Muslim Province which desires to end the British rule and drive them out of India. It is not easy to realize

what difficulties, what hardships and what affliction will befall us. I, therefore, earnestly appeal to Babu Rajendra Prasad to keep this in mind. We cannot succeed until the road-blocks created by the British are removed from our way. I hope my prison friend, Babu Rajendra Prasad, who has been elected the Chairman of this House and who loves us, will not forget our difficulties and help us to remove them.]*

The Chairman (Dr. Sachchidananda Sinha): I will now ask Mr. Poonacha from Coorg to speak for a few minutes.

Mr. C. M. Poonacha (Coorg): Mr. President, Sir, I deem it a great pleasure and great honour to associate myself with the sentiments expressed by the previous speakers. Coming from Coorg, Sir, I would like to convey to you, Dr. Rajendra Prasad, our respectful felicitations on behalf of the people of Coorg. As President of the Indian National Congress, you have once visited our Province and extended to us good advice which was a great fillip to us in our freedom movement. Sir, I do not intend making a long speech but would like to cut it short and express once again my respectful congratulations to you and trust that under your Chairmanship the efforts of this Assembly will be a complete success. Sir, I have done. (*Cheers*).

The Chairman (Dr. Sachchidananda Sinha): Mr. H. V. Kamath will now kindly address the House.

Mr. H. V. Kamath (C.P. and Berar; General): Mr. Chairman, Sir, will you permit me to join in the chorus of tributes that has flowed from all parts of this august Assembly? This Constituent Assembly is the first Assembly of its kind in India. On this occasion, at once happy and solemn, when we have elected to the high office of permanent Chairman, Deshratna Rajendra Prasad, it is well for us to remember that we have come to this stage in our history through the united will and labours of the Indian nation, through the brave-struggle and suffering of the Indian National Congress under the leadership of Mahatma Gandhi, as well as by the heroic was waged by the "Azad Hind Fauj" under the leadership of Netaji Subhas Chandra Bose. It is not for me to dilate upon the qualities of head and heart of Deshratna Rajendra Prasad. He embodied in himself the spirit of India, the spirit which has animated our sages and our rishis to preach the ancient gospel, the ancient but ever new—(*sanatano nitya nutarih*) the gospel of universalism: that spirit Deshratna Rajendra Prasad embodies in himself. When I look at him, I am reminded of a poem of Gurudev-Rabindra Nath Tagore, wherein he says—Give me the strength to make my love fruitful in service. Give me the strength to surrender my strength to thy will with love'. At this moment of our history we welcome Deshratna Rajendra Prasad to this high office. I pray to God Almighty that in His Grace abounding, He may endow Deshratna Rajendra Prasad with strength and health, with energy and fortitude to steer this barque of our Constituent Assembly to the fair haven of peace, freedom and harmony. Friends, I have done. Before I conclude, I only want to say this that it is well for us to take to heart and to bear in mind the ancient message—

Uttisthata jagrata prapya varannibodhata

"Awake, arise and stop not till the goal is reached." *Jai Hind*.

The Chairman (Dr. Sachchidananda Sinha): Mr. Somnath Lahiri will now address the House.

Mr. Somnath Lahiri (Bengal; General): Let me congratulate Dr. Rajendra Prasad on his election as permanent Chairman of this House and I congratulate him on behalf of the Communist Party which I have the honour to represent.

Well, Dr. Rajendra Prasad, when you happened to be the President of the Indian National Congress we, the Communists, noticed in you your

] * English translation of Hindustani speech ends.

patience, tolerance and your eager desire to know the view-points of the other parties and other points of view. Well, Sir, I hope you will continue to exercise the same qualities as the Chairman of this Assembly and will allow us facilities equal to that of anyone else to express our points of view fully. Sir, one great thing to remember is that British imperialism is still sovereign over us and whatever may be the colour of any member in this Assembly, I am sure that everyone of us burns with the desire to be free, absolutely free, immediately from the clutches of British imperialism which has sucked our blood for the last 200 years and which still retains its grip over us with its army, with its British Viceroy, with its white bureaucracy, with its economic and financial strangleholds and with the aid of its allies—the Indian Native Princes. Well, Sir, some would expect you to be non-partisan as the Chairman of the Assembly. I would not in the sense that you are a patriot, one of the tried patriots of this country and in the matter in which we have to assert our sovereignty, sovereignty not against a section of our own people, not by quarreling over phrases of Sections and Committees but sovereignty against British imperialism, asserting our sovereignty by asking and compelling the British Viceroy to quit, by asking and compelling the British army to quit. I am sure we could declare our sovereignty here and now by calling upon our people to wage a struggle and to begin that struggle by declaration from this august Assembly that we are free, we no longer recognize the authority of the British Government, of the British Viceroy, of the diplomatic words, etc. I wish we could declare from this Assembly that we are not to be led by the illusions created by British imperialism and its Cabinet Mission plan regarding transfer of power. But I know that illusions die hard. I hope we will have your help in dispelling those illusions and making the people of India again wage the most determined and united struggle against a Plan, a diabolical Plan, which has already reduced us to become a laughing stock of the world. We are already meeting under the dark pall of death and fratricidal warfare which has been the result of this Cabinet Plan.....

The Chairman (Dr. Sachchidananda Sinha): Mr. Lahiri, permit me to interrupt you. You may say something now about Dr. Rajendra Prasad. (*Laughter*).

Mr. Somnath Lahiri: I know that. That is exactly the point for which I have praised Dr. Rajendra Prasad and hope he will extend to us the same consideration for placing our point of view as you would to any others because it has always been our experience that when it comes to a question of our placing our views we are invariably asked to be brief. As a matter of fact, I have already been asked twice to be brief even before I got up to speak in this Assembly. However, I don't mind that. What I would expect of Dr. Rajendra Prasad as permanent Chairman of this Assembly is to help us in dispelling our countrymen's illusions, to help us to place our point of view in full, to throw away this Cabinet Mission's Plan and all its award and everything else and be united and fight.

The Chairman (Dr. Sachchidananda Sinha): Hon'ble Members will agree that I am not infallible. I shall therefore now call on Mr. Jaipal Singh to address you for a few minutes, He represents the aboriginal tribes of Chhota Nagpur.

Mr. Jaipal Singh (Bihar: General): I thank you, Sir, for giving me an opportunity to speak as representative of the aboriginal tribes of Nagpur. I want to say a few words in congratulating Dr. Rajendra Prasad, especially on behalf of the community I represent. So far as I have been able to count, we are here only five. But we are millions and millions and we are the real owners of India. It has recently become the fashion to talk of "Quit India". I do hope that this is only a stage for the real rehabilitation

and resettlement of the original people of India. Let the British quit. Then after that, all the later-comers quit. Then there would be left behind the original people of India. We are indeed very glad that we have Dr. Rajendra Prasad as the permanent Chairman of this Assembly. We feel that, as he belongs to a Province where there is, in the southern portion of it, the most compact aboriginal area in the whole of India perhaps, that we, in presenting our case, will at least get sympathetic hearing from him. I do not wish to say anything about his merits. They are already too well known. Let me therefore end by saying that we hope that the rest of the House will, while Dr. Rajendra Prasad gives us his sympathy, also reciprocate with him. (*Cheers*).

The Chairman (Dr. Sachchidananda Sinha): I shall now request bulbul-i-Hind, the Nightingale of India, to address the House (*laughter and cheers*) not in prose but in poetry.

(Mrs. Sarojini Naidu then went up to the rostrum amidst acclamation.)

Mrs. Sarojini Naidu (Bihar: General): Mr. Chairman, the manner of your calling me is not constitutional. (*Laughter*).

The Chairman (Dr. Sachchidananda Sinha): Order, order. No reflection on the Chair please (*continued laughter*).

Mrs. Sarojini Naidu: It reminds me of some lines of the Kashmiri poet who said:—

*“Bulbul ko gul mubarak, gul ko chaman mubarak,
Rangeen tabiaton ko range sukhan mubarak”*

and today we are steeped in the rainbow coloured tints of speeches in praise of my great leader and comrade Rajendra Prasad. (*Cheers*) I do not know how even poetic fancy can add yet another tint to the rainbow. So I will be modest, emulating the example of Rajendra Babu himself and confine myself, as a woman should, to purely domestic issues. (*Laughter*). We have all been taken in the chariot of oratory by our great philosopher Sir Radhakrishnan who seems to have evaporated from the scene. (*Laughter*).

Sir S. Radhakrishnan: No, no. I am here; (*Renewed laughter*).

Mrs. Sarojini Naidu: He has poured very eloquent wisdom on us. And also all the other speakers representing different provinces, sects, religions, communities and the gentleman who is asking all of us to quit India after the British, tracing his claim to the original people of this land, have all spoken in their turn, and one thing they have all been unanimous is the question of Rajendra Prasad himself. Some time ago I was asked to compress an epic into an epigram about Rajendra Prasad. I was asked to say a line about Rajendra Prasad, and I said that I could only do so if I had a pen of gold dipped in a pot of honey because all the ink in the world would not suffice to explain his qualities or adequately to pay tribute to his qualities. Very rightly one speaker reminded us, though I agree with one part of it, that both the temporary Chairman and the permanent Chairman were born in Bihar and that both have assimilated some of the qualities of the Great Buddha who was born in Bihar. I say that I agree on one point, not on the other. The point which I wish to agree with is that Rajendra Prasad has certainly descended spiritually from the great Buddha, the embodiment of compassion, understanding, sacrifice and love. For many years, I have been privileged to be associated with him. He is my leader, he is my comrade, he is my brother, but much younger brother. That I knew on his birthday, I found that he is over five whole years younger than I am—and therefore, I am in a position to—give him my blessings as well as my tribute of praise. In this House where every one has said with conviction that he would be the guardian and the father of the House. I conceive him not as one with the flaming sword but an angel with the lily which wins victories over the hearts of men, because in him there is essential sweetness, that is part of his

strength, there is essential wisdom, that is part of his experience, there is essential clarity of vision, creative imagination and creative faith that brings him very near the feet of Lord Buddha himself. I see gaps in this House and my heart is sore because of the absence of those Muslim brothers to whose coming I am looking forward under the leadership of my old friend Mr. Muhammad Ali Jinnah. I think if any persuasion were necessary, if any fine wand of magic were necessary to bring them in, it would be the essential sweetness, the essential wisdom, the essential creative faith of Dr. Rajendra Prasad. I am hoping and I believe I am right in hoping that my friend Dr. Ambedkar who is so bitter today will soon be one of the most emphatic supporters of this Constituent Assembly in all its purposes and that through him his adherents of many millions will realise that their interests are as safe as the interests of more privileged people. I hope those that call themselves the original masters of this land, the tribal people will realise that there is no distinction of caste, creed, ancient or modern, status in this Constituent Assembly. I hope the smallest minority in this country will, whether represented politically, or I do not know by what other means they may be represented,—I hope they will realise that they have a jealous, vigilant and loving guardian of their interests who will not permit the more privileged to encroach by a hair's breadth on their birth-right of equity and equal opportunity in this country. I hope also that the Princes of India, many of whom I count among my personal friends, who are so hurried, so anxious, so uncertain or so afraid today, will realise that the constitution for India is a constitution for the freedom and emancipation of every human being in India, whether Prince or peasant. I want that realisation to be carried home, and in no better manner, in no more convincing manner can it be carried than through the guidance and guardianship of Dr. Rajendra Prasad. I have been asked to speak—for how long? But I believe that I must disprove the age old proverb that woman has not only the last but the longest word. I have the last word not because I am a woman but because I am acting today as the hostess of the Indian National Congress which has so gladly invited those who are outside its fold to come and participate with us in framing the constitution, that is to be the immortal charter of India's freedom.

Friends, I do not praise or command Rajendra Prasad. I affirm that he is the symbol of India's destiny today. He will help us in framing that charter that restores to our Mother—our Mother still in fetters—her rightful place as torch bearer of liberty, love and peace.

Standing in the immemorial house with its roof of snow and walls of sea, once again in the history of humanity she will rekindle her lamp of wisdom and inspiration to illuminate the world on its onward march to freedom. So, will she be justified of her children and the children be justified of her.

The Chairman (Dr. Sachchidananda Sinha): Hon'ble Members, the last speaker has practically closed me for all time together by declaring that she as a woman must have the last word, and many of you who are lawyers here know that there can be no last word after the last word. I shall therefore not detain you long. If I choose to do so, I could hold your attention till the small hours of the next morning, for of all the people present here in this great gathering I am the one who has had the privilege, the great privilege, the greatest privilege, of knowing intimately Dr. Rajendra Prasad for a period of now 44 long years; since he passed his matriculation in the year 1902, and stood first in the first division in the whole of the Calcutta University of those days, extending from Assam to the Punjab and the North-West Frontier. I remember that when he passed the matriculation examination standing first in the Calcutta University, I wrote an editorial note in the *Hindustan Review* (which I

was then conducting, and which I am still conducting after 47 years, to the effect that to a man with the brilliant powers of Rajendra Prasad nothing could be denied. I said, we may predict that he will one day be the President of the Indian National Congress, and while delivering the presidential address, like Sir Narayan Chandavarkar at the previous year's session of the Congress, held at Lahore, will receive a communication from the Viceroy of India offering him a High Court Judgeship. That was what I predicted about him then. He has lived to be the President of the Indian National Congress more than once. But he has profoundly disappointed me by not being a High Court Judge. Why was I so anxious that he should be a High Court Judge? Because he would have handled properly the British bureaucracy on the executive side, with his independence of judgment and trenchant criticism of their conduct. But if Dr. Rajendra Prasad has not been a High Court Judge, he has lived to be elected the permanent Chairman of the Constituent Assembly of India. And to day it is my proud privilege now—the highest privilege I hoped to have achieved in my life—of inducting him into the Chair (which I have so unworthily occupied for the last few days) as the first permanent Chairman of this Constituent Assembly. (*Applause.*) I now vacate this Chair, and I shall ask Dr. Rajendra Prasad, in the name of this great gathering to come and occupy this Chair which he so worthily deserves.

(Cries of *Inquilab Zindabad, Rajendra Babu Zindabad*).

(The temporary Chairman, Dr. Sachchidananda Sinha, then vacated the Chair. The Chair was then occupied by the Hon'ble Dr. Rajendra Prasad amidst acclamation).

Acharya J. B. Kripalani (United Provinces: General): *[Mr. Chairman there have been many speeches in English and I feel that I should speak in Hindi. I spoke in Hindustani when I invited Dr. Sachchidananda Sinha to be our temporary Chairman. I now congratulate him, on your behalf, for performing his work so successfully.

I could not at first believe that Dr. Sinha was older than I. I am younger than him and I am proud of my hair but Dr. Sinha's hair are 'a shade blacker than mine'.

He called the meeting to order in a strong voice which did not at all show that he was older than us. He conducted the whole proceedings with a zeal which may be called the fervour of youth. Sometimes, he gave short shrifts to our amendments. Once he remarked on an amendment—"I hope the good sense will prevail."

This kept us silent, fearing that if we said anything, our good sense would be suspected. Thus he performed his work well and I congratulate him on it. I hope he will sit with us in the House in the same spirit in which he conducted the preliminary proceedings of the House].*

Mr. Chairman (The Hon'ble Dr. Rajendra Prasad): †[Brothers and sisters, pardon me if I say that I feel overwhelmed with the burden you have placed on my shoulders by entrusting me with this most important duty. By electing me for this high rank you have bestowed upon me an honour which is the highest honour for an Indian. Allow me to say that in this country of castes and creeds, you have, as it were, cast me out of your caste. Depriving me of a seat among yourselves you have compelled me to sit on a different Chair, and it does not end there. I believe all of you expect me to do nothing in this House which will show that I belong to a particular part or sect; you will expect that whatever I do

*[English translation of Hindustani speech begins.

] *English translation of Hindustani speech ends.

†[English translation of Hindustani speech begins.

here, will be done in a spirit of service to you all. I shall try to carry the honour conferred on me in a manner which will gladden the hearts of all of my brethren and my elder sister here, who have felicitated me at this occasion. I am aware that my path is beset with obstacles. The work of this Constituent Assembly is most arduous. Various problems will come before it and it will be confronted with questions which will not yield easily to solution. I know I will not be able to solve them but I have full confidence in you that you will help me at each step with the same kindness and liberality with which you have elected me here.

The Constituent Assembly is meeting at a most critical time. We all know that other constituent assemblies, whenever and wherever they met, were confronted with similar difficulties. They had also to contend with internal differences which were placed before them with great vehemence. We also know that many of these constituent assemblies were held amidst strife and bloodshed; even their proceedings were conducted amidst quarrels and fights. In spite of all these obstacles those assemblies carried on their work to the end. Their members joined together and with courage, kindness, generosity, tolerance and regard for one another's feelings framed constitutions which were then readily accepted by the people of the countries for which they were framed. Even at this time the people of those countries consider them their most valuable possession. There is no reason why our Constituent Assembly, in spite of the obstructions in its way, should not succeed in doing its work. If we are sincere, if we respect each other's opinion, we shall develop so much insight that we will not only be able to understand each others thoughts, but also be able to go deep to the root and understand each others real troubles. We will then function in a manner that no one will give no one cause to think that he has been ignored or that his opinion has not been respected. If this comes to pass and if this strength is born in us, I have full faith that in spite of all obstruction we will succeed in our work.

This Constituent Assembly has come into being a number of limitations, many of which we will have to bear in mind as we proceed. But, it must also be borne in mind that the Assembly is a sovereign body and is fully competent to conduct its proceedings in the manner it chooses to follow. No outside power can meddle with its proceedings. I also believe that it is competent to break the limitations attached to it at its birth. It should be our effort to get free of these limitations and frame a constitution which will assure all men and women of this country, no matter of what religion, province or shade of opinion, that their rights are fully protected. If such an effort is made in this House and we succeed in it, I believe that it will be such a landmark in the history of the world that it will be hard to rival.

It is also to be remembered and we, who are present in the House, cannot forget it even for a moment that many of the seats are vacant in this meeting. Our brethren of the Muslim League are not with us and their absence increases our responsibility. We shall have to think at each step what would they have done if they were here? We have to proceed keeping all these things in view. We hope they will soon come and take their places and share in the deliberations for framing a constitution for their country which will give it freedom, that they will join us in our march for freedom. But if unfortunately these seats continue to remain unoccupied, it will be our duty to frame a constitution which will leave no room for complaint from anybody.

We have been fighting for the freedom of our country for a long time. This Constituent Assembly has been brought into existence by three forces. First, the sacrifice of our patriots. Many men and women gave their lives, bore hardships and persecution and after hard and continuous

struggles ushered in the present stage. Second, the history of the British nation; their selfishness and their generosity. Third, the present world conditions and serious situation and the forces that are raging in the world. All these combined together to bring into being our Constituent Assembly. These forces will continue functioning while we are proceeding with our work. It is quite possible that some of them may draw us to one side and others to the other side. I am, however, confident that success will be ours. I pray to God that he may give us foresight, so that we may understand each other's mind, and that, united together, we may free our country.

I thank my brothers and sisters who have congratulated me. I was overwhelmed with embarrassment and I wished, I had not been present during their speeches. My particular thanks are due to Dr. Sinha who continued in the Chair and did not throw additional burden upon me at that time. I once more thank you all for the inspiring sentiments that have been expressed. I assure you that in the proceedings of this House. I shall freely give you whatever strength God has bestowed upon me, whatever little wisdom has been given to me and whatever experience of the world I have. In return I hope you will unstintingly give me the help that you can give me.]†

Friends, I just want to say a few words in English for the benefit of those of you who have not been able to follow my speech in Hindi. Hon'ble Members will not consider it ungracious on my part if I tell them that at the present moment I feel more overwhelmed by a sense of the burden of responsibility which they have placed on my shoulders than by a sense of elation for the great honour which they have conferred upon me. I realize that the greatest honour which an Assembly like this could confer on any Indian, you have been pleased to confer on me, and I am not using merely the language of convention when I say that I appreciate it greatly and I am grateful to you for it.

I know the difficulties which I shall have to face in the discharge of the heavy responsibilities which I have undertaken on your behest. I know the work of the Constituent Assembly is beset with various kinds of obstacles, but I know too that in the discharge of my duties, I can count upon your unstinted support and the same kind of generosity which you have exhibited in electing me to this high honour. Our Constituent Assembly is meeting in difficult circumstances. We see signs of strife in many places in this unfortunate land. But other countries too, when they elected their constituent assemblies and asked them to frame a constitution for them, were faced with similar difficulties. We can take comfort in the fact that in spite of those difficulties, in spite of the differences in view-points which exhibited themselves with vigour, sometimes with trouble and turmoil, the assemblies were able, in spite of them, to frame constitutions which were acceptable to the people at large and which have become in course of time an invaluable heritage for the people in those lands. There is no reason why we also should not succeed similarly. All that we need is honesty of purpose, firmness of determination, a desire to understand each others view-point, that we shall do justice, that we shall behave as fairly, as squarely as possible towards everyone else—and with that determination, with that resolve, I cannot see why we should not be able to overcome the obstacles in our way. I am aware that this Constituent Assembly has been born with certain limitations placed on it from its very birth. We may not forget, disregard or ignore those limitations, in the course of our proceedings and in arriving at our decisions. But I know too that in spite of those limitations the Assembly is a self-governing, self-determining independent body with the

]†English translation of Hindustani speech ends.

proceedings of which no outside authority can interfere, and the decisions of which no one else outside it can upset or alter or modify. Indeed it is in the power of this Constituent Assembly to get rid of and to demolish the limitations which have been attached to it at its birth and I hope you, Ladies and Gentlemen, who have come here for framing a constitution for an independent and free India, will be able to get rid of those limitations and to place before the world a model of a constitution that will satisfy all our people all groups, all communities, all religions inhabiting this vast land, and which will ensure to everyone freedom of action freedom of thought, freedom of belief and freedom of worship, which will guarantee to everyone opportunities for rising to his highest, and which will guarantee to everyone freedom in all respects.

I hope and trust that this Constituent Assembly will in course of time be able to develop strength as all such assemblies have done. When, an Organisation like this sets on its work it gathers momentum, and as it goes along it is able to gather, strength which can conquer all difficulties and which can subdue the most, formidable obstacles, in its path. Let me pray and hope that our Assembly too will gather more and more, strength as it goes along.

It is a most regrettable thing that I find many seats unoccupied today in this Assembly. I am hoping that our friends of the Muslim League will soon come to occupy these places and will be glad and happy to participate in this great work of creating a constitution for our people creating a constitution which according to, the experience of all other nations of the world, which according to our own experience and which according to our own traditions and our own peculiar conditions, will guarantee to every one all that can be guaranteed, all that need be guaranteed and all that require to be guaranteed, and will not leave any room for any complaint from any side. I am hoping also that you all will do your best to achieve this great objective.

Above all, what we need is freedom and as some one has said "Nothing is more valuable than the freedom to be free". Let us hope and pray that as a result of the labours of this Constituent Assembly we shall have achieved that freedom and we shall be proud of it. (*Applause.*)

ELECTION OF THE COMMITTEE FOR RULES OF PROCEDURE

Mr. Chairman: This, brings us to the close of our proceedings for the day, but I will ask Hon'ble Members to bear with me for a minute or two. You will recollect that yesterday we decided to have a Committee for framing Rules, and 12 O'clock was the time fixed by which all nominations had to be put in. We had to elect 15 members. I find that nominations of only 15 members have been put in. That obviates the necessity of having an election by ballot, and I declare the following persons, who have been proposed to be duly elected:

The Hon'ble Mr. Jagjivan Ram.
Mr. Sarat Chandra Bose.
Mr. F. R. Anthony.
Diwan Bahadur Sir Alladi Krishnaswami Ayyar.
Bakhshi Sir Tek Chand.
The Hon'ble Mr. Rafi Ahmad Kidwai.
Shrimati G. Durga Bai.
Dr. Joseph Alban D'Souza.

The Hon'ble Diwan Bahadur Sir N. Gopaldaswami Ayyangar.
The Hon'ble Shri Purushottam Das Tandon.
The Hon'ble Srijut Gopinath Bardoloi.
Dr. B. Pattabhi Sitaramayya.
Mr. K. M. Munshi.
The Hon'ble Mr. Mehr Chand Khanna.
Sardar Harnam Singh.

They are declared duly elected to the Rules Committee.

There is one thing more. On the first day, Dr. Sinha, to save time and for the convenience of the members, did away with the process of hand shaking with every member. I would like to go round and meet every member before you all leave this place. I know there are many with whom it has been by privilege to work for years. I know others with whom I have not been so intimately associated, but whose faces are known and in some cases names too. But there are at least some whom I have not known and I would like to make their acquaintance today, if you don't mind.

After that we disperse for the day. The House remains adjourned till Eleven of the Clock tomorrow morning.

(Mr. Chairman went round and shook hands with all the members present).

The Assembly then adjourned till Thursday, the 12th December 1946, at Eleven of the Clock.

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CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 12th December, 1946

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eleven of the Clock, Mr. Chairman (The Hon'ble Dr. Rajendra Prasad) in the Chair.

Mr. Chairman: If there are any Members who have not yet signed the Register, they may do so now.

(Nobody came forward.)

It seems there is nobody who has not yet signed. We now proceed to the next item. The first item that we have is a Resolution by Pandit Jawahar Lal Nehru. I understand that there are some Members who feel that they have not had sufficient time to consider this important Resolution. There is no doubt that the Resolution is a very important one and I would not like any Member to feel that he has not had sufficient time to consider it fully. If the House so desires, I am prepared to adjourn this discussion till tomorrow.

Hon'ble Members: Yes.

Mr. Chairman: Then there is another matter in this connection in regard to which I should like the advice of the House. We have got a Rules Committee and its members should meet to prepare the Rules which they will place before us. They should have time separate from the general session of the Assembly. If you agree, they will meet after this House is adjourned and we shall do as much as we can do. But if it cannot complete the work, the Rules Committee will have to meet tomorrow, and I would like to know whether the House would like to sit in the morning from 11 or in the afternoon because I would suggest that we should have one session only, either in the morning or afternoon, so that the Rules Committee may get the other half of the day for its work. If the House want the morning session, then we can meet in the morning.

Some Hon'ble Members: We want morning sessions.

Some Hon'ble Members: Afternoon sessions.

Mr. Chairman: I am afraid in this matter it is difficult for me to come to a decision. I have to trouble the members to raise their hands—those who would like the morning sessions may please raise their hands.

(More members raised their hands in favour of the morning session.)

It seems the morning session is preferred by a large number of people. We shall have the session at 11 tomorrow morning concerning this Resolution and in the afternoon we may have, if necessary a meeting of the Rules Committee. If any Members have got any amendment to the Resolution to move, I would request them to hand over the amendments to the Secretary in the course of the day and we shall take up the discussion tomorrow. The Secretary will take care, if possible, to circulate the amendments also to Members.

An Hon'ble Member: Are we sitting on Saturday?

Mr. Chairman: I think we should be sitting on Saturday. That is my view but that is entirely in the hands of the House. I think we will be sitting on Saturday too.

The Hon'ble Pandit Hirday Nath Kunzru (United Provinces: General): I think we should not meet on Saturday. Let us have a day off for quiet discussions of the problems between ourselves.

Shri Sri Prakasa (United Provinces: General): I think we should not meet on Sundays and that should be sufficient for quiet discussions for Pandit Hirday Nath Kunzru.

Mr. Chairman: We shall consider that tomorrow. So far as the House is concerned, I think we have to adjourn now till 11 A.M. tomorrow and I would like the Members of the Rules Committee to meet say half-an-hour later. In the meantime we shall fix up some room where they shall meet.

The House stands adjourned till 11 A.M. tomorrow.

Dr. Sir Hari Singh Gour (C. P. and Berar: General): It seems to me that it will serve a useful purpose if the Hon'ble Mover of the Resolution formally moves and expresses his views to enable the Members here to understand the full import of the Resolution, so that we can frame amendments accordingly and these can be taken up tomorrow or the day after.

Mr. Satyanarayan Sinha (Bihar: General): The House has, already been adjourned.

Mr. Chairman: Sir Hari Singh Gour has suggested that the Resolution might be moved by the Mover today who in his speech could explain his own point of view so that the other Members may be in possession of that and the discussion might take place tomorrow. I had myself at first thought of that but then I felt that the members would like to consider the whole thing tomorrow.

Some Hon'ble Members: Tomorrow.

Mr. Chairman: There seems to be a difference of opinion and I do not like to take a vote on this question especially as I have already declared the House adjourned. So we shall now adjourn. The House stands adjourned till tomorrow, 11 O'Clock.

The Assembly then adjourned till Eleven of the Clock, on Friday, the 13th December, 1946.

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 13th December, 1946

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eleven of the Clock, Mr. Chairman (The Hon'ble Dr. Rajendra Prasad) in the Chair.

RESOLUTION *RE*: AIMS AND OBJECTS

Mr. Chairman: Pandit Jawahar Lal Nehru will now move the Resolution which stands in his name.

The Hon'ble Pandit Jawahar Lal Nehru (United Provinces: General):
*[Mr. Chairman, this Constituent Assembly has not been in session for some days. It has done much formal business, but more is yet to be done. We have been cutting our way and clearing the ground on which we intend to erect the edifice of a constitution. It, however, seems proper that before we proceed further we should clearly understand where we are going and what we intend building. It is apparent that on such occasions details are unnecessary. In building, you will, no doubt, use each brick after mature consideration. Usually, when one desires to construct a building, one must have a plan for the structure that one wishes to erect and then collect the material required. For a long time we have been having various plans for a free India in our minds, but now, when we are beginning the actual work, I hope, you will be at one with me when I say, that we should present a clear picture of this plan to ourselves, to the people of India and to the world at large. The Resolution that I am placing before you defines our aims, describes an outline of the plan and points the way which we are going to tread.

You all know that this Constituent Assembly is not what many of us wished it to be. It has come into being under particular conditions and the British Government has a hand in its birth. They have attached to it certain conditions. We accepted the State Paper, which may be called the foundation of this Assembly, after serious deliberations and we shall endeavour to work within its limits. But you must not ignore the source from which this Assembly derives its strength. Governments do not come into being by State Papers. Governments are, in fact the expression of the will of the people. We have met here today because of the strength of the people behind us and we shall go as far as the people not of any party or group but the people as a whole—shall wish us to go. We should, therefore, always keep in mind the passions that lie in the hearts of the masses of the Indian people and try to fulfil them.

I am sorry there are so many absentees. Many members who have a right to come and attend the meeting are not here today. This, in one sense, increases our responsibility. We shall have to be careful that we do nothing which may cause uneasiness in others or goes against any principle. We do hope that those who have abstained, will soon join us in our deliberations, since this Constitution can only go as far as the strength behind it can push it. It has ever been and shall always be our ardent desire to see the people of India united together so that we may frame a constitution which will be acceptable to the masses of the Indian people. It is, at the same time, manifest that when a great country starts to advance, no party or group can stop it. This House, although it has

*[English translation of Hindustani speech begins.

[The Hon'ble Pandit Jawahar Lal Nehru]

met in the absence of some of its members, will continue functioning and try to carry out its work at all costs.

The Resolution that I am placing before you is in the nature of a pledge. It has been drafted after mature deliberation and efforts have been made to avoid controversy. A great country is sure to have a lot of controversial issues; but we have tried to avoid controversy as much as possible. The Resolution deals with fundamentals which are commonly held and have been accepted by the people. I do not think this Resolution contains anything which was outside the limitations laid down by the British Cabinet or anything which may be disagreeable to any Indian, no matter to what party or group he belongs. Unfortunately, our country is full of differences, but no one except perhaps a few, would dispute the fundamentals which this Resolution lays down. The Resolution states that it is our firm and solemn resolve to have a sovereign Indian republic. We have not mentioned the word 'republic' till this time; but you will well understand that a free India can be nothing but a republic.

On this occasion, when the representatives of the Indian States are not present, I desire to make it clear how this Resolution will affect the Indian States. It has also been suggested, and the suggestion may take the form of an amendment laying down that since certain sections of the House are not present, the consideration of the Resolution may be postponed. In my opinion, such an amendment is not in keeping with the spirit of the times, because if we do not approve the first objective that we are placing before ourselves, before our country and before the world at large, our deliberations will become meaningless and lifeless, and the people will have no interest in our work. Our intention regarding the States must be clearly understood. We do desire that all sections of India should willingly participate in the future Indian Union but in what way and with what sort of government rests with them. The Resolution does not go into these details. It contains only the fundamentals. It imposes nothing on the States against their will. The point to be considered is how they will join us and what sort of administration they will have. I do not wish to express my personal opinion on the matter. Nevertheless I must say that no State can have an administration which goes against our fundamental principles or gives less freedom than obtaining in other parts of India. The Resolution does not concern itself with what form of government they will have or whether the present Rajas and Nawabs will continue or not. These things concern the people of the States. It is quite possible that the people may like to have their Rajas. The decision will rest with them. Our republic shall include the whole of India. If a part within it desires to have its own type of administration, it will be at liberty to have it.

I do not wish that anything should be added to or subtracted from the Resolution. It is my hope that this House will do nothing that may appear in papers, so that, at no time, should people, who are concerned with these problems but who are not present here, be able to say that this House indulged in irregular talk.

I desire to make it clear that this Resolution does not go into details. It only seeks to show how we shall lead India to gain the objectives laid down in it. You will take into consideration its words and I hope you will accept them; but the main thing is the spirit behind it. Laws are made of words but this Resolution is something higher than the law. If you examine its words like lawyers you will produce only a lifeless thing. We are at present standing midway between two ears; the old order is fast changing, yielding place to the new. At such a juncture we have to give a live message to India and to the world at large. Later on we can frame our Constitution in whatever words we please. At present,

we have to send out a message to show what we have resolved to attempt to do. As to what form or shape this Resolution, this declaration will ultimately take, we shall see later. But one thing is, however, certain: it is not a law; but is something that breathes life in human minds.

I hope the House will pass the Resolution which is of a special nature. It is an undertaking with ourselves and with the millions of our brothers and sisters who live in this great country. If it is passed, it will be a sort of pledge that we shall have to carry out. With this expectation and in this form, I place it before you. You have copies of it in Hindustani with you. I will therefore not take more of your time to read it one way, or, I will, however, read it in English and speak further on it in that language.]*

I beg to move:

- “(1) This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution;
- (2) WHEREIN the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all; and
- (3) WHEREIN the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the Law of the Constitution, shall possess and retain the status of autonomous Units, together with residuary powers, and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom; and
- (4) WHEREIN all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people; and
- (5) WHEREIN shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and
- (6) WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and
- (7) WHEREBY shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea, and air according to Justice and the law of civilised nations; and
- (8) this ancient land attains its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind.”

“Sir, this is the fifth day of this first session of the Constituent Assembly. Thus far we have laboured on certain provisional and procedural matters which are essential. We have a clear field to work upon; we have to prepare the ground and we have been doing that these few days. We have still much to do. We have to pass our Rules of Procedure and to appoint Committees and the like, before we can proceed to the real step, to the real work of this Constituent Assembly, that is, the high adventure of giving shape, in the printed and written word, to a Nation's dream and aspiration. But even now, at this stage, it is surely desirable that we should give some indication to ourselves, to those who look to this Assembly, to those millions in this country who are looking up to us and to the world at large, as to what we may do, what we seek to achieve, whither we are going. It is with this purpose that I have placed this Resolution before this House. It is a Resolution and yet, it is something much more than a resolution. It is a Declaration. It is a firm resolve. It is a pledge and an undertaking and it is for all of us I hope a dedication. And I wish this House, if I may say so respectfully, should consider this Resolution

*English translation of Hindustani speech ends.

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not in a spirit of narrow legal wording, but rather to look at the spirit behind that Resolution. Words are magic things often enough, but even the magic of words sometimes cannot convey the magic of the human spirit and of a Nation's passion. And so, I cannot say that this Resolution at all conveys the passion that lies in the hearts and the minds of the Indian people today. It seeks very feebly to tell the world of what we have thought or dreamt of so long, and what we now hope to achieve in the near future. It is in that spirit that I venture to place this Resolution before the House and it is in that spirit that I trust the House will receive it and ultimately pass it. And may I, Sir, also, with all respect, suggest to you and to the House that when the time comes for the passing of this Resolution let it be not done in the formal way by the raising of hands, but much more solemnly, by all of us standing up and thus taking this pledge anew.

The House knows that there are many absentees here and many members who have a right to come here, have not come. We regret that fact because we should have liked to associate with ourselves as many people, as many representatives from the different parts of India and different groups as possible. We have undertaken a tremendous task and we seek the co-operation of all people in that task; because the future of India that we have envisaged is not confined to any group or section or province or other, but it comprises all the four hundred million people of India, and it is with deep regret that we find some benches empty and some colleagues, who might have been here, absent. I do feel, I do hope that they will come and that this House, in its future stages, will have the benefit of the co-operation of all. Meanwhile, there is a duty cast upon us and that is to bear the absentees in mind, to remember always that we are here not to function for one party or one group, but always to think of India as a whole and always to think of the welfare of the four hundred millions that comprise India. We are all now, in our respective spheres, partymen, belonging to this or that group and presumably we shall continue to act in our respective parties. Nevertheless, the time comes when we have to rise above party and think of the Nation, think sometimes of even the world at large of which our Nation is a great part. And when I think of the work of this Constituent Assembly, it seems to me, the time has come when we should, so far as we are capable of it, rise above our ordinary selves and party disputes and think of the great problem before us in the widest and most tolerant and most effective manner so that, whatever we may produce, should be worthy of India as a whole and should be such that the world should recognise that we have functioned, as we should have functioned, in this high adventure.

There is another person who is absent here and who must be in the minds of many of us today—the great leader of our people, the father of our Nation (*applause*)—who has been the architect of this Assembly and all that has gone before it and possibly of much that will follow. He is not here because, in pursuit of his ideals, he is ceaselessly working in a far corner of India. But I have no doubt that his spirit hovers over this place and blesses our undertaking.

As I stand here, Sir, I feel the weight of all manner of things crowding around me. We are at the end of an era and possibly very soon we shall embark upon a new age; and my mind goes back to the great past of India, to the 5,000 years of India's history, from the very dawn of that history which might be considered almost the dawn of human history, till today. All that past crowds around me and exhilarates me and, at the same time, somewhat oppresses me. Am I worthy of that past? When I think also of the future, the greater future I hope, standing on this sword's edge of the present between this mighty past and the mightier future, I tremble

a little and feel overwhelmed by this mighty task. We have come here at a strange moment in India's history. I do not know but I do feel that there is some magic in this moment of transition from the old to the new, something of that magic which one sees when the night turns into day and even though the day may be a cloudy one, it is day after all, for when the clouds move away, we can see the sun later on. Because of all this I find a little difficulty in addressing this House and putting all my ideas before it and I feel also that in this long succession of thousands of years, I see the mighty figures that have come and gone and I see also the long succession of our comrades who have laboured for the freedom of India. And now we stand on the verge of this passing age, trying, labouring, to usher in the new. I am sure the House will feel the solemnity of this moment and will endeavour to treat this Resolution which it is my proud privilege to place before it in that solemn manner. I believe there are a large number of amendments coming before the House. I have not seen most of them. It is open to the House, to any member of this House, to move any amendment and it is for the House to accept it or reject it, but I would, with all respect, suggest that this is not moment for us to be technical and legal about small matters when we have big things to face, big things to say and big things to do, and therefore I would hope that the House would consider this Resolution in this big manner and not lose itself in wordy quarrels and squabbles.

I think also of the various Constituent Assemblies that have gone before and of what took place at the making of the great American nation when the fathers of that nation met and fashioned out a constitution which has stood the test of so many years, more than a century and a half, and of the great nation which has resulted, which has been built up on the basis of that Constitution. My mind goes back to that mighty revolution which took place also over 150 years ago and to that Constituent Assembly that met in that gracious and lovely city of Paris which has fought so many battles for freedom, to the difficulties that that Constituent Assembly had and to how the King and other authorities came in its way, and still it continued. The House will remember that when these difficulties came and even the room for a meeting was denied to the then Constituent Assembly, they betook themselves to an open tennis court and met there and took the oath, which is called the Oath of the Tennis Court, that they continued meeting in spite of Kings, in spite of the others, and did not disperse till they had finished the task they had undertaken. Well, I trust that it is in that solemn spirit that we too are meeting here and that we, too, whether we meet in this chamber or other chambers, or in the fields or in the market-place, will go on meeting and continue our work till we have finished it.

Then my mind goes back to a more recent revolution which gave rise to a new type of State, the revolution that took place in Russia and out of which has arisen the Union of the Soviet Socialist Republics, another mighty country which is playing a tremendous part in the world, not only a mighty country but for us in India, a neighbouring country.

So our mind goes back to these great examples and we seek to learn from their success and to avoid their failures. Perhaps we may not be able to avoid failures because some measure of failure is inherent in human effort. Nevertheless, we shall advance, I am certain, in spite of obstructions and difficulties, and achieve and realise the dream that we have dreamt so long. In this Resolution which the House knows, has been drafted with exceeding care, we have tried to avoid saying too much or too little. It is difficult to frame a resolution of this kind. If you say too little, it becomes just a pious resolution and nothing more. If you say too much, it encroaches on the functions of those who are going to draw

[The Hon'ble Pandit Jawahar Lal Nehru]

up a constitution, that is, on the functions of this House. This Resolution is not a part of the constitution we are going to draw up and it must not be looked at as such. This House has perfect freedom to draw up that Constitution and when others come into this House, they will have perfect freedom too to fashion that constitution. This Resolution therefore steers between these two extremes and lays down only certain fundamentals which I do believe, no group or party and hardly any individual in India can dispute. We say that it is our firm and solemn resolve to have an Independent sovereign republic. India is bound to be sovereign, it is bound to be independent and it is bound to be a republic. I will not go into the arguments about monarchy and the rest, but obviously we cannot produce monarchy in India out of nothing. It is not there. If it is to be an independent and sovereign State, we are not going to have an external monarchy and we cannot have a research for some local monarchies. It must inevitably be a republic. Now, some friends have raised the question: "Why have you not put in the word "democratic" here. Well, I told them that it is conceivable, of course, that a republic may not be democratic but the whole of our past is witness to this fact that we stand for democratic institutions. Obviously we are aiming at democracy and nothing less than a democracy. What form of democracy, what shape it might take is another matter? The democracies of the present day, many of them in Europe and elsewhere, have played a great part in the world's progress. Yet it may be doubtful if those democracies may not have to change their shape somewhat before long if they have to remain completely democratic. We are not going just to copy, I hope, a certain democratic procedure or an institution of a so-called democratic country. We may improve upon it. In any event whatever system of Government we may establish here must fit in with the temper of our people and be acceptable to them. We stand for democracy, It will be for this House to determine what shape to give to that democracy, the fullest democracy, I hope. The House will notice that in this Resolution, although we have not used the word 'democratic' because we thought it is obvious that the word 'republic' contains that word and we did not want to use unnecessary words and redundant words, but we have done something much more than using the word. We have given the content of democracy in this Resolution and not only the content of democracy but the content, if I may say so, of economic democracy in this Resolution. Others might take objection' to this Resolution on the ground that we have not said that it should be a Socialist State. Well, I stand for Socialism and, I hope, India will stand for Socialism and that India will go towards the constitution of a Socialist State and I do believe that the whole world will have to go that way. What form of Socialism again is another matter for your considerations But the main thing is that in such a Resolution, if, in accordance with my own desire, I had put in, that we want a Socialist State, we would have put in something which may be agreeable to many and may not be agreeable to some and we wanted this Resolution not to be controversial in regard to such matters. Therefore we have laid down, not theoretical words and formulae, but rather the content of the thing we desire. This is important and I take it there can be no dispute about it. Some people have pointed out to me that our mentioning a republic may somewhat displease the Rulers of Indian States. It is possible that this may displease them. But I want to make it clear personally and the House knows that I do not believe in the monarchical system anywhere, and that in the world today monarchy is a fast disappearing institution. Nevertheless it is not a question of my personal belief in this matter. Our view in regard to these Indian States has been, for many years, first of all that the people of those States must share completely in the freedom to come. It is quite

inconceivable to me that there should be different standard and degrees of freedom as between the people in the States and the people outside the States. In what manner the States will be parts of that Union, that is a matter for this House to consider with the representatives of the States. And I hope in all matters relating to the States, this House will deal with the real representatives of the States. We are perfectly willing, I take it, to deal in such matters as appertain to them, with the Rulers or their representatives also, but finally when we make a constitution for India, it must be through the representatives of the people of the States as with the rest of India. Who are present here. (*Applause*). In any event, we may lay down or agree that the measure of freedom must be the same in the States as elsewhere. It is a possibility and personally I should like a measure of uniformity too in regard to the apparatus and machinery of Government. Nevertheless, this is a point to be considered in co-operation and in consultation with the States. I do not wish, and I imagine this Constituent Assembly will not like, to impose anything on the States against their will. If the people of a particular State desire to have a certain form of administration, even though it might be monarchical, it is open to them to have it. The House will remember that even in the British Commonwealth of Nations today, Eire is a Republic and yet in many ways it is a member of the British Commonwealth. So, it is a conceivable thing. What will happen, I do not know because that is partly for this House and partly for others to decide. There is no incongruity or impossibility about a certain definite form of administration in the States, provided there is complete freedom and responsible Government there and the people really are in charge. If monarchical figure-heads are approved by the people of the State, of a particular State, whether I like it or not, I certainly will not like to interfere. So I wish to make it clear that so far as this Resolution or Declaration is concerned, it does not interfere in any way with any future work that this Constituent Assembly may do, with any future negotiations that it may undertake. Only in one sense, if you like, it limits our work, if you call that a limitation, *i.e.*, we adhere to certain fundamental propositions which are laid down in the Declaration. Those fundamental propositions, I submit, are not controversial in any real sense of the word. Nobody challenges them in India and nobody ought to challenge them and if anybody does challenge, well, we accept that challenge and we hold our position. (*Applause*).

Well, Sir, we are going to make a constitution for India and it is obvious that what we are going to do in India, is going to have a powerful effect on the rest of the world, not only because a new free independent nation comes out into the arena of the world, but because of the very fact that India is such a country that by virtue, not only of her large size and population, but of her enormous resources and her ability to exploit those resources, she can immediately play an important and a vital part in world affairs. Even today, on the verge of freedom as we are today, India has begun to play an important part in world affairs. Therefore, it is right that the framers of our Constitution should always bear this larger international aspect in mind.

We approach the world in a friendly way. We want to make friends with all countries. We want to make friends in spite of the long history of conflict in the past, with England also. The House knows that recently I paid a visit to England. I was reluctant to go for reasons which the House knows well. But I went because of a personal request from the Prime Minister of Great Britain. I went and I met with courtesy everywhere. And yet at this psychological moment in India's history when we wanted, when we hungered for messages of cheer, friendship and co-operation

[The Hon'ble Pandit Jawahar Lal Nehru]

from all over the world and more especially from England, because of the past contact and conflict between us, unfortunately, I came back without any message of cheer, but with a large measure of disappointment. I hope that the new difficulties that have arisen, as every one knows, because of the recent statements made by the British Cabinet and by others in authority there, will not come in our way and that we shall yet succeed in going ahead with the co-operation of all of us here and those who have not come. It has been a blow to me, and it has hurt me that just at the moment when we are going to stride ahead, obstructions were placed in our way, new limitations were mentioned which had not been mentioned previously and new methods of procedure were suggested. I do not wish to challenge the *bona fides* of any person, but I wish to say that whatever the legal aspect of the thing might be, there are moments when law is a very feeble reed to rely upon, when we have to deal with a nation which is full of the passion for freedom. Most of us here during the past many years, for a generation or more have often taken part in the struggle for India's freedom. We have gone through the valley of the shadow. We are used to it and if necessity arises we shall go through it again. (*Hear; hear*). Nevertheless, through all this long period we have thought of the time when we shall have an opportunity not merely to struggle, not merely to destroy, but to construct and create. And now when it appeared that the time was coming for constructive effort in a free India to which we looked forward with joy, fresh difficulties are placed in our way at such a moment. It shows that, whatever force might be behind all this, people who are able and clever and very intelligent, somehow lack the imaginative daring which should accompany great offices. For, if you have to deal with any people, you have to understand them imaginatively; you should understand them emotionally; and of course, you have also to understand them intellectually. One of the unfortunate legacies of the past has been that there has been no imagination in the understanding of the Indian problem. People have often indulged in, or have presumed to give us advice, not realising that India, as she is constituted today, wants no one's advice and no one's imposition upon her. The only way to influence India is through friendship and co-operation and goodwill. Any attempt at imposition, the slightest trace of patronage, is resented and will be resented. (*Applause*). We have tried, I think honestly, in the last few months in spite of the difficulties that have faced us, to create an atmosphere of co-operation. We shall continue that endeavour. But I do very much fear that that atmosphere will be impaired if there is not sufficient and adequate response from others. Nevertheless, because we are bent on great tasks, I hope and trust, that we shall continue that endeavour and I do hope that if we continue, that we shall succeed. Where we have to deal with our own countrymen, we must continue that endeavour even though in our opinion some countrymen of ours take a wrong path. For, after all, we have to work together in this country and we have inevitably to co-operate, if not today, tomorrow or the day after. Therefore, we have to avoid in the present anything which might create a new difficulty in the creation of that future which we are working for. Therefore, so far as our own countrymen are concerned, we must try our utmost to gain their co-operation in the largest measure. But, co-operation cannot mean the giving up of the fundamental ideals on which we have stood and on which we should stand. It is not co-operation to surrender everything that has given meaning to our lives. Apart from that, as I said, we seek the co-operation of England even at this stage which is full of suspicion of each other. We feel that if that co-operation is denied, that will be injurious to India, certainly to some extent probably more so to England, and to some extent, to the world at large. We have just come

out of the World War and People talk vaguely and rather wildly of new wars to come. At such a moment this New India is taking birth—renascent, vital, fearless. Perhaps it is a suitable moment for this new birth to take place out of this turmoil in the world. But we have to be cleared at this moment, we, who have this heavy task of constitution building. We have to think of this tremendous prospect of the present and the greater prospect of the future and not get lost in seeking small gains for this group or that. In this Constituent Assembly we are functioning on a world stage and the eyes of the world are upon us and the eyes of our entire past are upon us. Our past is witness to what we are doing here and though the future is still unborn, the future too somehow looks at us, I think, and so, I would beg of this House to consider this Resolution in this mighty prospect of our past, of the turmoil of the present and of the great and unborn future that is going to take place soon. Sir, I beg to move. (*Prolonged Cheers*).

Mr. Chairman: Shri Purushottam Das Tandon will second the Resolution.

The Hon'ble Shri Purushottam Das Tandon (United Provinces: General: *[Mr. Chairman, I fully support the Resolution moved by my brother Pandit Jawahar Lal Nehru. Today's session of the Constituent Assembly is an historical occasion. After centuries such a meeting has once more been convened in our country. It recalls to our mind our glorious past when we were free and when assemblies were held at which the Pandits met to discuss important affairs of the country. It reminds us of the Assemblies of age of Asoka. We have dim impressions of those days before our eyes. We are also reminded of Assemblies of other countries such as, America, France and Russia. Our Constituent Assembly will be remembered with those others which met to frame the constitutions of other free nations. We have met here to frame a constitution which will show to the world that India is determined to live honourably not in isolation but as a part of the world. It will co-operate with other countries and help them in their difficulties and assist them in all those affairs which make for the general progress of the world. We hope that what we are doing today will be a historic event which will be counted those great events which have helped in the progress of the world.

India has been under the sway of the British for the last 150 years. We do not wish to go into things against which we have continuously raised our voice ever since the advent of the British Raj. We will not at present speak of the injuries done to India during this one and a half century. They not only deprived us of our freedom but also created disunity among us. We are not to go into these things today. We, however, cannot ignore the struggle and sacrifices of our leaders. In the beginning our leaders demanded freedom by passing resolutions with explanations and submitting them to the Government. We were subjected openly to high-handedness and the Government were everywhere openly favouring the British. We earnestly appealed to our rulers to treat us with justice. Our leaders referred them to their high ideals, to the ideals of Burke and Mill. They were steeped in British ideals and they hoped that the British would do them justice, and give them freedom. That time is now gone. Our experience has shown us that freedom cannot be had by requests and appeals and that drastic steps are unavoidable. The pages of our history show that new movements were started and open opposition began to be offered to the British. The movement of 1905-6 helped our country to ascend a few rungs higher on the ladder of progress. At that time our brave Bengali leaders and youths did act which will be written in golden letters in our history. We forged ahead. Our national leader, Mahatma Gandhi appeared in the field of politics and changed the methods of our

*[] English translation of Hindustani speech begins.

[The Hon'ble Shri Purushottam Das Tandon]

struggle. He taught us new ways and we started afresh. British laws were not only openly defied but were also openly contravened without minding the dire consequences which were likely to follow such action. Thousands of our people broke the laws and went to jails. The pictures of those, who gave their lives of lingered for years in prisons, stand before our eyes. The more recent movement—the movement of 1942—is, in fact, the creator of this Assembly. This movement played a most important role in making the British Government call this Constituent Assembly. It opened a new field for our further advance. The eyes of the British Government were opened and the world was confronted with the fact that the British Government could no longer stay in India. Other countries did not help us openly. We have, however, to admit that in addition to the expression of our strength, which is the main thing which will carry us towards our goal, we were helped by powers which are today engaged in uniting the world. The world has seen that oppression perpetrated in its remotest corner, has far-reaching repercussions involving the oppressor's country and its neighbours. This has been proved by the last two world wars. Now the great leaders of the world are thinking of the means to save the world from the ravages of a third world war. They desire to make it a paradise, to turn it into a place where no more wars will be fought, no more human blood will be shed, where no great distinction will exist between the rich and the poor, where everybody will get food and amenities, where people will be allowed to live according to their ideas, where every child has a right to be educated, where ideals will become noble and nobler and where spiritual ties will grow between the sons of man. Wise people are trying to bring out laws which will extricate the world from the slough in which it is at present wallowing and which will give equal rights to all countries. The time is swiftly changing and world forces are contributing towards these new ideas. We, too, living in this world cannot escape them. We ardently welcome the new forces which have always been the basis of our high hopes. It can be particularly said about India that its people have always considered the whole of mankind as one family and the whole world as one country. The best people among us never made any distinction between the people of the world. Many foreigners came to our country. We received them with open arms. We never practised the policy, which some countries have adopted against the people of our country. Our history shows that we welcomed all those who came from other countries and gave them whatever help they needed, assisting them to stay in our country. How did the people of England first come to this country? They found here protection and refuge. There have been quarrels and strifes; but on the whole our history shows that we have always protected human rights. We do not consider it right to divide brother from brother nor do we make any distinction in their political rights. We have no doubt, had and still have shortcomings: and we cannot ignore them.

Our past history urges us to go forward. We have to reach the point where we may place the ideal of equality not only before our own country but before the world at large. On this historical occasion it is quite natural that our thoughts dwell on our past history and to the events which occurred in our country. On our struggles, our sacrifices and help that we have received from other nations which have brought us here together and we must take strength from them. We have come here to frame a constitution which will give our country peace and tranquillity. We aim at giving equality to each and every inhabitant of our motherland.

The Resolution placed before you today has equality as its underlying theme. The different sections of the country have been given autonomy and India as a whole remains one with full sovereignty. We shall stand

united in affairs which demand our unity. The one important thing in the Resolution is the recognition of India as a free country. Our country is one and yet we shall give full freedom to its various sections to have for themselves whatever administration they liked. The present division of our country into provinces may change. We shall do justice to all communities and give them full freedom in their social and religious affairs.

There is an amendment to the Resolution asking for a postponement of its consideration until such time as the Muslim League joins the Assembly. We should not ignore the fact that for every action there is a proper time. If we postpone the Resolution today, when will it again come before us? We are not certain as to when the League would come in. We have gathered together today; should we disperse without doing anything? Should we not have at least an objective for our future proceedings? Should we go away after merely appointing a Procedure Committee? Our brethren advise us to postpone the consideration of the Resolution to some other time. If they wanted not to do anything in the absence of the Muslim League, why have they met here at all?

We do want the Muslim League to co-operate with us; but can we contribute to the present aims and aspirations of that body? We shall try our utmost not to hurt the cause of the Muslim League; and, I point out to you, that the Resolution takes note of this fact. There are many of us who are against giving residuary powers to the provinces. Personally, I would oppose the grant of residuary powers to the provinces in the best interests of my country, especially in view of the conditions prevalent in the provinces owing to this Hindu-Muslim problem. We all know what has happened in Bengal and in other provinces. Residuary powers and political rights, which may conduce to unity and progress in the country, should lie with the Central or Federal Government. The Resolution, however gives residuary powers to the provinces so that the Muslim League may not say that we have done in their absence what as we pleased. Moreover, the State Paper issued by the Cabinet Mission, which is the foundation of the Constituent Assembly, also said that the residuary powers should go to the provinces. We accepted it in the hope that this will enable the Muslim League to work with us. We went as far as we could to make the Muslim League co-operate with us; nay, I would rather say, we went farther than was needed, because the Muslim League aims at certain objectives which are absolutely against our objectives and this will cause a lot of trouble in the future. For the sake of securing Muslim League's co-operation we have been accepting many things against our ideals. We should now put a stop to that and should not ignore our fundamental principles for the sake of coming to an agreement with the Muslim League. I am opposed to the postponement of the Resolution, and I am sure, the House realises the importance of this Resolution. Constituent Assemblies in other countries began with their objectives before them. If you postpone this Resolution, what will the world think? When they hear of this Resolution they would think that India was going to be free; that the fight of 'Quit India' against the British started by Indians in 1942, was being won. This Resolution will lend a great importance to your cause of freedom, and its postponement I think, is not expedient.

There are other amendments to the Resolution. It has been clearly pointed out in the Resolution that power shall entirely vest in the people. Some members suggest to substitute 'working people' for 'people.' I am opposed to this. The word 'people' means all the people. I am myself a servant of the farmers. To work with them is my highest glory. The term 'people' is comprehensive and contains all the people. It is, therefore, my opinion that no adjective should be attached to it. There are amendments asking for universal compulsory education and so on. These are petty

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matters. Times have changed. Provincial Governments have enacted laws to enforce these things. For the nonce we should concentrate on larger issues. All these amendments are non-essential and should not be moved.

As I have already said we have got this of making a constitution after passing through many ordeals. We obtained some privileges in 1935. We continued the fight until we came to 1942. Now, as a result of these struggles, we have gathered here to frame a constitution and we do not yet know what will be the result of our efforts. Our path is still full of obstructions. Our friends in London send us their advice. Sir Stafford Cripps, while speaking of certain principles, advises us to accept the formula that the majority should frame its own constitution, while the minority should also have the right to have its safeguards against any obstructions from the majority. I am sorry to say though Sir Stafford professes to help us, his real aim is to erect obstacles in our way. The history of our relations with the British show that Hindu-Muslim differences are purely a British creation.

The differences on which the British harp upon have been created by them. They were not in existence before their advent. Hindus and Muslims had a common civilization and lived amicably. Can the British say that the situation now obtained in India is not of their creation and is not backed by them? Those who are opposing us under the instigation of the British are our brethren and we certainly desire their co-operation; but in order to have them on our side, we cannot sacrifice these basic principles to which we have been wedded till now and which go to make a nation. Sir Stafford warns us of civil war and advises us to co-operate with each other to avoid it. No patriot would like civil war and shedding the blood of his own countrymen. Congress has always tried to unite all the sections of the population to fight for the freedom of their country. Our leaders have never indulged in communal bickerings. Congress is the only body in which Hindus, Muslims, Parsees, Jains and Buddhists can unite. In politics it refuses to recognize any difference on account of religion. To say that such and such sections be separated from the country on religious basis, is no religion but pure politics—politics which destroy the unity of a country. We ask Sir Stafford and other British leaders: "If a hundred years or, for that matter, twenty years ago, the right of separate elections were given to different sects of your country what sort of Government you would have had today?" Again, we ask America: "if the right of separate elections was given to different communities and Christian sects of your country, would you have had the same form of government as you now have? Would you not have had continuous civil wars in your countries?" The possibility of civil war in our country has been created by the British Government. The British Government is playing the old game. The Cabinet's Statement shows the same mentality. The interpretation given by them stresses the point that the different groups of the Indian Federation shall have full power to frame whatever constitution they liked for them. They say, as they said before, that a province will have full option to remain in a group or not; but at the same time they qualify this statement with conditions which preclude the possibility of a province using that right. You tell a province that it was free to remain in a group or not but at the same time you say that all the people of a group should join together to frame its constitution. The North-West Frontier Province will have to attach itself to the Punjab, Sind and Baluchistan, and Assam to Bengal. Their constitutions will be framed by 'B' and 'C' groups. The group consisting of Punjab, Sind and Baluchistan will frame constitutions for N.W.F. Province and Bengal for Assam. Is it honest? You say that a province

has the right to go out of a group but you frame a constitution that precludes its going out of it. In the Cabinet Mission's Statement, it was clearly said that a province will have option to join a group. The option to go out is given at the end of the Statement. The meaning of the first part is that at the time of the formation of groups a province will have free option to be in the group or not. We understood it as such and so the Congress accepted it; but now it is said that a province has no option even at the time of formation of groups to remain out of its group not does it have the right to frame its constitution. It will be framed by the delegates of the whole group. This means that we should accept the division of India and deliver the N.-W. F. Province and Assam into the hands of persons who openly assert that they are out to divide India into two parts. If civil war is unavoidable, let it come. We cannot be coerced to do a wrong thing by threats of civil war. It is quite possible that civil war may occur in a corner of India and we may have to fight the British, too. They threaten us with civil war; but the fact is that they are sowing the seeds of civil war among us. They wish that we should fight so that they may rule over us. I feel pained when I say these things. I have a great regard for the British people. They are far advanced in the field of politics and they are wise and freedom-loving. We have learnt many things from them. I have not a trace of hatred in my mind for them. I was happy that a new era had dawned in England, that the Government had passed to the Labour Party who would reverse the old policy. For the last hundred years the policy of the British Government had been one of selfishness and cunning towards countries, while in their own country they are very liberal and have a great regard for each other. For the benefit of their own people they consider it expedient to coerce and exploit other people. It was expected that with the advent of this new government and the defeat of the old Tories their policy would be entirely reversed and the foreign policy of England would be based on honesty but I am disappointed to see that some of the recent statements aimed only at creating a breach among the people of India.

I admit that the Congress had come into the Assembly by accepting the Cabinet Mission's Proposals but I want to point out that Constituent Assembly after meeting may adopt an altogether a different course. In France people met on the invitation of King Louis. When they saw they could not do what they wanted to do, they began their own procedure. The King who had called them for granting him money, seeing their intentions, wanted to disperse them but they refused to disperse. Our Constituent Assembly has met on the invitation of the British Government but we are free to carry on the work as we please. Some of us were against the Congress participation in this Assembly. They were afraid of British tactics. The Congress, however, had full confidence in itself. My humble voice was also for coming into the Assembly I believed in the power and determination of my colleagues. The occasion was not to be lost. If we could not succeed on account of obstructions from the British Government we shall at least show the world the sort of constitution we want. Our Chairman in his speech made many good points. I was elated to hear him say that we would not subject ourselves to limitations laid down by the British Government.

In this House we cannot accept the British Government's proposals to divide India into sections and to give that right of framing constitution for provinces into the hands of persons who are bent upon dividing India. I do not like to say these things but I feel it my duty to say that the British Government shows a lack of honesty in assertions which it makes on behalf of the Muslim League.

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Somebody has rightly said that the League was the British Government's Front (morcha). Pandit Nehru said the other day in the Congress that the League members who had come in the Interim Government were acting as the King's Party. The fact is that the League is being duped by the British Government. They are our countrymen and our brethren and we are always prepared to come to an agreement with them. Today the British are using them as their morcha from behind which they are throwing arrows upon us. We know the British arrows and we have to protect ourselves. In the Constitution that we would frame, we would try to save ourselves from these arrows. In doing so, if we have to fight the British and their proteges, we are prepared to do so. We are sure we will, surmount all obstacles. It is the time of our trial. When success comes nearer a host of difficulties crop up. When *yogis* begin to ascend higher in their *yogas* they are beset by apparitions, spectres and evil spirits. They threaten them and try to dupe them. We are nearer the success and many evil spirit have arisen to make us deviate from our purpose. It is our duty that we should neither fall to their machinations or should we feel afraid of them.

In framing the Constitution we should remember that whatever plans of progress we make, we should never yield to the proposal of dividing India. India should remain one. Thus protecting our past civilization, we may proceed forward and take the greatest part in bringing peace to the world.

Mr. Chairman: The Resolution has been moved and seconded. I have received notice of a large number of amendments. I think I have got more than 40 amendments already before me and therefore I do not think it necessary to give any more time for giving notice of more amendments. I think all who wanted to put in amendments have already done so taking into consideration the number of amendments.

It is now 1 o'clock and I think we may rise. But before we rise, I desire to point out to the House that from the next day, I may have to do the unpleasant duty of imposing some sort of time-limit on the speakers. This being the first day, I did not like to interfere and I allowed the speakers to have full time.

Tomorrow being, Saturday, I would not like that the House should meet. It is not as if I am laying down a rule that we shall not meet on Saturdays. We are not meeting this Saturday for the reason that we are meeting in the Rules Committee and I want the Committee's work to be finished as soon as possible. So to allow the Members of the Committee full time tomorrow, we are not meeting here. We meet on Monday, and on Monday we shall meet in the afternoon from 3 o'clock, not in the morning. The House stands adjourned to 3 o'clock on Monday.

The Assembly then adjourned till 3 P.M. on Monday, the 16th December, 1946.

CONSTITUENT ASSEMBLY OF INDIA

Monday, the 16th December, 1946

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Three of the Clock (afternoon), Mr. Chairman (The Hon'ble Dr. Rajendra Prasad) in the Chair.

RESOLUTION RE: AIMS AND OBJECTS—*contd.*

Mr. Chairman: We proceed now with the further discussion of the Resolution moved on the 13th December. The number of amendments is very large but I understand that some of them will not be moved. I call upon Dr. Jayakar to move his amendment.

The Right Hon'ble Dr. M. R. Jayakar (Bombay: General): Mr. Chairman and friends, before I move my amendment I would like to say a few words to tender my congratulations for the excellent speech which Pandit Jawahar Lal Nehru made in moving the Resolution. Its lucidity, modesty and gravity were very impressive and as I listened to it, my thoughts went back to the old days when, a few yards from here, under the guidance and the leadership of his distinguished father, we carried on legislative fights which, viewed back from the dignity of the present Assembly now seem to be so diminutive and unreal. I always considered Pandit Motilal Nehru a very fortunate man in the sense that he had two children, each of whom has become very distinguished after his death—(*cheers*)—Pandit Jawahar Lal Nehru, the guiding soul of the present Assembly, and that distinguished lady whom we are waiting to receive after her achievement at the U.N.O. at New York.

Before I read the terms of my amendment to the Resolution I would like to remove a few misunderstandings which have arisen about its purposes. Many distinguished and loving friends have come and said to me, in all earnestness, that I ought not to move this Resolution. I would like to remove all misunderstandings about my reasons in moving this amendment. It was said that it will divide this Assembly, which is bad tactics at the present moment. When you hear my speech I hope you will agree that my motion is not intended to nor is it likely to cause a division in the sense these friends meant. Some others said that I was deliberately appeasing the Muslim League. I see no harm in that, if it is necessary for the purpose of making successful the work of this Assembly. One friend went the length of saying that I am supporting Mr. Churchill of all people in the world, the one person whom I tried to expose in my cross-examination at the Round Table Conference Committee. There is no possibility of my supporting Mr. Churchill by any means. Some friends touched me to the quick by saying that all my life, having been a champion of Hindu interests, I now propose to support and placate the Muslims. In reply I said that I saw no conflict between the two. Because I support Hindu interests it does not mean that I should trample on what I consider the just rights of another community. My real purpose in moving this amendment is to save the work of this Assembly from frustration. I fear that all the work we shall be doing here is in imminent danger of being rendered infructuous. I am anxious that the work of this Constituent Assembly should not be made futile and ineffective by our neglecting one or two difficulties which lie in our way. One friend said: 'You have been elected on the Congress ticket'. I recognise the generosity of that step and when the invitation came I accepted it at some personal inconvenience; but if the obligation of that step means that my services, which you have a right to demand at every step, must always take the form of popularity, then I am

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afraid it is not possible. I am here to render you as much co-operation and service as I can, but I cannot guarantee that such service will always be, in a form, popular with you. It may sometimes assume a painful form, *e.g.*, of asking your attention to some pitfalls and difficulties in the way.

The points which I make are two-fold, Sir. One is a purely legal point and after putting it in brief, I shall leave it to you, Sir, in the Chair and to the Constitutional Adviser whom I have known for the last 10 years as a man of great constitutional knowledge, rectitude of behaviour and stern independence. It is an advantage, if I may say so, from my place here that we have got the assistance of a person like Sir B. N. Rau and I have no doubt that the point, which I am putting before you, Sir, today will receive his best attention. I do not want to raise this as a point of order but I am now raising it as indicating a legal difficulty in our way. I have no doubt that in the time which you have at your disposal you will consider it very carefully and give such decision on it as you choose. The point which I propose to raise is that in this preliminary meeting of the Constituent Assembly at this stage no question like laying down the fundamentals of the Constitution can be considered. That the Resolution is intended to lay down the fundamentals of the Constitution, even Pandit Jawahar Lal Nehru has admitted. It is a very vital resolution and it lays down the essentials of the next Constitution. If you examine it, a cursory glance will reveal to you that the several things which are mentioned here, are fundamentals of the Constitution. For instance, it speaks of a Republic; of a Union; it talks of present boundaries, and the status of Provincial Authorities; Residuary powers, all powers being derived from the people, minorities Rights, fundamental rights—all these can be accurately described as fundamentals of the Constitution. My point is that within the limits of the power which the Cabinet Mission's Statement of 16th May accords to this preliminary meeting, it cannot validly lay down any fundamentals, however sketchy they may be, of the Constitution. That must wait until after we meet in the Sections and the Provincial Constitutions have been prepared. At that stage, the two other partners, the Muslim League and Indian States, are expected to be present. At our present preliminary meeting our work is cut out and limited by express terms which I shall presently read out to you and those express terms do not include the preparation or acceptance of the fundamentals of the Constitution which must await until we reach that stage which I have just mentioned. We are no doubt a sovereign body as you, Sir, very rightly remarked but we are sovereign within the limitations of the Paper by which we have been created. We cannot go outside those limitations except by agreement and the two other parties being absent, no agreement can be thought of. Therefore, we are bound by those limitations. Of course, if the idea of some people is to ignore those limitations altogether and convert this Constituent Assembly into a force for gaining political power, irrespective of the limitations of this Paper, to seize power and thereby create a revolution in the country, that is outside the present plan, and I have nothing to say about it. But as the Congress has accepted this Paper in its entirety, it is bound by the limitations of that Paper. If you will just permit me a few minutes to read to you the relevant parts of the Paper...

Mr. Kiran Sankar Roy (Bengal: General): Mr. Chairman, on a point of order. I would like to know whether Dr. Jayakar is raising a point of order or moving his amendment. If he is raising a point of order, we feel Sir that that point of order should be disposed of first before he can proceed to move his amendment.

Mr. Chairman: I think Dr. Jayakar has said that he is not raising a point of order, but he is pointing out the difficulties in the way of accepting this Resolution and I take it that he is proceeding in that way. As I understand it, he is not raising a point of order.

Dr. B. Pattabhi Sitaramayya (Madras: General): May I take it Sir, that this is a motion for adjournment of the consideration of the Resolution, as I make it out to be?

Mr. Chairman: I don't think it is a motion for adjournment either. He wants the Resolution to be discussed, but wishes to place before the House his own point of view with regard to the advisability or otherwise of the Resolution at this stage, and in doing so he points out certain difficulties in the way of accepting it.

Dr. B. Pattabhi Sitaramayya: May I respectfully suggest that he does not want us to proceed with the consideration of this subject. It is clear from the wording of his amendment. I invite your attention to the wording Sir.

Shri Mohan Lal Saksena (United Provinces: General): On a point of order. Under the Assembly rules, the mover of an amendment has to move his amendment before he makes his speech. I would suggest that Dr. Jayakar should be asked to move his amendment before he goes on to make his speech.

The Right Hon'ble Dr. M. R. Jayakar: Well, I will read the amendment. I wanted to save your time by a few minutes. This is the amendment:

“This Assembly declares its firm and solemn resolve that the Constitution to be prepared by this Assembly for the future governance of India shall be for a free and democratic Sovereign State; but with a view to securing, in the shaping of such a constitution, the co-operation of the Muslim League and the Indian States, and thereby intensifying the firmness of this resolve, this Assembly postpones the further consideration of this question to a later date, to enable the representatives of these two bodies to participate, if they so choose, in the deliberations of this Assembly.”

In substance, my amendment means that the further consideration of this Resolution should be postponed to a later stage, the stage of Union constitution-making at which, I take it, the Indian States and the Muslim League are expected to be present. I am not raising this as a point of order, but I am raising it as a difficulty which we have get over before we proceed to a consideration of this question, and this is an argument for the purpose of postponing the further discussion of this question. I am merely pointing out the legal difficulty in the way of this Constituent Assembly adopting this Resolution at this preliminary meeting. Therefore, the point I am making is that our power to transact our business at this stage of a preliminary meeting is limited. It is limited by express words and those limitations being accepted by us, this Assembly has no power at this stage to adopt any fundamentals of the Constitution. I would invite your attention, Sir, to a few paragraphs in the State Paper. I shall begin with Clause 19. Sub-clause (i) mentions the way the representatives of the several bodies are to be elected. Then follows Sections 'A', 'B' and 'C'. Then comes the note about Chief Commissioners' Provinces, etc. I shall leave that out. Then comes sub-clause (ii) which relates to the States. Then comes sub-clause (iii) which says that “representatives thus chosen”, *i.e.* the Hindus, Muslims and the Negotiating Committee for the States, (I will leave the Negotiating Committee out for the moment) “shall meet at New Delhi as soon as possible”. We have met. Then comes the preliminary meeting which is the meeting we are holding today. That it is a preliminary meeting cannot be disputed. In this connection, I may ask your attention to the letter of invitation, dated the 20th of November, which you

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received from the Viceroy to attend here this meeting. There it is described as the meeting. Therefore this is the preliminary meeting mentioned in sub-clause (iv). Then let us see what this preliminary meeting is entitled to do:

“A preliminary meeting will be held at which (1) the general order of business will be decided, (2) a Chairman and other Officers elected and (3) an Advisory Committee (*see* paragraph 20 below) on rights of citizens, minorities and tribal and excluded areas set up...”

I understand that this is soon going to be done. Apart from this, there is not a word there about passing either the essentials or the fundamentals or even a sketchy outline of any constitution.

Sri K. Santhanam (Madras: General): On a point of order, Sir. If the Hon'ble Member's argument is correct, the first sentence of his amendment is as much not within the power of this Assembly as the original Resolution by Pandit Jawahar Lal Nehru.

The Right Hon'ble Dr. M. R. Jayakar: I think having regard to the difficulty which one finds in hearing from a distance, it will be more convenient if after my speech is ended all objections to it may be raised by members walking up to this rostrum. It will be more easy to hear them at that time and nothing is going to happen in the meantime. I am not going to engage you very long. Whatever objections you may have to urge against my speech, they may be presented by members coming here and I shall then reply to them if I am given a chance, instead of members now interfering. Therefore, my submission, right or wrong, is that the powers of the preliminary meeting are limited to these steps.

Mr. Chairman: Order, order! What is your point of order, Mr. Santhanam?

Sri K. Santhanam: My point of order is that if the Hon'ble Member's argument is correct, then the first sentence of his amendment is outside the powers of this meeting of the Assembly.

Mr. Chairman: Mr. Santhanam says that the first sentence of your amendment (turning to Dr. Jayakar), according to your own argument, is out of order.

The Right Hon'ble Dr. M. R. Jayakar: If that is your view, it can be deleted. I am willing to do so. I do not want to waste the time of the House in arguing against this view. I am prepared to delete that portion if necessary and let the remaining portion stand. It is sufficient for my present purpose.

Dr. B. Pattabhi Sitaramayya: That is why I submitted at the very outset that this was a motion for postponing the consideration of the Resolution.

Mr. Chairman: That really creates a difficulty—it is the first part of your amendment which makes it an amendment by bringing it within the four corners of the Statement. If your argument is correct, and if that is omitted, then the result is that your amendment becomes only a motion for adjournment.

The Right Hon'ble Dr. M. R. Jayakar: Supposing for a moment that you treat this as a motion for adjournment, can I not move it at this stage? It is a motion which should be taken up before any other amendment on merits is considered. Therefore, even supposing you treat it as a motion for adjournment, I can urge it now.

Mr. Chairman: I seek the assistance of Members of this House on this point. The difficulty is that, if Dr. Jayakar's argument is correct on the legal point, the Resolution moved by Pandit Jawahar Lal Nehru is out of

order. This question should have been raised at the time when the Resolution was moved. But at this stage I do not think that that point of order can be raised. Therefore, we take both the amendment and the Resolution as being in order, and we proceed with the discussion.

The Right Hon'ble Dr. M. R. Jayakar: Then can I urge this as a legal question?

Mr. Chairman: I think this legal question would not arise. You put it on merits.

The Right Hon'ble Dr. M. R. Jayakar: I was mentioning to you, Sir, that at this stage the fundamentals of the Constitution cannot be considered or adopted. I will read out to you a few clauses more. Clause (v) says:

“These sections shall proceed to settle provincial constitution for the provinces included in each sections...”

I understand these will meet in March or April next. I leave the other irrelevant portions. Then comes clause (vi)—which relates to the stage at which questions relating to the Constitution can be settled.

“The representatives of the Sections and the Indian States shall reassemble for the purpose of settling the Union Constitution.”

That is the stage at which the fundamentals of the Constitution can be settled, because at that stage the States and the Congress and the Muslim League will all be present. This is so because the Scheme considers it necessary that all these three elements should have a chance of having their say on matters relating to the Constitution. That Stage has not been reached yet. Therefore, my submission is that this question at the present time cannot be considered or finally decided. I am however suggesting a way out of the difficulty if you like to adopt it.

Mr. N. V. Gadgil (Bombay: General): There is no prohibition in clause (iv).

The Right Hon'ble Dr. M. R. Jayakar: That is implied there. If you take clauses (iv) and (vi), the meaning is clear that the preliminary meeting shall be concerned only with a few things and the settling of the constitution shall be postponed till we come to clause (vi). Otherwise clause (vi) becomes absolutely redundant and is in conflict. Therefore, taking the two clauses together, it is clear that what is intended to be done at the stage of clause (iv), is clearly and expressly mentioned in that clause. All that concerns the Union constitution either by way of an elaborate settlement or a sketchy outline of the fundamentals—all that must wait till the stage in clause (vi) is reached.

Now I come to clause (vii) which throws more light on this question. It provides that if any major communal issue arises, it will be dealt with as provided in that clause. There is no party here who is likely to raise the question of a major communal issue. Therefore, if you look back on clause (vii), its sense is clear in the way I have mentioned. This is my brief submission on the law point.

Apart from this legal point I want to urge before you a few considerations of practical expediency for postponing the consideration of this question to a later stage. As a way out of this difficulty I suggest that the Resolution, having been discussed during all this time and the object of public ventilation being served, this Assembly should not vote on it for the present but defer its consideration to the stage mentioned in clause (vi) so that when deliberating on it afresh at that time with the view of taking a final vote on it, they may be present here, to take part in such

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deliberations, the representatives of the two parties who are absent here now. I suggest this as an alternative course, to meet the difficulty.

Mr. R.K. Sidhwa (C. P. and Berar: General): I rise to a point of order, Sir. Dr. Jayakar's amendment says:

"...this Assembly postpones the further consideration of this question to a later date, to enable the representatives of these two bodies (Indian States and Muslim League) to participate, if they so choose, in the deliberations of this Assembly."

He has quoted clause (ii) of paragraph 19. That clause says:

"It is the intention that the States would be given in the final Constituent Assembly appropriate representation...."

That stage has not been reached, and therefore, raising an objection that the Indian States are not represented here now cannot hold water. Again, if you further see.....

Mr. Chairman: That is not a point of order. That is an argument against what has been said.

The Right Hon'ble Dr. M.R. Jayakar: May I proceed, Sir?

Mr. Chairman: Yes.

The Right Hon'ble Dr. M.R. Jayakar: The plea which I am urging is this: This Constituent Assembly, as it is formed today, is not complete. Two persons are absent: The Indian States for no fault of theirs, because they cannot come in at this stage; that is the true position. The Negotiating Committee has been formed by the States, but we have not yet formed our Negotiating Committee. When we have done so, the two Committees will meet; that is the stage at which the States can come in according to the terms of this Document. As for the Muslim League, the position is different and the difference is very great.

The Muslim League has recently obtained three or four important concessions. Whether it is by superior strategy or any other means, it is not for me to say here. They have got three or four important points in their favour.

There are two points for interpretation, one is about voting and the other is about grouping into Sections. I understand that that question is going to be referred to the Federal Court. As an ex-Judge of the Federal Court and a sitting Member of the Superior Tribunal, namely, the Judicial Committee of the Privy Council, I recognise the necessity of not saying anything more about the proposed reference to the Federal Court or whether it is right and proper. I will only say that I wish you good luck. I congratulate you that you will have on your side the services of one of the ablest constitutional lawyers you can engage for your purpose, namely, my friend, Sir Alladi Krishnaswami Ayyar. Beyond that I do not want to say anything about the reference to Federal Court. But it is clear that, although you may go to the Federal Court for getting the interpretation, *viz.*, relating to grouping and voting, you cannot go to the Federal Court on the last point gained by the Muslim League, *viz.*, the provision that if a large section of people is not represented at the constitution-making. His Majesty's Government will not be willing to force such a constitution upon unwilling parts of the country. That is not a question of interpretation. It is a fresh concession which has been given to the Muslim League by way of addition to the Statement of May 16. I do not think that you can refer that point to the Federal Court. It is a substantive point which has been conceded the Muslim League *viz.*, that contrary to the Statement of Mr. Attlee, the Prime Minister, on 15th March this year, in the House of Commons, to the effect that though minorities will be protected, they will not be allowed to veto the progress of the majority. That was the position enunciated by no less a person than the Prime Minister in March 1946. That is gone. Now the position is very different indeed.

The Hon'ble Sardar Vallabhbhai J. Patel (Bombay: General): May I know, Sir, if the Right Hon'ble Gentleman is interpreting here the policy laid down by His Majesty's Government? All those so-called concessions which the Right Hon'ble Gentleman is referring to, are in addition to or over and above the Statement made in the White Paper. We have not accepted them and this House is not going to accept any addition, or alteration in the Document of May 16th (*Applause*).

The Right Hon'ble Dr. M.R. Jayakar: I am only pointing out the difficulties in your way. I am not asking you to admit any addition. I am pointing out the advantage, freshly found by the Muslim League, which creates a great difficulty in your way and the necessity for holding up matters until the Muslim League comes in. On that point, my remarks are quite relevant. If the Hon'ble Sardar Patel thinks that any addition like this will be rejected by the Congress, they are welcome to do so.

Now, Sir, what does it mean? What follows from it if a community like the Muslim community is not represented here at the constitution making. The words 'unwilling parts of the country' have also been interpreted by Sir Stafford Cripps. He says that the words mean any part of India where the Muslims are in a majority. On such parts, if they are unwilling, the constitution which you may frame in the absence of the Muslim community, will not be forced. The words used are "unwilling parts of the country". Whether any other community can take advantage of this provision, I do not know. That is a matter that may have to be cleared up. But this much is certain, and it was so expressly stated by Sir Stafford Cripps in the debate in the House of Commons. That those parts of the country where Muslims are in a majority, will not be forced to accept a constitution at the making of which they are not represented. Mark the words: "they are not represented", *i.e.*, they are not present.

Now, this particular addition has been hailed with delight in England by certain schools of thought. Mr. Churchill calls it 'an important milestone in the long journey'. Whether it is an important milestone or a dangerous milestone, we are not concerned with. The fact is there that the Muslims have secured this right at the present moment.

So, the position is this that, if they choose to remain absent from your deliberations for whatever reasons, they can make your work futile and fruitless. All your efforts will fail to bind them. Whatever constitution you may frame in their absence here will be binding upon perhaps willing portion like Section 'A'; I am very doubtful whether it will affect Sections 'B' and 'C'. The result is that whatever you may do in the way of providing a constitution for the whole of India here and now, as this Resolution proposes, if you accept it today in the absence of the Muslim League, your effort is not going to bind the Muslim League at all. That raises the question whether it will not be wise, merely as a means of saving your trouble and labour, to postpone to a future date, the further consideration of these constitutional points. To put it at the lowest, it will save labour.

If you look at the constitution suggested in the Resolution, there are points in it with which the States and the Muslims are most intimately concerned. You speak of a Republic. I personally have no objection.

Dr. Suresh Chandra Banerjee (Bengal: General): On a point of information, Sir. If the Muslims do not come at all, how long are we to wait? How long are we to sit quiet? They could have come in. They have not come of their own accord.

The Right Hon'ble Dr. M.R. Jayakar: That is not a point of order.

Dr. Suresh Chandra Banerjee: That information should be given by Dr. Jayakar.

Mr. Chairman: That is an argument which the Hon'ble Member may advance when his turn comes.

The Right Hon'ble Dr. M.R. Jayakar: If the Hon'ble member had not interrupted me and had waited for a little while, I would have given an answer to the query.

Sir, the result is that merely by adopting the simple device of not being present here, the Muslim League can make the whole of your work useless. What does it mean? It means further that if the Muslim League does not come in, the States may not come in. They have made it clear more than once. And, in the House of Commons, it was stated clearly that the States might not deal with a Constituent Assembly which is composed of one party only. Therefore it is clear that if the Muslim League chooses to remain absent, and we provoke it by our action to do so, the States may not come in.

The Hon'ble Pandit Govind Ballabh Pant (United Provinces: General): How is it the Right Hon'ble Member said that it was made abundantly clear in the House of Commons that if the Muslim League did not come in, the States will not join the Constituent Assembly?

The Right Hon'ble Dr. M.R. Jayakar: yes.

The Hon'ble Pandit Govind Ballabh Pant: I differ from the Right Hon'ble Gentleman in the interpretation of what was said there.

The Right Hon'ble Dr. M.R. Jayakar: I place my interpretation on that, and the Hon'le Member is free to place his interpretation on that.

The Hon'ble Pandit Govind Ballabh Pant: Dr. Jayakar has no right to represent the States' view here unless the States representatives or the Negotiating Committee make the position clear.

The Right Hon'ble Dr. M.R. Jayakar: I am not stating the view of the States. I am stating what was stated in the House of Commons. If the Muslim League does not come in, the States may not come in. The States may not conceivably like to deal with a Constituent Assembly which is composed of one party only. If so what will be the result? (Interruption).

Mr. Chairman: I think it will be better if we allow Dr. Jayakar to continue.

The Right Hon'ble Dr. M.R. Jayakar: Won't you allow me to go my own way for about 20 minutes? The whole of this week, I understand, is going to be at your disposal to pick holes in my speech.

The Hon'ble Pandit Govind Ballabh Pant: We will have something more to do than pick holes in your speech.

The Right Hon'ble Dr. M.R. Jayakar: If the Muslim League does not come in, then in all probability the States will not come in. What happens? Probably you will frame a constitution for Section 'A'. Perhaps you will be framing a constitution for a Union Centre for the Provinces in Section 'A'. You may like to have a Union Centre for those Provinces. It is certain however that you will be unable to frame a constitution for Section 'B', the majority there being of the Muslim League. The result will be that there will have to be another Constituent Assembly, as Mr. Jinnah is wanting, for the purpose of framing a constitution for Sections 'B' and 'C'. Whether the minorities in those Sections can take advantage of the formula that unwilling parts will not be forced to accept the constitution, whether the Hindus and the Sikhs of the Punjab and the Hindus of Bengal and Assam can take advantage of that provision, I do not know. I can

express no opinion on that. It may be that they will be able to take advantage of the principle of this dictum and say, "We had no hand in framing this constitution. Therefore that constitution should not be forced on us." That is a possibility. This much however is certain that our endeavour to frame a constitution for the whole of India as a Union will be defeated. The possible result of that will be that there may be one constitution for Hindus and another constitution for the Muslims and if this happens, there will be a third constitution for the States, and instead of having one United India, we may be forced to the necessity of having a Hindustan constitution, a mild, abbreviated, or qualified Pakistan Constitution and a Rajasthan constitution also. Your Union at the Centre will go. It will not be established. At present you have got at least this advantage that even though some form of Pakistan will be established in Sections 'B' and 'C', you have got a Union Centre, attenuated though it may be. Therefore the obvious necessity of the present occasion is that every effort ought to be made to invite the Muslims to come in here, and we should not make it more difficult. This is mainly because our work has to bear fruit. I admire in this behalf the sentiments expressed by Pandit Jawahar Lal Nehru in moving the Resolution. He said in effect that we seek the co-operation of the Muslims. We must continue to make an endeavour, though, in the past, our efforts did not evoke enough response. I do not think that my plea can be put in better words. It is clear that you cannot do any constitution-making at least till April next. Therefore, where is the harm in deferring the further consideration of this resolution for a few weeks more until at least you know that the Muslim League, by a formal resolution, has declared its intention not to come in. They must declare their intention during the next few weeks. I read the statement of Sir Stafford Cripps in the parliamentary debate that it was understood that, when Mr. Jinnah went back to India, if the Congress accepted the Statement of 6th December, he would call a meeting of the Muslim League and decide on this question. That was a statement made on the floor of the House of Commons. After you know that by an authoritative formal resolution, the Muslim League has decided not to come in, you can then decide what to do. One hurdle would have been crossed; but I am not disposed to take it for granted that the Muslim League will not come in. It is not practical politics. A friend came to me this morning and said: "Until yesterday, Dr. Jayakar, I was entirely in favour of your Resolution but Mr. Jinnah's Press Conference in London as made the whole difference." I said, "what difference has it made?" He said, "Mr. Jinnah has now stated that he will never come into this Constituent Assembly." I do not think that Mr. Jinnah has made such a statement, and even if so made, I am not disposed to take that statement as the final, authoritative, deliberate, formal decision of the Muslim League. What is the harm in postponing the final vote on this Resolution till then? You are not in any event going to do anything substantial at least until the 20th January, that is four weeks from now. At least till then you should keep the way clear for the Muslim League to come in and take part in the proceedings. One answer to my plea is, "We are not doing anything to which the Muslim League can legitimately object." That does not touch my point. It is not a question of doing anything to which the Muslim League does not object. It is a question of giving it the right and the opportunity to be present here during the deliberations on this Resolution. That is what I am trying to obtain. Then it is said that there is nothing here which is contrary to the White Paper. That again does not touch my point. My object is to save the work of this Constituent Assembly from becoming infructuous. Wait, go slow. A few weeks are not going to make any substantial difference. It is not going to cause any great harm if you, instead of passing this Resolution in the present session, deferred it to a few weeks hence. The fact is that you are going to adjourn till the end of January but you will not do so, not in compliance with the terms of my amendment. That

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is a significant fact. Why don't you wait for a little while and thereby make it less difficult for the Muslim League to come in. I am told what is the grievance. The Muslim League can come in later after we pass this Resolution. My reply is that it is their right to be present at these deliberations, and to make their contribution. Please remember that the Muslim League leader has already raised the grievance in his Press Conference in London. "I do not want to be presented with a *fait accompli*", he complains. Will you now give him the opportunity of justly complaining that an important and vital question, like laying down the fundamentals of the Constitution, has been finished in his absence, knowing that he was likely to come in? Are you not thereby making it more difficult for the Muslim League to come into the Constituent Assembly? What I am urging on your attention is this: that as you are doing a good deal of what my amendment wants you to do, what is the harm in accepting my amendment? I say, "go slow". What is the harm? Do you wish to say we shall go slow, but not in compliance with your amendment *i.e.*, not for enabling the Muslim League to come in? That is hardly dignified. It looks so petty. It will be a graceful gesture, if you say 'we are postponing because we wish to give the Muslim League of chance of coming in, so that this question may be discussed and finally adopted in their presence'. This is the position Sir, as Pandit Jawahar Lal Nehru said, there is great need of the spirit of co-operation and accommodation at the present time, having regard to the great difficulties through which we are passing. I have explained to you the difficulties and also the danger of this work becoming fruitless. In the light of that possibility and danger, I would urge, with all the words at my command, that the words of Pandit Jawahar Lal Nehru ought to be translated into action. We seek Muslim co-operation, we go out of our way to seek it by postponing this Resolution. Sir, miles away from here is working that solitary figure, whose steps we claim to follow, the great Mahatma;—alone, stinted of sleep, stinted in food and stinted in health, grieved and solitary, he is trying to win the Muslim community by friendly co-operation and goodwill. Why can we not follow his example here? Sir, if I may say so, I am glad you are here to preside over the deliberations of this august Assembly, and from what I have known of you all these years, your great capacity for goodwill, your gentleness, your spirit of accommodation and your ability to see the opposite point of view, having regard to all these virtues, I think, it is very significant that at this time you are in the Chair and my effort is for establishing that atmosphere in which your efforts, with your particular gift of fascination, can best thrive. Therefore, I am making this plea that we should defer the consideration of this Resolution so that you will have the chance of obtaining Muslim co-operation. But it is said we will after the Resolution when they come in. It is neither wise nor easy to alter deliberately-adopted Resolution. The substance of my plea is to allow the Muslim League an opportunity to take part in the deliberations, sit by your side, make speeches not *ex post facto*, but before and during the passing of this Resolution. That is real co-operation and not asking them after they want to come in and accept what you have done.

From this view I fear many of you will differ. I was warned, "you are making yourself extremely unpopular." But I said to my friend, "unpopularity has been my guardian since my childhood." I have passed through many unpopularityes. When I helped to start the Swaraj Party, I was unpopular. When I started the Responsive Co-operation Party, I was unpopular. When I went to the Indian Round Table Conference in London, I was unpopular. When I joined in passing the 1935 Act, I was unpopular—that piece of legislation which you, very thoughtlessly in my opinion, turned down. Having done that you are now borrowing out of that detested legis-

lation, four important features, a Federation, an attenuated Centre, Autonomous Provinces and lastly residuary powers in Provinces. May I say, however, that my unpopularity has, with lapse of time, swollen into bulky majorities. Unpopularity does not therefore frighten me at my age and with my experience. My duty is to tell you that the course you propose to adopt is wrong, it is illegal, it is premature, it is disastrous, it is dangerous. It will lead you into trouble. As I am elected on your ticket, I am bound to tell you frankly that there is danger ahead, danger of frustration, danger of discord and division, which it is our duty to avoid, Sir, I have done.

Mr. Chairman: Sir Hari Singh Gour has given notice of an amendment. This appears to me to be out of order, but before ruling so, I would ask Sir Hari Singh Gour to point out how it becomes relevant. The amendment is this:

“That in the said Resolution for the words:

“This Assembly postpones the further consideration of this question to a later date to enable the representatives of these two bodies to participate, if they so choose in the deliberations of this Assembly.”

The following words be substituted:

“This Assembly is of the opinion that the demand made by the Muslim League is suicidal in view of the history of Pakistan elsewhere and that it is in the interests of the Mussalmans and the other communities to constitute joint electorate reserving for the minority communities their equality of status for the next five years and providing a further safeguard that no member of one community shall be deemed to have been duly elected unless he holds a certain percentage of the votes of the other community.”

It may seem that this amendment goes much beyond what is contained in either the original Resolution or the amendment of Dr. Jayakar. I am therefore inclined to say, it will not be in order, but I am not giving my ruling at this stage. I will ask him to point out how it is in order.

Dr. Sir Hari Singh Gour (C. P. and Berar: General): Mr. Chairman. The point that at present I am called upon to reply to, is the question of my amendment to the Hon'ble Dr. Jayakar's amendment being in order. I wish to submit that if Dr. Jayakar's amendment is in order, my amendment to that amendment is in order. It must be assumed that I have not done anything more than pointing out the legality or orderliness of that amendment. I have always been feeling that if Dr. Jayakar wants the whole thing to be shelved, it cannot possibly come in as an amendment. An amendment means correction. The Hon'ble Dr. Jayakar's amendment therefore means that the Hon'ble Pandit Nehru's original Resolution should be passed as corrected by him. That may mean an amendment. If you wish to completely obliterate the main Resolution and want that there should be no further discussion for an indeterminate period, I fail to understand what Dr. Jayakar is trying to amend. He had better amend his own amendment first. I assume that amendment may go through and therefore I have given notice of my amendment. But, Mr. Chairman, you will further find that with some mental reservation about the legality of his amendment and mine, I have supplemented it by giving notice of another amendment to the original Resolution, which substantially reproduces the terms of my present amendment. Now, briefly stated, my case is this. If this amendment of the Hon'ble Dr. Jayakar is in order and is to be, discussed, I am entitled to correct it. If on the other hand, that amendment is ruled out of order, I do not wish to move my amendment.

[Dr. Sir Hari Singh Gour]

In that case I would move the second amendment of which I have given notice.

Mr. Chairman: We shall deal with the second amendment when the time comes.

The amendment of Dr. Hari Singh Gour would make the Resolution as a whole read as follows:

“This Assembly declares its firm and solemn resolve that the Constitution to be prepared by this Assembly for the future governance of India, shall be for a free and democratic Sovereign State; but with a view to securing in shaping such a constitution, the co-operation of the Muslim League and the Indian States, and thereby intensifying the firmness of this resolve, this Assembly is of opinion that the demand made by the Muslim League is suicidal in view of the history of Pakistan elsewhere and that it is in the interests of the Muslims and other communities to constitute a joint electorate reserving to the minority communities a particular quota of seats for the next five years, providing a further safeguard that no member of one community shall be deemed to have been duly elected unless he polled a certain percentage of the votes of the other community.”

I am afraid Dr. Hari Singh Gour has not been able to connect the two parts of the Resolution, and it is out of order.

I propose to ask the Members who have given notice of amendments one after another to move them if in order. The Resolution and amendments may be discussed together. I think that will save time.

Dr. B. Pattabhi Sitaramayya: The Hon'ble Dr. Jayakar's amendment being in the nature of an adjournment motion of the consideration of the Resolution, it should gain priority both in discussion and in decision over the other amendments which are amendments of a substantive nature to the proposition.

Diwan Chaman Lall (Punjab: General): Dr. Jayakar's amendment is also a substantive one. It is not a procedural one. It also speaks of democracy, eliminating the word Republic and although it says that further consideration may be postponed, it cannot be considered merely as a procedural amendment.

Mr. Chairman: We have treated it as an amendment. The next amendment of which notice is given is by Mr. Somnath Lahiri. With regard to that amendment also, my view, as at present advised, is that it is not in order. I will ask him to show how it is in order.

Mr. Somnath Lahiri (Bengal: General): Mr. Chairman, the original Resolution, to which mine is an amendment, resolves the aim of the Constituent Assembly to declare India as an Independent Sovereign Republic. My amendment would be considered an amendment for the very simple reason that it deal with the same subject and it does not go contrary to the main idea of the original Resolution. It is always within the scope of an amendment to extend the scope of the original Resolution.

Mr. Chairman: The objection that was taken to your amendment is that it lays down certain action to be taken that is not in the main Resolution. For instance, it wants to declare a Republic here and now. It calls upon the Interim Government to act in a particular way and there are several other matters of this character. It is a resolution which directs action to be taken here and now and in that sense it is suggested that it is out of order.

Mr. Somnath Lahiri: I think that if in furtherance of the objects of that Resolution, some action is suggested, that certainly is within the scope of the amendment. For instance, you have allowed in Dr. Jayakar's resolution certain things about the Muslim League and other things which are

not contained in the original Resolution moved by the Hon'ble Pandit Jawahar Lal Nehru. Just because he thinks that the Muslim League and others should be given an opportunity to come in, action to the extent of postponing this Assembly should be taken; and he has suggested his amendment and you have agreed that it is quite in order. Just as postponing is a kind of action, any other thing which may be suggested is also certainly in order. If I may remind you, Sir, of an incident in 1939, when you were the President of Congress, at the time of the declaration of War, a resolution came up at the A.I.C.C., where Pandit Jawahar Lal Nehru moved a resolution asking the British to declare their war, aims, and laid down certain conditions as a basis of co-operation, on which we could cooperate in the war. I remember myself having moved an amendment which said that we must prepare the country for a struggle and I remember that you, as Chairman, said it was quite in order although the Hon'ble Pandit Jawahar Lal Nehru pointed out that the intention of the amendment was just contrary to what was conveyed in the original resolution.

An Hon'ble Member: Is it a reported case?

Mr. Chairman: I am afraid that cannot go in as a precedent. (*Laughter*).

Mr. Somnath Lahiri: This is my submission. If in spite of this you think that it should be ruled out of order, then I may be given an opportunity to speak on the main Resolution so that I can express my views.

Mr. Chairman: I think the amendment is out of order. I would give you an opportunity to speak on the main Resolution later.

I have received intimation that a number of the amendments, of which notice had been given by the members, have been withdrawn. I will only call upon those members who have not expressed such desire to move their amendments if they wish to. So, the next amendment which has not been withdrawn is that Rai Bahadur Syamanandan Sahaya, who may please come forward to move his amendment if he so wishes.

Rai Bahadur Syamanandan Sahaya (Bihar: General): Mr. Chairman, Sir, I Move:

"That for the 1st and the 2nd paras. of the Resolution the following be substituted:—

'This Constituent Assembly declares its firm and solemn resolve to constitute India, within the shortest time, into an Independent Sovereign Republic, comprising initially of—

- (a) The territories that now form British India, and as soon as possible, also of,
- (b) The territories that now form the Indian States,
- (c) Such other parts of India as are outside British India and Indian States, and
- (d) Such other territories as are willing to join the Independent Sovereign Republic of India,

and further resolves that a constitution for the future governance be framed and laid down'."

It is not, Sir, without a certain amount of diffidence that I stand here to move my amendment. After the great and magnificent speech of the Hon'ble the Mover of this Resolution it took me a great deal of thought and vacillation before I decided to send in this amendment especially because I thought my amendment perhaps achieved the objective which the Hon'ble the Mover had rather than stand in the way of it. I have an apprehension that perhaps attempts might be made by interested parties to isolate those of us who constitute the Constituent Assembly to-day but whatever happens, it is my desire—my extreme desire, as I know it is the desire of every one assembled here—that this Constituent Assembly shall Proceed with its task. The Hon'ble Dr. Jayakar in his speech made

[Rai Bahadur Syamanandan Sahaya]

references to several difficulties. One of the difficulties pointed out, was that we have to work under the limitations laid down by the Cabinet Mission. I am no where near him in the matter of knowledge of constitutional law but I heard the Chairman of this Constituent Assembly saying in his speech that although there may be limitations placed on the Constituent Assembly, it has the inherent right of getting over them. I have based part of my amendment on this consideration. I will now try to point out, Sir the difference between the original Resolution and the amendment as I have put it, for it will be necessary to explain why is it that I have introduced certain changes in the Resolution. In the first place, I have altered the word 'proclaim' into 'constitute'. I shall give my reason for doing so at a later stage and I would point out now only what the difference is between the Resolution and the amendment. Then I have omitted the word 'Union'. I have introduced the words "within the shortest time" and I have said that the Constitution should not only be framed but should be laid down. These are some salient points of difference between the Resolution as proposed and my amendment. I have read the Resolution carefully and I had, on one occasion, an opportunity of placing my views to a certain extent before the Hon'ble the Mover of the Resolution, who agreed that the wording of the Resolution at certain places looked archaic. Perhaps in laying down a law or framing a constitution, it is necessary to use terms which were used 100 years before either by the framers of the American Constitution or the constitutions of other countries but I think, in our case, it might be more useful and more helpful to be precise and to state our view-point clearly in unambiguous and in easily understandable language rather than use words only because they were used in previous constitutions. I will now try to explain the reasons for the changes, I propose, I think the word "proclaim" is not exactly what you would like this Constituent Assembly to do. Proclamation of independence, I suppose, has been made on other occasions before this. It is now our duty to actually constitute the State into an Independent Sovereign Republic and therefore I introduced the word "constitute", instead of the word "proclaim". I have also, Sir, left out the word "Union". I believe that India is India. It needs no Union. It has got a providential Union, and I would not like even to reiterate it now as it might be interpreted that the Union of India was still to be achieved. It is quite another matter that for the time being, we may be able to enforce the Constitution we frame on only a part of India. But we look forward at the earliest possible moment to introduce it on other parts also. As such I would, if it were left to me, stick to India as such and not introduce the word "Union" where the word "Union" has been used in other countries there has been good reason for using that term. Here, I suppose we would be better advised to leave out the word "Union". Then, as I said, I have used the words "frame and lay down". I have heard it said in this House before that the Constituent Assembly has got the sanction behind it to enforce the Constitution that it frames. I have also read carefully the Declaration of May 16. It does not in any way state that the Constitution that is passed here will require the sanction of the British Parliament. The two essential conditions laid down are that a treaty will be entered into between England and India and that the minorities will be protected. I take it, therefore, that we assembled here, have not merely the right and the power to frame a constitution, but also to lay down the Constitution and enforce it. That is why I have omitted the word "draw up" and used in its place the words "frame and lay down".

The other important change, Sir, which I have made in the amendment is that I have tried to specify different stages when the Constitution will come into force on the whole of India. Even in the original Resolution, I may point out, there are certain territories envisaged which perhaps might

come into the Union at a very late stage. I refer, Sir, to the two territories described as territories outside both British India and Indian States, and such other territories as might like to join the Union. Now these two parts of the Union surely are not going to come in now and here. Therefore different stages of the formation of the complete Union have been envisaged even in the original Resolution and I have tried in my amendment to clarify that the Independent Sovereign Republic will comprise initially of the territories that now form British India, and, as soon as possible, also of the territories that form the Indian States. My whole purpose in moving this amendment is, as I said before, to see that in framing the first Resolution we should so word it that it may not have to be altered at any stage. After all, it is the first act of this Assembly and no one would like, that circumstances developing later on, might require the Resolution to be altered. An Independent Sovereign Republic for the territories that form British India has been accepted in the past by the majority elements constituting that territory. There may be difficulties pointed out by others. We shall probably have to take note of those difficulties and try to solve them. I therefore, introduced in the Resolution stages by which we could form the Independent Sovereign Republic ultimately in its entirety. But even if we may not be able to secure the association of people whose association we definitely seek and are anxious to secure, even then the march to independence will not be hindered and we shall not have to wait for all the territories to agree before the Constitution can be laid down. These, Sir, are the reasons which led me to move this amendment. I am very sorry that the Hon'ble the Mover of the Resolution is not here today. As a matter of fact my desire entirely was to bring to his attention the points which I had in mind and to request him to consider whether it might be possible to accept the amendments or portions of it that might not be in conflict with the original idea which he advocated.

Mr. Chairman: The next amendment which has not been formally withdrawn and of which notice has been given is by Shri Govind Malaviya. He is absent, but I have his authority—he has told me himself—that he would not like to move his amendment. So I take it that is also withdrawn.

Then, there is another amendment by Rai Bahadur Syamanandan Sahaya.

Rai Bahadur Syamanandan Sahaya: The second amendment, Sir, which stands in my name is that in para 4 of the Resolution, the following words be omitted:

“of the Sovereign Independent India, its constituent parts and organs of Government.”

The original Resolution reads as follows:.....

Professor N. G. Ranga (Madras; General): Is a member entitled to speak more than once on the same Resolution? When he has got two or three amendments, let him move the whole lot of them and make one speech.

Rai Bahadur Syamanandan Sahaya: The amendments have been recorded according to the several paragraphs of the Resolution.

Mr. Chairman: He has got one other amendment in his name. He may move both of them.

Rai Bahadur Syamanandan Sahaya: The other amendment, Sir, is as follows:

“That in para. 5 of the Resolution the words ‘of protection under the law’ be substituted for the words ‘before the law’.”

I shall not move this.

Now, Sir, my reason for bringing this amendment asking the House to omit the words—

“Sovereign Independent India, its constituent parts and organs of Government.”

[Rai Bahadur Syamanandan Sahaya]

was to avoid an impediment in the way of the smooth working and functioning of this Constituent Assembly and not to do anything before the other parts of it join this House which might frighten them here at the early stage.

Paragraph (4) says:

“Wherein all power and authority of the Sovereign Independent States, its constituent parts and organs of government, are derived from the people.”

Among its constituent parts are territories that now form Indian States. I suppose the attention of most members of this House has been drawn to the recent statement in the Legislative Assembly (or whatever the name may be, of Bikaner wherein the Prime Minister said that so far as the States are concerned the power is derived from the sovereign and not from the people. I submit that these are matters on which there can be a difference of opinion and it would not be proper to pass a resolution containing such statements which might give the other important elements of this Constituent Assembly a real grievance to keep out. The Resolution as amended by me will read:

“wherein all power and authority are derived from the people.”

I have purposely omitted the words “Sovereign Independent India, its constituent parts and organs of government”. With regard to the constituent parts I have pointed out the difficulty and the reason why I move the amendment. Even the amended Resolution retains the purport of the Hon’ble Mover’s Motion as it says,

“wherein all power and authority are derived from the people.”

without in any way specifically bringing in the constituent parts. The Hon’ble Mover of the Resolution in his speech said that even in the Republic which he envisaged, there will be room for ruling chiefs and States where there is a system of monarchy or kingship. That being so, it would not be advisable to pass a resolution saying that all power and authority of the constituent parts also are derived from the people. Perhaps members of the House have noticed the statement which was broadcast last night in which the representatives of the different States made a statement signifying some objection to the Resolution and complaining that there had been no consultation about it before. In view of all that, and in view of this extreme desire of every one assembled here to carry this difficult work through, I think we ought to avoid passing a resolution or making statements which might give reasonable cause for an honest difference of opinion.

I do not move amendment No. 30 because that is only a verbal change and I shall not move it. There is one other amendment (No. 43) also standing in my name and I am not moving it.

Mr. Chairman: The next amendment stands in the name of Sir Uday Chand Mahtab—No. 25.

Maharajadhiraja Bahadur Sir Uday Chand Mahtab of Burdwan (Bengal: General): I do not propose to move the amendment.

Mr. Chairman: I find that the movers of all other amendments given notice of here have withdrawn their amendments. I suppose there is no mistake here, and if there is any, Hon’ble Member may point it out to me. There is one amendment of which notice has been given by Dr. Sir Hari Singh Gour, but unfortunately that was received only this morning. I had already put a definite limit to the time for giving notice of amendments and as Dr. Sir Hari Singh Gour has exceeded that limit, I am unable to allow his amendment.

Now, the Resolution has been moved, and also amendments to it have been moved. The Resolution and these amendments are now for discussion by the House.

I will ask Hon'ble Members to confine their speeches to as short a time as possible because we have already had two days on this, and though I do not wish to curtail the right of any Hon'ble Member to speak, I will ask Members to bear my remark in mind. I have got a list of names here who will take part in the debate, but I take it, it is not a complete list. There may be some other members who may be willing to speak, but I shall proceed according to this list and interpose other speakers also if they wish to speak. The first name that I have got here is Mr. Shrikrishna Sinha.

The Hon'ble Mr. Shrikrishna Sinha (Bihar: General): Mr. Chairman Sir, I stand here to support the Resolution as originally moved by Pandit Jawahar Lal Nehru: In my opinion, it is really unfortunate that a resolution of such a sacred nature should have been subjected to amendments. I purposely call it sacred because by this Resolution an attempt is made to give expression to that aspiration to be free which has stirred us for the last several years.

Sir, the Resolution, if carefully analysed, comes to this. It gives a picture of the vision of future India. That India of the future is to be a democratic and, decentralised republic, in which the ultimate sovereignty is to lie with the people and in which fundamental rights are to be safeguarded to minorities inhabiting this land. Now, Sir, these are the three fundamental features of this Resolution and it is because of these three fundamental features that I call this Resolution sacred. I shall try to be brief. Yet I cannot refrain from reminding this House that we are all assembled here in Assertion of a right, a cherished and valuable right which mankind has achieved for itself after undergoing untold sufferings and sacrifices. Some sort of political structure is required in every society to make life therein possible. A careful analysis of the process of evolution of States in this world shows that the nature of these has changed with the change in the conception of life. Sir, I was not a little surprised to hear just now from an Hon'ble Member of a House which has assembled in assertion of the constituent power of the People that there can be honest difference of opinion regarding the place where political sovereignty resided in society. Certainly, Sir, not long ago, the world did not believe that all individuals composing society had an equal right to liberty and happiness. Society was composed of classes and the individual had no place in society. The place of man in society was determined by the class to which he belonged and so there was no individual liberty to be safeguarded. Poverty was not thought to be a disease which society must get rid of. Some of the great thinkers of the 18th century France, were of the opinion that the presence of poverty in society was necessary for the proper production of wealth. In such a society, Sir, there could be no place for the principle of the sovereignty of the people. Sovereignty belonged to the King whose privilege it was to rule. The people existed merely to pay the taxes demanded of them by the king and obey the laws enacted by him. But with the lapse of time, the conception of society and life changed. Men came to believe that every individual has an equal right to liberty and happiness. With this change in the conception of life, a change in the structure of the State became necessary. But those who held political power were reluctant to part with it and effect a change in the political structure. There was thus a clash between the ideologies which swayed the people and those which swayed the men in power. There were revolutions on both sides of the Atlantic at the end of the 18th century in which the principle that the power belonged to the people was vindicated. Even after this, there were rulers who would not recognise this principle and so another blood-bath in the shape of a revolution had to be gone through to get finally sanctioned the principle that political power belonged to the people. It was to achieve this constituent power that we in this country have been fighting British Imperialism for the last

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several years. It is this which moved this country from one end to the other in 1921 and made its millions rally under the banner of revolt raised by Mahatma Gandhi in that year. It was for asserting this basic right of a people that hundreds mounted the scaffold, thousands faced bullets and men, in lakhs swarmed the jails. There was a wide gap between the political ideals on which the Government of India was based and the political ideology which swayed the people, and the result has been strife. So, Sir, we are not here in this Assembly because the British Government in a fit of generosity have thought it proper to ask us to take over power. I have been in a position from where I can form my own opinion as to whether there is any sincerity behind all this talk of peaceful transfer of power. We are here because we have succeeded in compelling those who still entertain the dream of governing India according to the political ideals embodied in the Government of India Act, to give up that dream. We have succeeded because of that spirit of rebellion which spread all over the country in 1942. It is as a result of the 1942 rebellion that we are here in this Constituent Assembly. Gathered together in such an Assembly it should be our first duty to draw up a picture of future free India and present it to our people. The Right Hon'ble Dr. Jayakar who spoke eloquently, has drawn a picture of the difficulties which the absence of our Muslim League friends will cause. I do not think that we required a speech from a man of the eminence of Dr. Jayakar to point out these difficulties. We know what those difficulties are. If I understood him aright, however, he did not give us a counsel of despair. He has actually advised us to go on with our work if our friends of the Muslim League do not come in after some time.

Sir, our leader, the Hon'ble Pandit Jawahar Lal Nehru, has made it quite clear that we are anxious to see our Muslim League friends occupying their rightful place in this Assembly. Every one of us is equally anxious to see them come back. But I fail to understand how this particular Resolution would stand in the way of their so coming here at a future date. If we have understood the political ideology of the Muslim League correctly, if we understood the Cabinet Declaration correctly, there is one matter in which all are agreed and that is that the future India is to be a United India and that that India might also be outside the British Commonwealth of Nations, if the Indian people so decide. From the pronouncements made from time to time by Muslim League leaders I think we can rightly draw the conclusion that the Muslim League also stands for a free and independent India. So, Sir, according to all of us including the League, the future India is going to be an independent free India. In that independent free India the source of authority is going to vest in the people who inhabit this land. That is the cherished right which has been won for the peoples inhabiting this globe by those who have gone before. That is the principle for which we have been fighting all along. Now when this Constituent Assembly meets and we draw up a declaration, I think the first thing to be included in that declaration should be this elementary right of a people which decides to be free and therefore to this feature of the Resolution no one can have any objection.

Now, Sir, the Union which we are going to have in India is going to be a Union of all the parts of India. This certainly means that the future India is going to be a united India. I will again say that the shape of that future India which this Resolution envisages certainly shows that the framers of this Resolution have taken pretty good care to see that nothing is said in this Resolution which can create difficulties in the way of our friends of the Muslim League coming into this Assembly at some later date. I know, Sir, there are members in this Assembly—and I must confess

that I am one of those,—who believe that—there has arisen in Indian, an Indian nation, an Indian nation with an Indian culture and an Indian civilisation. Such men certainly are only too anxious to have a republic of the unitary type in this country. There has been such a tremendous increase in the economic forces of production in the world that if full use is to be made of these forces in this world, it is necessary that we should have still larger political units which will transgress the national boundaries of national states. It is a realisation of this truth which makes many Indians feel that India must have a centralised republic. But in spite of that, if we by this Resolution want to have a republic in India which will be democratic and at the same time decentralised, it is because the framers of this Resolution have taken care to take into account the feelings of our Muslim League friends. Sir, there was a time when because of the historical circumstances prevailing in the world of those days, States of large sizes, containing populations homogeneous in language and religion, could be erected. There can be no doubt that a national state with a homogeneous population is a force and a living force. But unfortunately at a time when there is a tendency for these national states to pass out of existence, we have to deal with a bitter legacy left behind by them and that is the legacy of small nationalities, consisting often of a few thousands or a few lakhs, clamouring for separate states of their own. This has been creating havoc in this world. The whole of Eastern Europe has become the zone for breeding wars because in that portion of Europe are living small nationalities so intermixed that they cannot be divided into small states, and yet they clamour for separate political existence.

Sir, this Resolution gives expression also to the aspiration that India shall have her place, her rightful place, among the nations of the world. Every Indian legitimately aspires that one day India will give a lead to the whole of Asia and we can give this lead now by successfully constructing a state which will be a democratic republic, and, at the same time decentralised so that different cultural groups based on language, on religion, may be integrated in a vast republic. It is hoped that very soon the flood of Western Imperialism will retreat from the lands of Asia, and no sooner it has retreated, these lands will have to solve the problem of erecting independent states of their own. This question of nationalities is bound to raise its head even in those countries. They have such problems in Palestine, in the Arab world, and in the small islands in the south-eastern portion of Asia. If we are to lead them rightly so that like the Balkans these Asiatic lands may not also become the battleground of the Imperialisms of the West, it is very necessary that we should set an example by having a state in India which will be a state for the whole of India and at the same time provide safeguards for cultural minorities. This is what this Resolution contemplates by further making provision for the fundamental rights of the individuals and groups living in this country and for safeguarding the fundamental rights of the minorities.

Sir, it is because of these features of this Resolution that I said that the Resolution was of a sacred nature and one which is bound to rank with those declarations which were made on similar occasions in the past by peoples just after they had shed their shackles of slavery. It not only is sacred, it is arduous also, arduous not only because of the difficulties pointed out by Dr. Jayakar, but arduous because of the attitude of British statesmen over there in England. I have just now told you that from my personal experience as an administrator I do not feel that the Britishers have made up their mind to peacefully transfer power to the people of India. Only the other day you had the speech of Mr. Churchill. Not one word of cheer from that great imperialist. At a time like this in the history of our country when so many of us have assembled here to advise a constitution

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for this land, instead of giving a word of cheer, he was again at his old game. He had a fling at the Congress, he had a fling at Pandit Jawaharlal Nehru. In the advent of Pandit Jawaharlal Nehru into the Interim Government he sees the butchery of innocent men in Bihar. To Mr. Churchill, living seven seas across, I will say, you have been supplied with a lie by some interested person and you have made yourself the willing tool for the propagation of that lie. The Government of Bihar did not hesitate for one single moment to use force and it used force, whatever force it had, to give protection to the lakhs of Mussalmans living in that Province. The Bihar Government is a proud Government. It is not going to have dictations from the Government of India, so long as it is constituted under the Government of India Act, 1935. Pandit Jawahar Lal Nehru is our leader and so he went to Bihar. He is a source of inspiration to us. I may tell Mr. Churchill that during his strenuous tours of a few days through the Province he gave the people a bit of his mind. I told the greatest official of this country that he could not restore order in Bihar in the short period in which we did it. Order could be speedily restored, not because of the bayonets that the Government of Bihar had or because of those bayonets that were lent to them by the Government of India. It was the dynamic personality of Pandit Nehru, the saintly presence of Dr. Rajendra and the spectre of a fast unto death by the Mahatma that restored order quickly in Bihar. Mr. Churchill has done great mischief by giving currency to such lies. I have taken much of your time. But I must tell you that before you pass this Resolution you must try to visualise the difficulties that may come in your way. I have not studied this declaration of the Cabinet from the point of view of a lawyer. Spurn to look at it from the point of a lawyer. I have been a soldier all my life and I would look at it from the point of view of a fighter. The statements of British statesmen are not quite helpful. It is just possible that not because of the difficulties that have been dangled before us by Dr. Jayakar but because of the difficulties which may be created in our way by those in power. This Constituent Assembly may one day have to go the way the Constituent Assembly of France in 1799, had to go, because of the attitude of the King and statesmen of that time. So before I sit down, I would remind Hon'ble Members of the House that before they make up their minds to vote in favour of this Resolution they must realise the difficulty that they may have to face in giving effect to their resolve. If we pass this Resolution we must at the same time take a firm resolve to tear down that political edifice which owes its existence in India to the Government of India Act, 1935—a monument of constitutional jugglery—and build on it a Republic of the type which this Resolution envisages, whatever may be the difficulties that may come in the way.

Mr. Chairman: It is already past five. I would like to know whether the Hon'ble Members would like to sit till half past five.

Many Hon'ble members: Half past five.

Mr. Chairman: Opinion is divided.

The Hon'ble Sardar Vallabhbhai J. Patel: Opinion is unanimous for five.

Mr. Chairman: Those who are in favour of half past five will please raise their hands.....

Those who are not in favour of half past five will now raise their hands.

Mr. Chairman: The "fives" have it. The House will now adjourn till Eleven of the Clock tomorrow.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 17th December, 1946.

CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 17th December, 1946

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eleven of the Clock, Mr. Chairman (The Hon'ble Dr. Rajendra Prasad) in the Chair.

The following Member presented, Her credential and signed the Register. The Hon'ble Mrs. Vijayalakshmi Pandit.

Mr. Chairman: I am happy to welcome Srimathi Vijayalakshmi Pandit after the great work she have been able to achieve in the International Conference in America. (*Cheers*). I am sure the whole House will join me in that welcome as is apparent from the cheering. (*Applause*).

Is there any other member who wishes to sign the Roll?
(None.)

RESOLUTION RE: AIMS AND OBJECTS-*contd.*

Mr. Chairman: We shall proceed to the discussion of the Resolution and the amendments. I have got a long list of members who wish to speak. The list covers more than 50 names. I do not know how I can accommodate all the 50 speakers who have sent in their names. There may also be some others who wish to speak. I would therefore select according to me own choice. I am not sure that that may not cause complaint in some quarter or other, but I suppose that that is the only way. I want to suggest to the speakers to be as brief as they can, because after all we have got to go through this work, finish this Resolution and take up other business. Sitting, as we are doing now for two hours a day, if every speaker takes 15 minutes, that means 6 days and if we sit both in the morning and evening, it means 3 days. I do not think we can afford so much time on this Resolution. I would therefore request the speakers to be as brief as they can without my fixing any time-limit. Ten minutes may be taken as a reasonable limit. I would call upon Mr. Masani.

Mr. M. R. Masani (Bombay: General): Mr. Chairman, in rising to speak on this Resolution, I would like to make it clear at the outset that I do so, not as a member of one of the several communities, into which unfortunately, our nation is today divided, but as an Indian first and last. (*Hear*). I do so even though I owe my origin to the very smallest or tiniest of our national minorities. It was one of those groups of people who received that welcome, that hospitality and that protection to which Babu Purushottamdas Tandon referred in his speech in seconding this Resolution. I hope, Sir, that these minorities which exist in our country, will, along with the majority, continue their progress towards becoming a nation, a process which in this ancient country was happening through the absorption of new groups that came into it through the centuries, but a process which seems to have been retarded through the rigidity of caste and through the exclusiveness of society in the past few centuries. I would only observe at this stage that the conception of a nation does not permit the existence of perpetual or permanent minorities. Either the nation absorbs these minorities or, in course of time, it must break up. Therefore, while welcoming the clause in this Resolution which promises adequate safeguards for the minorities, I would say that it is a good thing that

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we have these legal and constitutional safeguards, but that ultimately no legal safeguard can protect small minorities from the overwhelming domination of big masses, unless on both sides an effort is made to get closer and become one corporate nation, a homogeneous nation. That process has been shown to us by the United States of America, where peoples of different races have, with one unfortunate exception, been absorbed into one nation.

There must have been indeed very few members of this House who were not deeply moved, and who did not feel elevated, by the noble speech with which the Mover of this Resolution introduced it in this House. He peered into the future and tried to see what shape the destiny of the people of India would take and, in response to the appeal which he made that we should consider this Resolution as something fundamental and avoid legal disputes and quibbling over its terms. I would like, in the very few minutes that, Sir, you have placed at my disposal, to draw the attention of this House to what I might call the social or long-term aspect of this Resolution and to try to understand what kind of society or State, what way of life this Resolution offers to the people of this country. I feel, Sir, that immediate disputes aside, that is the part of the Resolution at which the common people of the country will look with the closest attention.

I approach this part of the Resolution, Sir, as a Democratic Socialist, a Socialist who feels that democracy needs to be extended from the Political to the economic and social spheres and that, if socialism does not mean that, then it means nothing at all. I welcome this Resolution in spite of the fact that neither the word 'Democracy' nor the word 'Socialist' finds a place in its Preamble. It is perhaps just as well that those words have been avoided because, as one of us here put it in his Presidential Address at the Meerut Congress, terms like Socialism or Democracy can be made to cover Multitude of sins. The fog of words often covers realities. We know the French Revolution was made in the name of fraternity but, towards the end of that Resolution a cynic remarked—

"When I saw what men did in the name of fraternity, I resolved if I had a brother to call him cousin!"

That I fear, is true of other revolutions as well.

As a Socialist, Sir, I welcome this aspect of the Resolution because, as the Mover has rightly pointed out, the content of economic democracy is there although the label is not there. The Resolution, in my view clearly rejects the present social structure, it rejects the social *status quo*. There can be no other meaning to the words in clause 5 which refer to justice—social, economic and political. I do not think anyone here would argue that the present state of our society is based on justice. I think it has an estimated that today if our national income were to be divided into three equal thirds, 5 out of 100 Indians get one third of our national income, another 33 get the second third and the big mass of 62 get the remaining portion. That surely is not social or economic justice and, therefore, as I understand this Resolution, it would not tolerate the wide and gross inequalities which exist in our country. It would not tolerate the exploitation of a man's labour by somebody else. It certainly means that everyone who toils for the common good will get his fair share of the fruits of his labour. It also means that the people of this country, so far as any constitution can endow them, will get social security—the right to work or maintenance by the Community. The Resolution also provides for equality of opportunity. Equality of opportunity, Sir, presupposes equal facilities in education and in the development of the talent that is latent in each one of us. Today, among our masses a fund of latent talent exists which has no chance to come out and contribute to our national good. Equality of opportunity certainly assumes that every child in this country,

every boy and girl, will get an equal opportunity to develop those faculties which he or she possesses in order contribute to the common good.

That, Sir, is the socialist aspect of the Resolution. It does not provide for Socialism. It would be wrong to provide for such a thing, because this House has no mandate to go in for far-reaching economic changes in the country. Those changes can be brought about by a properly constituted Parliament when it comes into existence with the mandate of the people. All that we can do as an Assembly here, is to frame a constitution which will allow those far-reaching changes which are necessary to be made and I submit, Sir, that this Resolution goes as far as it can in satisfying the most ardent socialist amongst us.

As I said, Sir, I approach this as a Democratic Socialist and, if Socialism is there, so is Democracy or the content of Democracy included in the Resolution. I do not think the word 'Republic' there is adequate. As Pandit Jawahar Lal Nehru himself has stated; it is conceivable that a Republic may not be democratic. If we cast our eyes around the globe to-day, we shall see several instances of this and therefore, apart from saying that we shall be a Republic, it is necessary that we should make it clear, as clauses 4 and 5 do, that in our view Democracy does not mean a Police State, where the Secret Police can arrest or liquidate people without trial. It does not mean a totalitarian State where one party can seize power and keep opposition parties suppressed and not give them the freedom to function freely and with equal facilities. It cannot mean a Society or State where an individual is made a robot or where is reduced to "a small screw in the big machine of State". Pandit Jawahar Lal Nehru has pointed out that this Resolution is based on Democracy, and that all our past bears witness to the fact that we stand for Democracy and for nothing less. But it is not only our past which is a guarantee of our democratic faith. It is also our present.

Our national life has many different trends in it but, almost unanimously, we all stand for the freedom of the individual and for a democratic State. And to show how widely differing schools of thought in our midst can agree with almost one voice on this desire to distribute power to our common people, to distribute political and economic power so widely that no one man or group of people can exploit or dominate the rest, I will cite to you first the testimony of one who is not present amongst us, one who, was referred to by the Mover as the Father of our Nation. I refer to Mahatma Gandhi. (*Cheers*). These are his words as quoted in 'A Week with Gandhi' by Louis Fischer:—

"The centre of power now is in New Delhi, or in Calcutta and Bombay, in the big cities. I would have it distributed among the seven hundred thousand villages of India....."

"There will then be voluntary co-operation between these seven hundred thousand units, voluntary co-operation-not co-operation induced by Nazi methods. Voluntary co-operation will produce real freedom and a new order vastly superior to the new order in Soviet Russia....."

"Some say there is ruthlessness in Russia, but that it is exercised for the lowest and the poorest and is good for that reason. For me, it has very little good in it."

And as if to find an echo of that in a thinker of a very different school, I shall now cite a sentence or two from a recent picture of Socialism drawn by the leader of the Indian Socialist Party, Jai Prakash Narain. I regret, Sir, that he has not joined us in our labour here, but this is what he says and it sounds almost like an echo of Gandhiji's thought:

"The State under Socialism threatens, as in Russia, far from withering away, to become an all-powerful tyrant maintaining a strangle-hold over the entire life of the citizen. This leads to totalitarianism of the type we witness in Russia today. By dispersing the ownership and management of industry and by developing the village into a democratic village republic, we break this strangle-hold to a very large extent and attenuate the danger of totalitarianism....."

[Mr. M.R. Masani]

Thus my picture of a socialist India is the picture of an economic and political democracy. In this democracy, men will neither be slaves to capitalism nor to a party or the State. Man will be free."

Sir, it is a fashion of our day to argue that the social and economic changes that are at present required cannot be made unless individual liberty and democracy are first destroyed and an all-powerful State can push its programmes through. This Resolution, if I read it aright, is a refutation of that thesis. It envisages far-reaching social changes—social justice in the fullest sense of the term but it works for those social changes through the mechanism of political Democracy and individual liberty. To those defeatists who say that this cannot be done, this Resolution says it can be done, and we have the intention and the determination to do it. The central problem of our times is whether the State is to own the people or the people are to own the State. Where the State belongs to the people, the State is a mere instrument subordinate to the people and it serves the people. It only takes away the liberty of the individual to the extent that the people really desire it. Where the State owns the people, the people are mere robots in a big machine—pushed about here and there by the whims of an all-powerful dictator or an all-powerful party. It is because I believe, Sir, that this Resolution points the direction to a constitution where the people will be in power, where the individual will occupy the centre of the stage and the development of the individual personality will be the main aim of our social good, that I support this part of the Resolution, this aspect of it, for I believe that, as the fathers of the United States Constitution put it, every individual Indian has an "inalienable right to Life, Liberty and pursuit of Happiness". (*Cheers.*)

Mr. F. R. Anthony (Bengal: General): Mr. President, Sir, I have risen to support the amendment moved by Dr. Jayakar. I have given the most earnest consideration to the Resolution moved by Pandit Nehru and to the amendment as it has been moved by Dr. Jayakar. I appreciate the solemn character of the main Resolution, and I am not going to support the amendment purely by arguing technical or legal reasons in support of it. I appreciate the fact that the first part of that main Resolution affirms our solemn resolve to proclaim India as an independent Sovereign Republic. That, I realise, is an article of faith with the Congress Party. It represents the supreme objective for which they have fought so long and so arduously. No one could, should, more than that would dare ask them not to reiterate that pledge of theirs on this, the first and the most appropriate occasion. Apart from that, I think it is a pledge which is enshrined in the heart of every Indian. I also appreciate the fact that constitutional precedent shows that assemblies such as ours have at the very first opportunity declared their main and fundamental objective. And ours is to proclaim India as a Sovereign Independent Republic. Pandit Jawahar Lal Nehru has asked us, quite rightly, not to read into this word "Republic" any unnecessary bogeys. It is only meant to indicate a constitution in contradistinction to a monarchical form of government. At the same time, he emphasised that it does not preclude units, autonomous units, from joining this Republic and retaining to themselves a monarchical form of government. The reason why I have supported Dr. Jayakar's amendment are that, I believe that it fulfils essentially both these things. The amendment respects the Congress pledge. It affirms our solemn resolve to frame constitution for a free and democratic Sovereign State. The words used may not be identical. I would prefer the words to have been adopted from the main Resolution, but I believe that from the constitutional point of view, the connotations of these two phrases are virtually identical. Further, Dr. Jayakar's amendment meets the second need, to proclaim at this first stage our fundamental objective of framing a constitution for a free and democratic Sovereign State. What I believe Dr. Jayakar's amendment

really seeks to do is to ask us to defer a declaration on the remaining parts of that main Resolution. That is, those parts relating to the Indian States, to the powers and functions of the Provinces and to the powers and functions of the Union. That, I believe is the intention of this amendment—to ask us to defer a declaration, however just it may be,—a declaration which may expose us to the charge, however baseless, that we are prejudging matters of detail which have to be traversed in this Assembly and on which decisions should be made after they have been fully canvassed and discussed here. That is why, Sir, I feel that Dr. Jayakar's amendment should be supported. It ought to be adopted because it is dictated, if I may say so, with all humility, by considerations of statesmanship, by the desire of every one of us to see the greatest measure of agreement and goodwill between the two major parties and by the desire of every one of us to see this great country of ours embracing, giving strength to and being given strength by those who make up her children.

Dr. Syama Prasad Mookherjee (Bengal: General): Mr. Chairman, Sir, I believe in the course of the chequered history of our country, we have often passed motions and resolutions from different political parties and platforms embodying our demands for an Independent Sovereign State for our motherland. But so far as today's Resolution is concerned, it has a deep and special significance. It is for the first time in the history of our country, since we came under British rule, that we have met to frame our own constitution. It is a great responsibility—in fact, as the Hon'ble the Mover of the Resolution reminded us, it is a solemn and sacred trust which we Indians have agreed to perform and we propose to do so to the best of our ability. Now, Sir, the amendment which has been moved by Dr. Jayakar raises certain questions of fundamental importance. I am sorry I cannot support the amendment. The effect, of the amendment practically is that we cannot pass a resolution of this description at all until the Sections have met and made their recommendations. Dr. Jayakar wants that we should not pass this Resolution until both the Indian States and the Muslim League are enabled to attend the Constituent Assembly. So far as the Indian States are concerned, they cannot come even if they wish to, until the Sections have met and settled the provincial constitutions, which means how many months none can foretell. So far as the Muslim League is concerned, no doubt, every one regrets that the Muslim League has not found it possible to attend the preliminary session of the Constituent Assembly. But what guarantee is there that, if this Resolution is postponed till the 20th January next, as Dr. Jayakar suggests, the Muslim League will come and attend the session?

I feel, Sir, that the question should really be looked at from a different point of view. Does this Resolution raise issues which are in any way inconsistent with the Cabinet Mission's Scheme of May the 16th? If it does raise issues which are inconsistent with that scheme, then obviously we are prejudging matters, we are raising matters which, it may be said, we have no right to do at this stage. Now, that document to my mind is something like a puzzle picture. You can interpret it in so many ways looking at it from different angles of vision. But looking at the Resolution as it stands, what is the declaration that it is making now? It enumerates certain fundamental things which are within the framework of the Scheme itself. I know that if we go into some details. I have to refer to at least one matter on which many of us hold divergent views, namely, the question of residuary powers. But that is a matter which the Cabinet Mission's Scheme has included within the contemplated framework of the Constitution. That is a matter on which the Indian National Congress has expressed its opinion; that is a matter, I believe, on which the Muslim League also has expressed its opinion. Some of us differ

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from that standpoint and urge a stronger Centre in India's paramount interest. We shall do so at an appropriate stage later on. Pandit Jawahar Lal Nehru, as the mover of the Resolution, has also made it clear that we are not now framing a constitution for India; we are only passing a resolution at this stage, at the preliminary stage, outlining generally the shape that the future constitution of India should take. In other words, when the time actually comes for us to frame the Constitution, I believe, Sir, it will be open to any one to, bring up any matter that he chooses before the House as an amendment to any proposal that may be made and which is bound to be considered on its merits. The passing of this Resolution, I take it, can be no legal bar whatever against any member bringing forward any amendment to the draft Constitution that this Assembly may frame at a later stage. If assurances are forthcoming, on these two issues, namely, that the Resolution as drafted does not go against the main features of the Cabinet Mission's Scheme, and also that it does not commit the Constituent Assembly in a definite manner with regard to the details of the Constitution that is yet to come. I see no reason why any obstacle should be put forward to passing the Resolution at this stage.

The Resolution has an importance of its own. After all, we are sitting here not in our individual capacity, but we claim to represent the People of this great land. Our sanction is not the British Parliament; our sanction is not the British Government; our sanction is the people of India (*cheers*). And if that is so, we have to say something, not merely to frame rules and regulations—we have to say something concrete to the people of India as to why we have assembled here on the 9th December 1946. If what Dr. Jayakar says had been the correct position, then this Constituent Assembly should not have been called at all; in fact, Dr. Jayakar need not have attended the meeting. He should have informed the Governor General,—“ I regret I cannot accept your invitation because I feel you are doing wrong in calling the Constituent Assembly as the Muslim League and the Indian States are not attending.” But having come here, for us to raise this issue is practically to walk into the trap, of the Muslim League and to strengthen the hands of reactionaries in Great Britain. I know that Dr. Jayakar will be the last man to do such a thing. I admire his courage of conviction; in fact, every one who feels that a certain thing should be done, must be able to come forward and present his view point. But we may also respectfully point out to Dr. Jayakar the great danger that lies in the innocent looking amendment that he has put forward before the House, and I hope that he will withdraw the amendment in due course when the time comes.

I would like just to say a few words with regard to another aspect of the question. The Resolution is there, but, how are we going to implement it? What are the impediments that we already see before us which may prevent us from carrying this Resolution into effect? Now, one, of course, is the status of the Constituent Assembly in the absence of the Muslim League. Dr. Jayakar yesterday referred to some analogy of a dinner party. He said, “If guests are invited and some guests do not come, then how can you have the dinner party?” But he forgot to say what will be the fate of the guests who have already arrived? If he is going to be the host and invites six guests, suppose five of them come and one is absent, is he then going to starve those five guests of his and turn them out of his house and say, “the sixth has not come and you are not going to get your food?” Obviously not. Here also the hunger for freedom for those who have come has to be satisfied. Mr. Churchill said that the absence of the Muslim League in the Constituent Assembly was something like the absence of the bride in the Church when the

marriage was going to take place. I do not know, when the Indian States come in and also the Muslim League, how many brides the Constituent Assembly is going to have ultimately. In any case, if that is Mr. Churchill's point of view, he should not play the role of a seducer. He should have asked Mr. Jinnah to go back to India and join the Constituent Assembly and place his point of view before the people of India. No one has said that the Muslim League should not come. In fact, we want that the Muslim League should come so that we can meet each other face to face. If there are difficulties, if there are differences of opinion, we do not wish that we should carry only by majority votes. That may have to be done as a last resort, but obviously, every attempt must be made, will be made to come to an agreement as regards the future Constitution of India. But why is the Muslim League being prevented from coming? My charge is that the Muslim League is not coming because of the encouragement it receives from British attitude. The Muslim League has been encouraged to feel that if it does not come, it may be able to veto the final decision of the Constituent Assembly. The power of veto in some form or another has again passed into the hands of the Muslim League, and that is the danger that threatens the future activities of this great Assembly. Sir, I am not going to discuss in detail, because this is neither the time nor the occasion when I can discuss, the various provisions of the British statements. But, I would certainly say this: that this Constituent Assembly, although it is a British creation for the time being, once it has come into existence, it has the power, if it has the will, to assert its right and to do what is best and proper for the attainment of India's freedom, for the good of the people of India irrespective of caste, creed or community. (*Hear, hear*).

Now, Sir, we have said, at any rate, the Indian National Congress has said—because that was one of the major parties with whom negotiations went on—that they stand by the Cabinet Mission Scheme of May 16. It gladdened my heart yesterday when the Hon'ble Sardar Vallabhai Patel got up, interrupting Dr. Jayakar, and said that the Congress has not accepted anything beyond the Statement of May 16, 1946. (*Cheers*) That I consider to be an announcement of fundamental importance, We have got to make it clear as to what we are here for. I say that our attitude should be something like this: We shall give the Cabinet Mission Scheme of May 16, a chance; genuinely, honestly we shall see if we can come to an agreement with the other parties and elements on the basis of the Scheme on May 16, 1946. But subsequent interpretations, if any, we are not going to accept. Or if any party chooses to deviate from the Scheme and break away, we shall proceed and frame the Constitution as we wish.

There has been considerable difference of opinion with regard to one clause of the Statement of May 16, 1946, and that is with regard to the question of grouping. Now, it is for the Congress to decide, as one of the major parties involved, what interpretation it is going to accept ultimately. If the interpretation as given by His Majesty's Government is not accepted, and if the Congress considers that the interpretation put upon that portion of the Statement by it (the Congress) is correct, then of course a crisis may come. That is a question which has to be decided apart from a discussion on this Resolution. In fact, the greater the delay in making a decision on that question, the greater will be the atmosphere of unreality; so far as the proceeding of this House are concerned. But, after that question is decided, supposing the interpretation put by His Majesty's Government is accepted, whether by a reference to the Federal Court, or not, I need not go into, then we shall go on. We shall proceed with our work. The Muslim League may come or may not come if it comes, well and good; and even if it does not come, it cannot retard India's freedom and we must claim to proceed with our business in this

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Constituent Assembly. I feel, Sir, that if a crisis does come, as I visualise, it is likely to come, if our country is to be free, it is not going to be in accordance with constitutional means. In view of the developments that have taken place during the last few days, our task will not be performed so easily. But let me emphasise that whatever has to be done, it has to be done through the agency of this Constituent Assembly and none other. If ultimately we have to function, we shall function on our own responsibility and prepare a constitution which we shall be able to place before the bar of world opinion and satisfy everyone that we have treated the people of India, minorities and all, in a just and equitable manner.

After all, what happened with regard to the South African question? We have today in our midst, the Hon'ble Mrs. Pandit, who has come back to her motherland after a great victory. But even there she was not supported by our self-constituted trustee—His Majesty's Government in Great Britain. In fact the vote went against India so far as Great Britain was concerned. But she won. The Indian Delegation won before the bar of world opinion. Similar may be the case with regard to the Constituent Assembly also. If we take courage in both hands and frame a constitution which will be just and equitable to all, then we shall be able, if need be, to declare this Constituent Assembly as the first Parliament of a Free and Sovereign Indian Republic. (*Loud cheers*) We then may be able to worm our own National Government and enforce our decision on the people of this land. As I said a few minutes ago, our sanction is not the British people of the British Government. Our sanction is the, people of India and therefore we have to make the ultimate appeal to the people of our country.

Sir, when we talk about minorities, it is suggested as if the Muslim League represents the only minority in India. But that is not so. There are other minorities. Coming from Bengal with all her tragic suffering, let me remind the House that Hindus also constitute a minority in at least four Provinces in India and, if minority rights are to be protected, such rights must affect every minority which may vary from Province to Province.

Only last night, Lord Simon made the startling announcement that the Constituent Assembly sitting in Delhi consists of only Caste Hindus. So many false statements have been uttered during the last few days in England that it is difficult to keep count of them all. But who are represented 'xi this House today? There are Hindus; there are some Muslims too. At east there are Muslims from one Muslim province who come as representatives of a Government which is functioning there in spite of the Muslim League. There are the representatives of the Province of Assam which is supposed to be part and parcel of Mr. Jinnah's Pakistan-to-come. That Province is also officially represented by the majority of the people of that province. You have the Scheduled Castes. All the Scheduled Caste members who have been elected to the Constituent Assembly are here. Even Dr. Ambedkar who may not agree with us in all matters is present here, (*applause*), and I take it, it will be possible for us to convert him, or reconvert him and to get him to our side, (*renewed applause*) when we go to discuss in detail the interests of those whom he represents. There are other Scheduled Caste members also present here. The Sikhs are present here; all of them. The Anglo-Indians are present and so are the Indian Christians. So, how did it lie in the mouth of Lord Simon..... (A Voice: Parsis also are present here.) Yes, last but not least, the Parsees also are present here. So, how did it lie in the mouth of Lord Simon or anybody else. (A Voice: The Tribal representatives are here). Tribal areas and the Adibasis are here represented by my friend Mr. J. Singh. In fact, every element that has been elected to the Indian Constituent Assembly is

here barring the Muslim League. The Muslim League represents a section. I take it a large section, may be a very large section of the Muslim community, but it is absolutely false to suggest that this Constituent Assembly consists only of one section of the people, the Caste Hindus, as though Caste Hindus have been born only to oppress the others and to fashion out something which will be disastrous to the interests of India. Now, is it suggested that if one section of the Indian people chooses to be absent from the Constituent Assembly, India should continue to remain a slave country? (*A Voice*: "No"). That reply has to be given to the people of this country who are absent and also their instigators. I would say, Sir, that we should say to the British people once and for all, "We want to remain friendly with you. You started your career in this country as traders. You came here as supplicants before the Great Mughal. You wanted to exploit the wealth of this country. Luck was in your favour. By forgery, fraud and force, you succeeded in establishing—these are all matters of history—your Government in this country, but not with the willing co-operation of the people of this land. You introduced separate electorates, you introduced religion into Indian politics. That was not done by Indians. You did it, only to perpetuate your rule in this country. You have created vested interests in this country which have become powerful enough now and which cannot be destroyed with their own willing co-operation. In spite of all these, if you really want that you and India should remain as friends in the future, we are prepared to accept your hand of co-operation. But for heaven's sake, it is not the business of the British Government to interfere so far as the domestic problems of India are concerned. Every country will have its own domestic problems and unfortunately India has her domestic problems too, and those domestic problems must ultimately be settled by the people of this country." I hope, Sir, as we are not framing a constitution now, as we are only laying down a general outline of the things that we want to do in the future, the House will refuse to listen to narrow technicalities. We shall go ahead with our work in spite of all difficulties and obstacles and help to create that great India, united and strong, which will be the motherland of not this community or that, not this class or that, but of every person, man, woman and child, inhabiting this great land, irrespective of race, caste, creed or community, where everyone will have an equal opportunity, an equal freedom, an equal status so that he or she could develop himself or herself to the best of his or her talents and serve faithfully and fearlessly this beloved common motherland of ours.

Mr. Chairman: Dr. Ambedkar.

Dr. B. R. Ambedkar (Bengal : General) : Mr. Chairman, I am indeed very graceful to you for having called me to speak on the Resolution. I must however confess that your invitation has come to me as a surprise. I thought that as there were some 20 or 22 people ahead of me, my turn, if it did come at all, would come tomorrow. I would have preferred that as today I have come without any preparation whatsoever. I would have liked to prepare myself as I had intended to make a full statement on an occasion of this sort. Besides you have fixed a time limit of 10 minutes. Placed under these limitations, I don't know how I could do justice to the Resolution before us. I shall however do my best to condense in as few words as possible what I think about the matter.

Mr. Chairman, the Resolution in the light of the discussion that has gone on since yesterday, obviously divides itself into two parts, one part which is controversial and another part which is non-controversial. The part which is non-controversial is the part which comprises paragraphs (5) to (7) of this Resolution. These paragraphs set out the objectives of the future constitution of this country. I must confess that, coming as the Resolution does from Pandit Jawaharlal Nehru who is reputed to be a Socialist, this Resolution, although non-controversial, is to my mind very

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disappointing. I should have expected him to go much further than he has done in that part of the Resolution. As a student of history, I should have preferred this part of the Resolution not being embodied in it at all. When one reads that part of the Resolution, it reminds one of the Declaration of the Rights of Man which was pronounced by the French Constituent Assembly. I think I am right in suggesting that, after the lapse of practically 450 years, the Declaration of the Rights of Man and the principles which are embodied in it has become part and parcel of our mental makeup. I say they have become not only the part and parcel of the mental make-up of modern man in every civilised part of the world, but also in our own country which is so orthodox, so archaic in its thought and its social structure, hardly anyone can be found to deny its validity. To repeat it now as the Resolution does is, to say the least, pure pedantry. These principles have become the silent immaculate premise of our outlook. It is therefore unnecessary to proclaim as forming a part of our creed. The Resolution suffers from certain other lacuna. I find that this part of the Resolution, although it enunciates certain rights, does not speak of remedies. All of us are aware of the fact that rights are nothing unless remedies are provided whereby people can seek to obtain redress when rights are invaded. I find a complete absence of remedies. Even the usual formula that no man's life, liberty and property shall be taken without the due process of law, finds no place in the Resolution. These fundamental rights set out are made subject to law and morality. Obviously what is law, what is morality will be determined by the Executive of the day and when the Executive may take one view another Executive may take another view and we do not know what exactly would be the position with regard to fundamental rights, if this matter is left to the Executive of the day. Sir, there are here certain provisions which speak of justice, economical, social and political. If this Resolution has a reality behind it and a sincerity, of which I have not the least doubt, coming as it does from the Mover of the Resolution, I should have expected some provision whereby it would have been possible for the State to make economic, social and political justice a reality and I should have from that point of view expected the Resolution to state in most explicit terms that in order that there may be social and economic justice in the country, that there would be nationalisation of industry and nationalisation of land, I do not understand how it could be, possible for any future Government which believes in doing justice socially, economically and politically, unless its economy is a socialistic economy. Therefore, personally, although I have no objection to the enunciation of these propositions, the Resolution is, to my mind, somewhat disappointing. I am however prepared to leave this subject where it is with the observations I have made.

Now I come to the first part of the Resolution, which includes the first four paragraphs. As I said from the debate that has gone on in the House, this has become a matter of controversy. The controversy seems to be centred on the use of that word 'Republic'. It is centred on the sentence occurring in paragraph 4 "the sovereignty is derived from the people". Thereby it arises from the point made by my friend Dr. Jayakar yesterday that in the absence of the Muslim League it would not be proper for this Assembly to proceed to deal with this Resolution. Now, Sir, I have got not the slightest doubt in my mind as to the future evolution and the ultimate shape of the social, political and economic structure of this great country. I know to-day we are divided politically, socially and economically. We are a group of warring camps and I may go even to the extent of confessing that I am probably one of the leaders of such a camp. But, Sir, with all this, I am quite convinced that given time and circumstances nothing in the world will prevent this country from becoming one. (*Applause*) With all our castes and creeds, I have not the slightest hesitation that we shall in some form be a united people. (*Cheers*). I have no

hesitation in saying that notwithstanding the agitation of the Muslim League for the partition of India some day enough light would dawn upon the Muslims themselves and they too will begin to think that a United India is better even form them. (*Loud cheers and applause*).

So far as the ultimate goal is concerned, I think none of us need have any apprehensions. None of us need have any doubt. Our difficulty is not about the ultimate future. Our difficulty is how to make the heterogeneous mass that we have to-day take a decision in common and march on the way which leads us to unity. Our difficulty is not with regard to the ultimate, our difficulty is with regard to the beginning. Mr. Chairman, therefore, I should have thought that in order to make us willing friends, in order to induce every party, every section in this country to take on to the road it would be an act of greatest statesmanship for the majority party even to make a concession to the prejudices of people who are not prepared to march together and it is for that, that I propose to make this appeal. Let us leave aside slogans let us leave aside words which frighten people. Let us even make a concession to the prejudices of our opponents, bring them in, so that they may willingly join with us on marching upon that road, which as I said, if we walk long enough, must necessarily lead us to unity. If I, therefore, from this place support Dr. Jayakar's amendment, it is because I want all of us to realise that whether we are right or wrong, whether the position that we take is in consonance with our legal rights, whether that agrees with the Statement of May the 16th or December 6th, leave all that aside. This is too big a question to be treated as a matter of legal rights. It is not a legal question at all. We should leave aside all legal considerations and make some attempt, whereby those who are not prepared to come, will come. Let us make it possible for them to come, that is my appeal.

In the course of the debate that took place, there were two questions which were raised, which struck me so well that I took the trouble of taking them down on a piece of paper. The one question was, I think, by my friend, the Prime Minister of Bihar who spoke yesterday in this Assembly. He said, how can this Resolution prevent the League from coming into the Constituent Assembly? Today my friend, Dr. Syama Prasad Mookherjee, asked another question. Is this Resolution inconsistent with the Cabinet Mission's Proposal? Sir, I think they are very important questions and they ought to be answered and answered categorically. I do maintain that this Resolution whether it is intended to bring about the result or not, whether it is a result of cold calculation or whether it is a mere matter of accident is bound to have the result of, keeping the Muslim League out. In this connection I should like to invite your attention to paragraph 3 of the Resolution, which I think is very significant and very important. Paragraph 3 envisages the future constitution of India. I do not know what is the intention of the mover of the Resolution. But I take it that after this Resolution is passed, it will act as a sort of a directive to the Constituent Assembly to frame a constitution in terms of para 3 of the Resolution. What does para 3 say? Para 3 says that in this country there shall be two different sets of polity, one at the bottom, autonomous Provinces or the States or such other areas as care to join a United India. These autonomous units will have full power. They will have also residuary powers. At the top, over the Provincial units, there will be a Union Government, having certain subjects for legislation, for execution and for administration. As I read this part of the Resolution, I do not find any reference to the idea of grouping, an intermediate structure between the Union on the one hand and the provinces on the other. Reading this para in the light of the Cabinet Mission's Statement or reading it even in the light of the Revolution passed by the Congress at its Wardha session, I must confess that I am a great deal surprised at the absence of any reference to the idea of grouping of the provinces. So far as

[Dr. B.R. Ambedkar]

I am personally concerned. I do not like the idea of grouping (*hear, hear*) I like a strong united Centre, (*hear, hear*) much stronger than the Centre, we had created under the Government of India Act of 1935. But, Sir, these opinions, these wishes have no bearing on the situation at all. We have travelled a long road. The Congress Party, for reasons best known to itself consented if I may use that expression, to the dismantling of a strong Centre which had been created in this country as a result of 150 years of administration and which, I must say, was to me a matter of great admiration and respect and refuge. But having given up that position, having said that we do not want a strong Centre, and having accepted that there must be or should be an intermediate polity, a sub-federation between the Union Government and the Provinces I would like to know why there is no reference in para 3 to the idea of grouping. I quite understand that the Congress Party, the Muslim League and His Majesty's Government are not *ad idem* on the interpretation of the clause relating to grouping. But I always thought that,—I am prepared to stand corrected if it is shown that I am wrong,—at least it was agreed by the Congress Party that if the Provinces which are placed within different groups consent to form a Union or Sub-federation, the Congress would have no objection to that proposal. I believe I am correct in interpreting the mind of the Congress Party. The question I ask is this. Why did not the Mover of this Resolution make reference to the idea of a Union of Provinces or grouping of Provinces on the terms on which he and his party was prepared to accept it? Why is the idea of Union completely effaced from this Resolution? I find no answer. None whatever. I therefore say in answer to the two questions which have been posed here in this Assembly by the Prime Minister of Bihar and Dr. Syama Prasad Mookherjee as to how this Resolution is inconsistent with the Statement of May 16th or how this Resolution is going to prevent the Muslim League from entering this Constituent Assembly, that here is para. 3 which— the Muslim League is bound to take advantage of and justify its continued absence. Sir, my friend Dr. Jayakar, yesterday, in arguing his case for postponing a decision on this issue put his case, if I may say so, without offence to him, somewhat in a legalistic manner. The basis of his argument was, have you the right to do so? He read out certain portions from the Statement of the Cabinet Mission which related to the procedural part of the Constituent Assembly and his contention was that the procedure that this Constituent Assembly was adopting in deciding upon this Resolution straightaway was inconsistent with the procedure that was laid down in that Paper. Sir, I like to put the matter in a somewhat different way. The way I like to put it is this. I am not asking you to consider whether you have the right to pass this Resolution straightaway or not. It may be that you have the right to do so. The question I am asking is this. Is it prudent for you to do so? Is it wise for you to do so? Power is one thing; wisdom is quite a different thing and I want this House to consider this matter from the point of view, not of what authority is vested in this Constituent Assembly, I want this House to consider the matter from another point of view, namely, whether it would be wise, whether it would be statesmanlike, whether it would be prudent to do so at this stage. The answer that I give is that it would not be prudent, it would not be wise. I suggest that another attempt may be made to bring about a solution of the dispute between the Congress and the Muslim League. This subject is so vital, so important that I am sure it could never be decided on the mere basis of dignity of one party or the dignity of another party. When deciding the destinies of nations, dignities of people, dignities of leaders and dignities of parties ought to count for nothing. The destiny of the country ought to count for everything. It is because I feel that it would in the interest not only of this Constituent Assembly so that it may function as one whole, so that it may have the reaction of the Muslim League before it proceeds to decision that I support

Dr. Jayakar's, amendment—we must also consider what is going to happen with regard to the future, if we act precipitately. I do not know, what plans the Congress Party, which holds this House in its possession, has in its mind? I have no power of divination to know what they are thinking about. What are their tactics, what is their strategy, I do not know. But applying my mind as an outsider to the issue that has arisen; it seems to me there are only three ways by which the future will be decided. Either there shall have to be surrender by the one party to the wishes of the other—that is one way. The other way would be what I call a negotiated peace and the third way would be open war. Sir, I have been hearing from certain members of the Constituent Assembly that they are prepared to go to war. I must confess that I am appalled at the idea that anybody in this country should think of solving the political problems of this country by the method of war. I do not know how many people in this country support that idea. A good many perhaps do and the reason why I think they do, is because most of them, at any rate a great many of them, believe that the war that they are thinking of, would be a war on the British. Well, Sir, if the war that is contemplated, that is in the minds of people, can be localised, circumscribed, so that it will not be more than a war on the British, I probably may not have much objection to that sort of strategy. But will it be a war on the British only? I have no hesitation and I do want to place before this House in the clearest terms possible that if war comes in this country and if that war has any relation to the issue with which we are confronted today, it will not be a war on the British. It will be a war on the Muslims. It will be a war on the Muslims or which is probably worse, it will be a war on a combination of the British and the Muslims. I cannot see how this contemplated war be, of the sort different from what I fear it will be. Sir, I like to read to the House a passage from Burke's great speech on Conciliation with America. I believe this may have some effect upon the temper of this House. The British people as you know were trying to conquer the rebellious colonies of the United States, and bring them under their subjection contrary to their wishes. In repelling this idea of conquering the colonies this is what Burke said :—

“First, Sir, permit me to observe, that the use of force alone is but temporary. It may subdue for a moment; but it does not remove the necessity of subduing again; and a nation is not governed, which is perpetually to be conquered.

“My next objection is its uncertainty. Terror is riot always the effect of force and an armament is not a victory. If you do not succeed, you are without resource for, conciliation failing, force remains; but, force failing, no further hope of reconciliation is left. Power and authority are sometimes bought by kindness; but they can never be begged as alms by an impoverished and defeated violence....

“A further objection to force is, that you impair the object by your very endeavours to preserve it. The thing you fought for is not the thing which you recover; but depreciated, sunk, wasted and consumed in the contest.”

These are weighty words which it would be perilous to ignore. If there is anybody who has in his mind the project of solving the Hindu-Muslim problem by force, which is another name of solving it by war, in order that the Muslim is may be subjugated and made to surrender to the Constitution that might be prepared without their consent, this country would be involved in perpetually conquering them. The conquest would not be once and for ever. I do not wish to take more time than I have taken and I will conclude by again referring to Burke. Burke has said somewhere that it is easy to give power, it is difficult to give wisdom. Let us prove by our conduct that if this Assembly has arrogated to itself sovereign powers it is prepared to exercise them with wisdom. That is the only way by which we can carry with us all sections of the country. There is no other way that can lead us to unity. Let us not have no doubt on that point.

Sardar Ujjal Singh (Punjab : Sikh) : Sir, I stand here to support the Resolution which was so ably and eloquently moved by Pandit Jawahar Lal Nehru. Sir, the Resolution places before this Assembly the objective which we must have in view before we start on our labour. This is undoubtedly a unique and solemn occasion in the history of India when the chosen people of this country have assembled hereto prepare a charter of liberty and a scheme of governance for the people and by the people. Sir, before we sit to work we must send a message of hope and cheer to the dumb millions of this country and to the world outside whose eyes at this moment are fixed upon us. And I believe this Resolution will give a new hope of an early realization of their dreams to the teeming millions, the dumb masses of this country, who have been struggling hard for the last many years to achieve freedom. Sir, in this matter of the fight for freedom, as in many others, history repeats itself. Ours is not the only country which has to struggle so long and so hard. The Goddess of Liberty must take her due toll of sacrifice from everyone. It may be that the struggle is violent and has been violent elsewhere, and non-violent in this country. For this and for many other things for which this country stands today and hopes to achieve in the future, we owe a great debt of gratitude to that master-mind, Mahatma Gandhi, whom Pandit Nehru described as the Father of the Indian Nation.

Sir, the Constituent Assembly is the culmination of the final stage of the struggle for freedom. The Resolution before this House is an expression of the pent-up emotions of the millions of this country. It can be divided into three parts. The first part deals with the declaration of an Independent Sovereign Republic of India. The second deals with autonomous units, having residuary powers with a Union of them all *i.e.*, including the Indian States. The third part deals with social and economic freedom and justice to all and with adequate safeguards for the minorities, backward classes and tribal areas. Opinions may differ with regard to the exact wording of the Resolution or its brevity in certain respects, but taken as a whole it is an expression of the will of the people of this country.

Sir, my Hon'ble friend, Dr. Jayakar, for whom I have got the highest respect, objected to this Resolution being moved and taken into consideration on the floor of this House at this stage on the ground that we are, at this preliminary session, precluded from taking into consideration any other matter excepting those three which are set out in paragraph 19 of the Cabinet Mission's Statement. He further suggested that the House would be well advised to take this matter on the 20th of January, when we meet again after we adjourn for the Christmas. My Hon'ble friend probably knows, when we meet again on the 20th of January for completing our unfinished business, we will be meeting again in a preliminary session and if he objects to this Resolution being taken into consideration today, his objection holds good also when we meet again on the 20th of January. (*Hear, hear*).

Sir, the second point that he suggested was that we should postpone its consideration for a few weeks so that the Muslim League and the States may have an opportunity to have their say on this matter. I am one of those who regret very much that the Muslim League is not present here today in this House and also value and seek the co-operation of the Muslim League. But it is not the fault of this House that those friends are absent today and we do not know when they may join us. It is not, therefore, fair to this House, having assembled here, to wait indefinitely without knowing when the other party is coming in. With regard to the States, if my Hon'ble friend were to study the State Paper, he would find that it is clearly laid down that States will come at the last stage when we after completing our provincial constitutions, reassemble for the Union Consti-

tution making. Are we to postpone a resolution of this nature to the very last stage when a good part of our constitution has been framed? A resolution of this importance must be considered and adopted at the beginning of our work.

Another objection to this Resolution was taken by Dr. Ambedkar that he did not find the word "grouping" mentioned anywhere. Dr. Ambedkar should know that grouping is an optional matter and, if I may say so, almost all of us are against grouping. Even the State Paper leaves it to the option of the Sections or the Provinces. In a resolution of this kind the Mover could not put in what the Sections may decide otherwise or the Provinces may decide otherwise.

The Indian States may find some objection to the word "Republic" being used in the Resolution. Indian States have been used to the monarchical system of government and they may have some fears on that score but in the light of the speech of Pandit Nehruji those fears are entirely unjustified. In an Indian Republic the people of the Indian States if they so choose can retain a monarchical form of government in their own part of the country.

I believe, Sir, that the exact scheme when it emerges from the labours of the Constituent Assembly will be such as will be acceptable to all the elements in Indian life and will be suited to the talents and the peculiar conditions of this country.

The second portion of the Resolution deals with the Union and the autonomous units, residuary powers being given to the units. Some of us may have serious objection to the residuary powers being given to the Units, but this proposal is in accord with the State Paper Scheme and is an essential part of paragraph 15. It may be a bitter pill for most of us, but it has got to be swallowed.

The third part of the Resolution gives an assurance to the minorities and the backward classes that their interests will be adequately safeguarded. Now, Sir, in this connection my community feels that the safeguards should not only be adequate but should be satisfactory to the Sikhs and the other minorities concerned. With your permission, Sir, I would like to acquaint the House with the solemn assurances given to the Sikhs in the Congress Resolution of December 1929, passed at the Lahore Session of the Indian National Congress. The relevant portion of the Resolution which related to the Sikhs and the minorities read, as follows:

"No solution thereof (*i.e.*, the communal problem) in any future constitution of India will be acceptable to the Congress which does not give full satisfaction to the Muslims, Sikhs, other minorities."

Ever since this resolution was passed, the Sikhs have made a common cause and have fought the country's battle for freedom side by side with the Congress. Unfortunately, when the British Mission came and formulated their proposals, *i.e.*, the Statement of May 16, although they admitted the Sikhs to be one of the three main communities in India, they completely failed to provide any protection or safeguards for the Sikhs. In the case of the Mussalmans, the Mission pointed out that there was a real apprehension of their culture, and political and social life becoming submerged in a unitary India, in which the Hindus would be a dominant element. They however entirely failed to realise the same plight of the Sikhs in the Punjab which is the Holy Land and the Homeland of the Sikhs under a Muslim majority. It was the height of injustice on the part of the Cabinet Delegation not to have provided similar safeguards for the Sikhs in the Punjab and the 'B' Section, as they had provided for the Muslims in the Union. Sir Stafford Cripps, while speaking in the House of Commons the other day, remarked that they could not give similar rights to the Sikhs in the Punjab and the 'B' Section as they had given to the Mussalmans in the Union, as a similar right would have had to be

[Sardar Ujjal Singh]

given to other minorities. May I ask whether the Mission took into consideration the other minorities when they provided safeguards for the Mussalmans in the Union Centre? They did not consider the Sikhs although they were admitted to be one of the main communities of India. On the other hand, I feel that the Sikhs have a stronger claim for having similar safeguards in the Punjab than the Mussalmans have in the Union Centre. I also feel and believe that any safeguards given to the Sikhs in Section 'B' and in the Punjab will be a guarantee for the protection of the rights of other minorities in that area. As nothing was done by the Mission, a wave of indignation went throughout the entire Sikh community and their indignation rose to the highest pitch. A resolution was passed by the Sikhs at a special meeting held at Amritsar—their holy centre, that the Constituent Assembly should be boycotted and the Sikhs did boycott the Assembly. The Congress, however, accepted the proposals of the Cabinet Mission, and eminent leaders of the Congress appealed to the Sikhs to accept the proposals also. Sardar Patel particularly pleaded the cause of the Sikhs at the All-India Congress Committee session in Bombay and our sincere thanks are due to him. In the House of Lords on the 18th July last, while speaking on a debate, the Secretary of State made significant reference to the Sikhs in the following words:

"It is, however, essential that fullest consideration should be given to their claims for they are a distinct and important community, but on population basis adopted they lose their weightage. This situation will, to some extent, we hope, be remedied by their full representation in the Advisory Committee on Minorities set up under paragraph 20 of the Statement of May 16."

He further said:

"Over and above that, we have represented to the two major parties who were both most receptive in this matter that some special means of giving the Sikhs a strong position in the affairs of the Punjab or in the N.-W. Group should be devised."

This assurance though satisfactory in some respects was not sufficient to change the attitude of the Sikh community towards the Constituent Assembly. Then on the 9th August, the Congress Working Committee passed a resolution appealing to the Sikhs to reconsider their position. The resolution stated:

"The Committee are aware that injustice has been done to the Sikhs and they have drawn attention of the Cabinet Delegation to it. We are, however, strongly of the opinion that the Sikhs would serve their cause and the cause of the country's freedom better by participation in the Constituent Assembly than by keeping out of it. It therefore appeals to the Sikhs to, reconsider their decision and express their willingness to take part in the Constituent Assembly. The Working Committee assures the Sikhs that Congress will give them all possible support in redressing their legitimate grievances and in securing adequate safeguard."

The Sikhs reviewed the whole position on the 14th August. The resolution of the Congress Working Committee carried the greatest weight with them, and it was on that account that the Panthic Board, which was called at a special meeting, decided to lift the ban on participation in the work of the Constituent Assembly. The resolution of the Panthic Board decided to give the Constituent Assembly a trial to secure for the Sikhs similar safeguards as were given to the Mussalmans in the Union. The Sikh members are here assembled according to that mandate. I have great faith in the Congress leaders and sincerely hope that the assurances given to the Sikhs will be implemented without delay as the time has come for the translation of those solemn words into action.

I am sorry to take the time of the House in going in a little detail into the Sikh position, but I thought it my duty to acquaint the House with the Sikh case. Let me, however, make it clear that the safeguards which the

Sikhs demand for their due and strong position in the Punjab and the North West, are meant to be provided within the Indian Republic and not outside. They are anxious that all communities may live together in harmony and peace. They are prepared to live happily with their Mussalman brothers in the Punjab and the North West, even treating them as elder brothers, but not as a superior ruling race or a separate nation. The Sikhs, therefore, cannot tolerate the partition of this great and ancient land. They will stoutly oppose the establishment of Pakistan and all that it implies or stands for.

Sir, if I may be permitted to say, the Sikhs have a burning passion for freedom. No single community in the history of India has struggled so long and so hard as the Sikhs have done to drive away foreign hordes from this land; and in recent times, their record of sacrifice in the battle of country's freedom is second to none. They will continue to march with the Congress in its fight for independence with unabated zeal and vigour. (*Hear, hear*). They, however, want their separate entity and position to be maintained and strengthened so that they may be able to contribute their full quota to the service of the country.

Sir, I realise that it is a stupendous task that this august Assembly has set itself to accomplish. There are hurdles and obstacles in our way, but I feel certain that we will be able to cross those hurdles and overcome all those obstacles if we deliberate with caution, act with decision and, if need be, oppose with firmness. With these words, Sir, I support the Resolution (*Cheers*).

Seth Govind Das (C. P. and Berar: General): *[Mr. Chairman, in the Central Assembly and in the Council of States I speak in English as the Rules demand it; but hereafter so many English speeches I would like to speak in the language of my country.

I have come to speak for the Resolution and against the amendments. While speaking in favour of the Resolution I cannot resist the desire to offer my thanks to the Hon'ble Dr. Jayakar for his beautiful speech. I was surprised to hear of Dr. Jayakar's amendment yesterday. Dr. Jayakar and I have been friends since the days of the Swaraj Party. I can understand his amendment. I can understand his desire to defer voting on the Resolution until the Muslim League joins; but I fail to understand the logic of the arguments advanced by him in support of his contention. I do not want to speak on the legal aspect of his arguments. That is the work of the lawyers. What surprises me is his assertion that if we passed the Resolution now, we will finish our work without achieving what we desire. That puts me in mind of the days prior to 1920; when our Moderates were at a loss to know what to do and saw everywhere nothing but frustration and disappointment. We have not met here simply to sit together, talk a lot and then disperse without achieving any result. It will be our duty to see that we achieve results. Just at present it is not necessary to say what we are going to do and how far we are going to proceed. Suffice it to say that we shall achieve speedy and substantial results. Dr. Jayakar has spoken of war. The Congress people and the people who believe in the principle of Satyagraha always desire peace and no war. They, however, want true peace and not the peace of the graveyard.

The greatest gift that Mahatmaji has, given to the world is Satyagraha. Satyagrahis want peace but when they see that true peace is impossible without having resort to war they get ready to give their lives in a war of *Ahinsa*. I, therefore, say we do not want war. We want peace. We neither want to fight with the Muslims nor with the British Government.

*[English translation of Hindustani speech begins.

[Seth Govind Das]

If, however, the British Government wishes to fight with us making Muslims their *Shikhandi*; we will not do what Bhisham Pitamah did. We will not lay down our arms because *Shikhandi* is made to stand against us. We do desire our brethren of the Muslim League to come and cooperate with us. If, however, with all our solicitations, with all our patience and with all our desire for peace, they do not come, we are not going to stop our work for them. Dr. Jayakar has not told us whether our Muslim brethren would join us if we postponed the consideration of the Resolution till the 20th January. If we were assured that they would join us, Pandit Jawahar Lal Nehru, I think, would perhaps, be the first person to say that if his Muslim brethren were coming in, he would postpone Resolution.

Panditji told us in so many words that the Resolution was an undertaking—a pledge. When one signs a pledge, he signs it with full sense of responsibility of what he was doing. As this Resolution is a pledge when we pass it, we will pass it with a full sense of our responsibility.

The Resolution speaks of a Republic. There may be a difference of opinion whether the Republic should be a democratic republic or a socialist republic. But, to discuss it at this juncture, would be meaningless. Whenever the world is in need of a thing it creates it. Keeping in view the condition of the world and the plight of India, we can say that our republic will be both democratic and socialist. I desire to tell the people, who feel chary of socialism and tremble at hearing of its tenets, that not only the people who have nothing are miserable but the people who possess everything, are also in sorrow. The former are miserable because they labour under the desire to possess everything and the later are unhappy because they have to resort to hundreds and thousands of knaveries and evasions. They perform acts that are not in the least considered fair in the eyes of Justice. If these people, while ignoring justice, pretend to protect and champion it, I tell you, they never get true happiness. I am myself of the people who possess everything; but I feel that if true peace is to be realized, it can only be realized through socialism. No other system can give us true peace. There can be no doubt that our republic will be both democratic and socialist.

As to preventing us doing this work; I desire, to make it known that both the British Government and the Muslim League cannot stop us from doing what we intend to do. Our country is so vast and its population is so great that even the British Government cannot now put obstacles in the way of its freedom and progress.

To my brethren of the Muslim League, I desire to say something; and I say it with all the emphasis at my disposal, that if the British, who are foreigners, put obstacles in the path of our freedom, nobody, in history, will hold them blameworthy; but, if persons, who are born in this country who are bred in it, and who consume its produce, try to come in the way of its freedom, they will be censured by their own progeny. As for the British, they cannot block our way to freedom; but so far as our Muslim League brethren are concerned, they may take it from me in plain words that if they allied themselves with the British to keep this country in slavish subjugation, future generations will hold them blameworthy and they will get this stigma without stopping us from achieving our freedom.

If the British Government adhering to the Statements issued in the last few days, tried not to enact a new Government of India Act, in the light of the decisions of this Constituent Assembly, I tell them that their efforts in this respect are doomed to failure. They have always tried to keep India

and other countries under their subjugation by not allowing them to solve their own problems. If, they played the same game with this country now, the time will perhaps never come for the presentation of a Government of India Act in the British Parliament and no Indo-British Treaty will ever be signed. I do not say this on behalf of the Congress. I see the future, when, if the British failed to translate the decisions of this Constituent Assembly into some solid form of action, a parallel government will be set up here and the whole of England will have to fight it. People coming from across the seven seas will not be able to win our war of *Ahinsa*. I fully believe in it.

I do not want to take more time; but before the chit comes to me asking me-to stop, I appeal to you that you should pass this Resolution not as a resolution but as a pledge with full sense of responsibility of what you do and go forward in the manner of a free country.]*

Mr. Chairman: It is now 1 o'clock. The House stands adjourned till Eleven o'clock tomorrow morning. In the afternoon we have got a meeting of the Rules Committee and we shall not be able to meet here.

The Assembly then adjourned till Eleven of the Clock, on Wednesday, the 18th December, 1946.

] *English translation of Hindustani speech ends.

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CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 18th December, 1946

The Assembly met in Constitution Hall, New Delhi, at Eleven of the Clock, Mr. Chairman (The Hon'ble Dr. Rajendra Prasad) in the Chair.

PROGRAMME OF BUSINESS

Mr. Chairman: I have received a note from Mr. Mohan Lal Saksena asking me to make a statement with regard to the progress that has been made in the Rules Committee. I think it would be helpful to the Members in making their future programme if I made that statement today. We have been discussing drafts which had been prepared before and we have gone through a great part of the work, but some work still remains to be done and the final draft will have to be considered by the Rules Committee before being placed before this House. I hope we shall be able, to complete this work by Friday and I propose to hand over to Members the rules in their final form as passed by the Rules Committee on Saturday, so that we may take them up for consideration by this House on Monday next. Monday happens to be the 23rd and after that we have the Christmas holidays. I do not think we shall be able to complete the rules in one day. They will take at least two days or it may be three days. If the Members agree I propose that we observe Christmas holidays for two days 24th and 25th and then the Assembly continues sitting thereafter. So on the 26th and 27th we may discuss the rules and finish them by the 27th and anything else arising out of the rules we may do thereafter. I do not think we should finish this preliminary session before passing the rules and before appointing certain committees which it is the intention of the preliminary session to appoint. This is the programme as I envisage at present. It all depends upon the House. Hard pressed as we are for time, I do not think we could afford to go without any work during the whole of the Christmas week. I think we should take holidays on the 24th and 25th of this year.

Sri M. Ananthasayanam Ayyangar (Madras: General): We would like to have the whole week of Christmas as holiday and we would like to go back during this period and meet again after the beginning of next year.

Mr. Chairman: It is not expected that the Members should go home if we have only a holiday of two days.

The Hon'ble Pandit Hirday Nath Kunzru (United Provinces: General): Mr. Chairman, it was expected by most of us when the session commenced that it would end before Christmas and on that footing we have made engagements which will keep us busy during Christmas week. I am not asking for any holidays at all. I should be quite prepared to do without them altogether, but having accepted engagements which are of a somewhat important character, it would not be possible for many of us to attend the session if it is continued after the 23rd of December. I hope, therefore, that you will be good enough to take this into consideration before deciding when the Constituent Assembly should meet again in order to pass the rules and appoint those committees to which you have referred.

Mr. Dharendra Nath Datta (Bengal: General): Mr. Chairman, Sir, you have just told us that the rules should be placed before us on the 23rd of December and considered on the 26th, but some time is necessary for putting in amendments. I do not know what is the practice here but in the legislatures elsewhere, at least 4 or 5 days' time is given. So it is impossible

[Mr. Dharendra Nath Datta]

to begin the consideration of the rules on the 26th and I think under the circumstances, it is desirable that we should meet on the 2nd of January.

The Hon'ble Rev. J. J. M. Nichols-Roy (Assam: General): Mr. Chairman, Christmas holidays are very important for Christians and we usually get holidays on the 24th, 25th, 26th and 27th and we shall be glad if this Constituent Assembly will meet again on the 2nd or 3rd of January. Then we can carry on as long as we want, but if we meet during this year after the 25th *i.e.*, during the Christmas holidays, it will be very inconvenient for the work of this Assembly and will also disturb many of our engagements which we have already made during the Christmas holidays. That is all I have to place before this House, Sir.

Mr. D. P. Khaitan (Bengal: General): Sir, I am rather surprised at the way in which the Members of the Constituent Assembly have not agreed with your programme as announced by you. The work before the Constituent Assembly must gain precedence over every other work and we should proceed with as much speed as we possibly can. We should not desparate before we have passed the Rules of Procedure which are so essentially necessary. Therefore, through you, Sir, I appeal to all the Members of the Constituent Assembly to lay aside all other work and give precedence to the important work that lies ahead of us.

Shri Mohan Lal Saksena (United Provinces: General): Mr. Chairman, I would like to make the suggestion that in order to facilitate the work of the Procedure Committee this House may not meet tomorrow and it may meet the day after tomorrow in the afternoon, so that we may have the report of the Committee in full and consider the rules from Saturday and if possible we might finish it on Monday.

Mr. R. K. Sidhwa (C. P. and Berar: General): I think the House is entitled to have a number of days for studying the report and also presenting amendments. In our party meetings also we shall have to consider them. It may take two or three days. It may not be possible to finish the work in two or three days as Mr. Mohan Lal Saksena says. I would therefore support the motion that we meet on the 2nd or 3rd January after presenting the report of the Committee on 21st or 23rd.

Mr. Chairman: There are certain other public functions, which have been announced very long before, which take place in the first week of January. It was for this reason that I was anxious to complete the work of this Assembly before the year is out. For example, the Science Congress is going to begin on the 2nd January next. Eminent scientists from all over the world are coming and Pandit Jawahar Lal Nehru is going to have a very important function there, and there may be other members also who may be interested in it. Similarly, there are other functions which have been fixed. I was therefore anxious not to disturb those public functions which have been announced already and to complete our work as much as possible within this year. Of course it rests with the members of the Assembly. If they do not wish to sit beyond the 23rd, we shall have to take that also into consideration and go into the next year. The difficulties that confront us, I have placed before you. In January, there will be a further difficulty; some Provincial Assemblies will meet.

The Hon'ble Shri Purushottam Das Tandon (United Provinces: General): The business of the Provincial Assemblies can be adjusted suitably.

The Hon'ble Sardar Vallabhbhai J. Patel (Bombay: General): Sir, in a House consisting of about 300 important members it is difficult to suit the convenience of all. We have the Budget Session of all the Provinces also.

There is the Budget Session of the Central Assembly. It is not possible to meet the convenience of all. As has been rightly suggested, precedence should be given to the work of the Constituent Assembly. We will not be able to make any progress with the work of the Constituent Assembly till we have passed the Rules. The Rules we must finish before we disperse and then we can adjourn. The preliminary session may not be finished during this month or even in the first week of January. Therefore to suggest that we should meet on the 3rd or 4th January is not practicable. With all the inconvenience that we may have to put up with, we must finish the Rules. Therefore, if as the Chairman has suggested, the Rules are ready on the 23rd, either we give up the holidays on 24th and 25th or we come on the 26th and 27th and finish the Rules. Then we can fix the date for adjournment. Without the programme being fixed, we will not be able to dispose of our work. Therefore, let us provisionally fix the programme and then consider other matters.

Sri K. Santhanam (Madras: General): I wish to suggest that the Rules may be placed before the Assembly as they are ready. Why should we wait till all the Rules have been completed. We can take them up from tomorrow or this evening. I am really surprised that the Committee should not have been able to draft even a portion. We can take up portions and go on passing them. When they are completed, we shall have also completed.

Mr. Chairman: I do not think it is possible to take up the Rules piecemeal. We have to take them as a whole.

The Hon'ble Shri Purushottam Das Tandon: I suggest, Sir, that we should keep in view that a large number of members have already entered into engagements for the Christmas week. It is no good-telling us now that we had no business to enter into such engagements. Ordinarily, it is supposed that during the Christmas week, we will not be working here actively. Of course, members will give some part of their time to the Rules if presented to them before we disperse. They should be given some time to think over them. As has been pointed out, possibly the Parties also may have to consider them in their party meetings. I think, Sir, we should not take up the question of rules during the Christmas week; sufficient time should be given to the members to think over them, to digest them and to send in amendments. We can meet some time in the first week of January.

Mr. Chairman: Now we have heard different speakers and their opinions. We shall take some decision tomorrow after consideration of these points. In the meantime, we will proceed with our business. We take up the discussion of the Resolution and the amendments.

RESOLUTION RE: AIMS AND OBJECTS—*contd.*

The Hon'ble Rev. J.J.M. Nichols-Roy (Assam: General): Mr. President Sir, thank you for giving me this opportunity to speak on this Resolution. I stand here to support the Resolution moved by Pandit Nehru, with all the force that I can command. This Resolution contains all the principles that need to be enunciated in such a kind of Resolution to be placed before this House. First of all, it has stated the objective that we all in India have in our minds, that is, to proclaim at a certain date the independence of India. Here we have only resolved that we shall proclaim the independence of India and we have that firm resolve in our mind to get the independence of India. That is the desire of every one in India. I cannot imagine that there will be anybody in India from one end of India to the other end, who will be against that kind of objective. Then it proclaims

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also that the kind of Constitution that we shall make will be a republican form of Government,—a democratic form of Government,—a Government by the people and for the people. That is surely the desire of all the people of India. It is true that there are some monarchies in India but we envisage the time when all these monarchies will become at least wholly constitutional monarchies like the Monarchy of England, and we believe that even the people of all the States envisage that in their own States, there will be a democratic form of Government. Therefore there can be no objection at all to these declarations that we have in this Resolution. Then it speaks of the territories which will be included in the Union of India and it is comprehensive enough. Then in the third para it speaks of autonomous units—that those autonomous units which are now autonomous according to present boundaries or with such other boundaries as they may have afterwards,—these units or territories will remain autonomous units together with residuary powers and will exercise all powers and functions of government and administration, save and except such powers which are assigned to the Central Government. This is our desire, this is the desire of all the people of this country. It is the object before us that each Province will be autonomous. In this connection, Sir, I want to say that it is very unfortunate that the idea of Sections was introduced in the Cabinet Mission Declaration and that in a Section according to the latest interpretation given by His Majesty's Government a certain Province will be outvoted by the Majority of members of another Province. I speak especially in connection with Section 'C' which relates to Assam: Assam is a non-Muslim Province. There are 7 non-Muslims who are representatives of Assam in this Constituent Assembly and 3 are Muslims. I am sorry that my Muslim friends are not present here, in this Assembly. I wish they were here. In Bengal, Sir, there are 27 non-Muslims and 33 Muslims. If we are brought into a Section, there will be 36 Muslims and 34 non-Muslims and if the voting in that Section will be by a majority vote, a simple majority vote as interpreted by His Majesty's Government, it will mean that our Constitution, our Assam Constitution, will be framed by the Majority of the people of Bengal, that is the Muslim League. We cannot conceive of anything that is so unjust as this, Sir, (Cheers). It is a matter which should be considered by all the members of this Constituent Assembly. When the Cabinet Mission made its Declaration, we in Assam thought that such kind of interpretation might be given in the future but we took it for granted that the Cabinet Mission would not be so unreasonable as to place Assam which is a non-Muslim Province to come under a Muslim Province and that our constitution would be framed by the majority of the members in the Section. We never thought that it would be like that, because we considered that it is unjust for the people of Assam to be placed in such a position. In the month of June 1946 we had a public meeting in Shillong. I happened to be the Chairman of that meeting. We were discussing about the Declaration of the Cabinet Mission and in that meeting I said this:—

“From this paragraph 15 (v) of the Cabinet Mission's Declaration I understand that each Province has freedom to form or not into a group suggested by the Cabinet Mission. Secondly, that the grouping will be, as independent provinces, to discuss what subjects could be taken as common subjects to be dealt with by the group. Thirdly, that if a province does not agree in regard to subjects which may affect it vitally, there will be no group constitution as recommended by para. 19 (v) of the Declaration. Fourthly, that if one province, in the discussion, finds it impossible to settle the question in the group, it will not be forced by a majority vote of the members of another Province. Fifthly, that the whole question will be brought before the whole Constituent Assembly which will have the power to decide finally.”

That is what we understood by the Declaration of the Cabinet Mission, and, I believe, Sir, that was also the view which the Congress took at that time. I was very much gladdened by the declaration of Sardar Vallabhbhai Patel the other day that the Congress had not up to the present time accepted the interpretation of His Majesty's Government. Sir, we still hold that position. It appears to me that the British Cabinet Mission has changed its mentality from what it was when they were here in India. When they were in India they were under certain circumstances and were influenced by the opinion at that time in this country. When they have gone back to England they are placed under a different circumstance, influenced by the Conservative Party there, and the force which Mr. Jinnah has placed upon their minds. They have changed their opinion altogether. That is what appears to me. I would like to know from Lord Pithick-Lawrence whether in reality there was that idea in the minds of the Cabinet Mission when they were here in India. There was nothing in any of their declarations, in any of their writings that said that the vote in the Sections would be by a simple majority vote. The principle of driving by force a non-Muslim province to come under a Muslim province is absolutely wrong. Mr. Jinnah has forced His Majesty's Government to commit this great injustice to our Province, and we feel, Sir, that we shall have the sympathy and support of this august body, that our Province may not be driven to that pitiable condition. I want Mr. Jinnah and the League Members to be here and I want them to come here to take part in the framing of the constitution of India. I will expect him and all the others to be just. I do not want anything else except that they will act like gentlemen and be just. It is unjust, everybody knows, that we should be forced into such a position in which we are now placed by the recent interpretation of His Majesty's Government. We are an autonomous province and a non-Muslim province. Why should we be forced to go to that kind of a Section which could outvote the province of Assam and frame the Constitution according to the desire of the majority, created artificially. Now, Sir, it may be said that this will at once bring a conflict between the British Government and this Constituent Assembly. This need not be. Someone said to deviate from the four walls of the Declaration of May 16th and to give a different interpretation would be revolutionary. This Constituent Assembly need not adopt that attitude at all. I believe that we can adopt a friendly attitude. We shall say to the British Government: "We thank you for the good effort you made to bring a compromise between the Hindus and the Muslims. You have given to us good advice and made good recommendations. You have acted as makers of peace. We shall, as far as practicable, implement your recommendations, but we shall, like responsible persons, be free to deviate from them whenever we find it is impracticable and unjust to carry out literally to the letter any of your recommendations. We shall frame a constitution which will do justice to all minorities and which shall not overlook any community. If the members of the Muslim League will co-operate, we shall heartily welcome them. After we have finished framing the constitution, the whole of India will get the opportunity to see what kind of constitution this Constituent Assembly has framed; we request you, British gentlemen, not to make speeches in Parliament which will suggest revolutionary activities in India. Kindly co-operate with us quietly until we finish our work, and then judge our work." Then only the British Government will have the opportunity to see what kind of a constitution this Assembly has framed. Then, and not till then, can they say that this Constituent Assembly has been just or unjust to a certain community or to the Muslims. We do expect that the Muslim community will come here and co-operate in framing the Constitution of India. There is no one who wishes their attendance here more than I do. I have some very good friends of mine among the members of the Muslim League and I would like to see them come here and co-operate with this Assembly.

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I now turn to another portion of this Resolution, namely, paragraph 5 and before I do that, I must point out another thing. I envisage that in the autonomous Provinces there will be units in a Province which will be self-governing and which will be connected with a Province. This will be necessary do doubt, in a Province like Assam.

Now, to turn to paragraph 5. In this paragraph we have provisions regarding justice and freedom,—social justice, justice in the economic and political field, ensured to all. Political justice, no doubt, will mean that every community will get representation in the legislatures as well as in the administration of the country. Therefore, there need be no fear in the mind of any community that this Constituent Assembly will not look after their interests.

Then there is mention, there, of the freedom of thought, expression, belief, faith and worship. There was a propaganda made in this country by some parties that when there will be self-government in India, some religious faiths will not be allowed to propagate their faith. This is really false propaganda. This Resolution has declared that this will not be the case. There will be provision in the Constitution of India for the freedom of all religious faiths and for the propagation of those faiths according to their own desire. I am particularly glad that this para. speaks of association and action, subject to law and public morality. Public morality needs to be protected by Government and righteousness needs to be exalted. "Righteousness exalteth a nation, but sin is a reproach to any people".

I would like to speak on other points of this Resolution but, I don't think I need dwell on them at all. There are difficulties and hindrances before us. India is not an exception to difficulties of this nature; such difficulties confronted Canada, Australia and even the United States—when they were engaged in the work of framing their constitutions, and some parts of those countries did not come into the constitution at the beginning, although they came in afterwards. That very same thing may be repeated here in India. We shall have to go on framing the constitution and then when that is placed before the world and before this country, it will then and then only be the proper time for the people of England or the British Government to say that it is not a constitution according to their Declaration. Before that happens, they should not try to prejudge what this Constituent Assembly will do and thus cause obstruction to its work.

Mr. Chairman: The Hon'ble Member has exceeded his time.

The Hon'ble Rev. J. J. M. Nichols-Roy: I want to speak on only one more point, which has impressed me from the speech of Viscount Simon in the House of Lords. Viscount Simon has said that this Constituent Assembly, if it carries on the work of framing a constitution for India, will "threaten" India "with a Hindu Raj". I was very much surprised when I saw these words in a newspaper this morning. When I was in Western countries—in England and also America, I was impressed by the fact that some people in those countries had an idea that a Hindu is a man who is steeped in his caste system and who worships a cow. If this is the idea which Viscount Simon has when he refers to a Hindu Raj' *i.e.*, that the people of India will be forced to perpetuate the caste system and to worship a cow, then he is entirely wrong. If the people who are assembled here,—whether they be Hindus, Muslims, or Christians, or whatever other religion they may profess—if they frame a constitution which will be a democratic constitution, which will do justice to everybody, why should that constitution be called a Hindu Raj? And if by 'Hindu' is meant people who live in India, surely we should have a constitution for the people of India. That is exactly what we want: we want a constitution to be made by the people of India, but if some people in India do

not want to come into the constitution just now, they will come afterwards and I envisage a time when they will all enter into this constitution and make India one country—one united country,—with a democratic form of government. I have faith that all these hindrances will be removed by prayer to God. Let us follow the example of Mahatma Gandhiji—our Bapuji and pray to God. Let us pray to God that all these hindrances may be removed from our way and that we may be able to carry on the work of framing a constitution which will be a blessing to our whole country.

Mr. R. K. Sidhwa (C. P. and Berar: General) : Mr. Chairman, Sir, the demand made by the Indian National Congress for framing a constitution for free India has now become an accomplished fact. We are here to frame a constitution for India and we are sure—whether our friends the Muslim Leaguers whom we welcome—speaker after speaker has stated that they miss their presence here—whether they come in or not, let me state, that with all the threats that have been now thrown at us by the Britishers during the last four or five days in the House of Commons and the House of Lords we shall proceed with our business and shall frame a constitution which they dare not refuse to implement. If they choose not to implement it when the occasion arises for them to do so, then we know how to implement it. Sir, if poverty as to be eradicated from India, to bring human happiness to this country and our constitution should be based on the socialist principle and such a constitution. I am confident when it is completed will be welcomed by all in this country and also outside this country. Much fetish has been made many a time about the minority question. Sir, all reasonable safeguards and all interests will be reasonably considered while framing this constitution but I do not understand why the question is brought to the forefront. In this very resolution, in paragraph 3, you will see how we have safeguarded, without anybody else's telling us, the interests of the minorities. Paragraph 4 relates to residuary powers, which we have accepted, not because the British Delegation want us to do so. This matter had been receiving the serious consideration of the Congress as you know, Sir, for a number of years, and to allay the fears of the Muslim Leaguers, we came to a decision in August 1942 that there should be residuary powers in the provinces. Many of us even today do not like the residuary powers to be vested in the provinces; we want a strong Central Government. If a free vote is taken in this House or in the country, they will oppose residuary powers being vested in the provinces. But simply because we want to allay the fears of the Muslim League, imaginary or real, we respect their feeling and accepted that residuary powers shall vest in the provinces. May I ask who came forward to safeguard the interests of the minorities? It is the Congress and the majority community that have said that the provinces shall have residuary powers. Whether leaguers are here or not, as Hon'ble Congressmen we will stick to that resolve. We do not want to go back, even if the Muslim League choose to remain absent upon that pledge; even though we do not like it we shall implement it. That is one instance that I want to point out to the Britishers when they tell us how we are ourselves alert in safeguarding the interests of the minorities. But if you make unreasonable demands. It is certainly not possible for the majority community to be converted into a minority community. In this very paragraph there is a reference regarding redistribution of provinces. I am a firm believer in the redistribution of the present provinces. (*Hear, hear*). The present heterogeneous way in which, without any thought, or without any sense these provinces have been formed, requires immediate revision. Coming from the Province of Sind, as I do, I know ten years ago when we were separated from Bombay there was 22 crores of rupees of debt to the Government of India. We have wiped off that debt in 7 years—I do not want to enter into the details of the advantages that we have achieved by separation.

[Mr. R.K. Sidhwa]

But what I would state is that this paragraph is so guardedly framed as to respect the feelings of the Mussalmans, so that the present provinces may be taken into consideration in going into Sections. If I were free I would suggest an amendment that the provinces should be redistributed straightaway and the boundary commission appointed immediately and then the constitution should be framed. But here also we want to keep to our promise to go into Sections within the framework of the Declaration of May 16. I point out these things in order to show to the world that without any interference or dictation or advice that has been given to us day in and day out in the House of Commons and in the House of Lords—the mischievous statements and mischievous speeches that are being heard from the British to-day,—we do our legitimate duty. We cannot tolerate this kind of propaganda, which have falsely raised the question of minorities and raised the usual bogey of communal disturbances. When the Delegation came they were in a different mood because there were political riots. The army, the navy and the air force were in revolt before they came. It was a political riot. Now, Sir, the Services in India feel that their days are numbered. They have started making capital of communal disturbances. Now that there is communal tension the British Cabinet want to go back upon what they stated when they came over here. The British Government have told us that, if we do not frame the constitution according to their interpreting clause 15, it shall not be forced upon the minority community. I come from the minority communities, it is a very small minority comparatively an insignificant number, but still that community, as the world knows, although we are a lakh of Parsis only—the Parsi community is known all over the whole world. As Babu Purushottam Das Tandon pointed out in seconding the Resolution, in the earlier days of this country's history, whosoever came in this country were welcome. 1300 years ago when we were driven away from Iran so the history say, and were wandering in the sea for three months, nobody gave us a shelter excepting the Jadhwa Rana of Sanjan in Gujarat. We are grateful to him. We have had no grievance against the Hindu community, so long as we have been here. The Parsis have taken prominent part in politics, social and industrial enterprises; amongst the founders of the Indian Congress that great man Dadabhoy Naoraji was one. (*Cheers*). In 1909 from the presidential address in Calcutta he coined the word "Swaraj". Parsis were the pioneers in the industry of shipbuilding and textiles. They were the first to introduce female education, so in charitable organisation like hospitals irrespective of caste and creed. As recently as 30 years ago the Iron and Steel Industry of India which is the second largest in the whole world was started by the Tata family. I do not say all this to glorify my community. All I want to show is that the majority community have never forgotten us; and on our part we have not lagged behind in taking part. We were forced by the British people to ask for separate electorates. We have refused. In the general electorate our community's interests are absolutely safe. I know of an instance where 30 years ago the mischief of separate representation was forced for the purpose of upholding British rule in this country. In Sind we had in the local bodies general representation without any communal representation. The then Commissioner of Sind called some of the Mussalmans to the Government House and told them secretly. "You give us a representation demanding separate electorates and I shall recommend to the Government of Bombay". Such representation was given and ever since there are separate electorates in our Sind Municipality. Thus, we have seen with our own eyes how mischief is played by the British by dividing one community against another. Parsis have been asked many a time to demand separate electorates. We have refused and replied, "We are quite safe with our majority community." See the goodness of the majority community in this very Assembly.

We have all been all elected by their votes. May I say that those who opposed our cherished goal of achieving freedom were opposed to our goal for they have also been elected by the majority community. We do not consider anybody a foe although they may have opposed our cherished views or cherished demand, I mean the Anglo Indians, yet we have elected them. This is a Magnanimity which one ought to appreciate. What kind of safeguard do the Britishers want unless it is to create the usual old mischief? But let me tell the British Government, the time has come when this mischievous propaganda that is being carried on intentionally today to disturb the Constituent Assembly work cannot help them. We shall proceed with our work. We shall proceed in spite of the difficulties and hurdles and machinations that have been carried on in season and out of season, particularly at this juncture. Instead of Sir Stafford Cripps or the Secretary of State telling Mr. Jinnah "You got the interpretation of particular clause, as you want and you must stop the propaganda of Pakistan." The Cabinet Mission discussed, investigated and have come to the conclusion that Pakistan is neither feasible practicable nor advisable and therefore that question is buried once and for all. Yet now in the Parliament during the recent debate have you said a single word to Mr. Jinnah, to stop making speeches of pernicious, poisonous propaganda on Pakistan? Mr. Jinnah day in and day out, whenever he goes either to a press conference or in his statements, goes on reiterating the story of Pakistan. We do not know therefore what he wants notwithstanding the decision that the British Delegation has given in their Statement of May 16.

Unless the British Government want to go back upon it, they should tell Mr. Jinnah to stop this propaganda, poisoning the minds of the people which causes communal disturbances in this country. Instead of telling him so, they have the effrontry to give advice to the minority community. We cannot understand what is it that they really want and what is it that is working in their mind. Was it to frustrate our object of meeting here on 9th December that they invited the Muslim League to London? But, all honour to our leaders; they stuck to their decision to hold the first meeting of the Constituent Assembly on 9th December despite the fact that the Hon'ble Pandit Nehru had to go to England the previous week, assuring us that he would return on 9th December and participate in the opening ceremony of the Constituent Assembly. We have been thwarted in many ways. They want to stop our work. That is clear from the speeches delivered in the Parliament. A day ago we were told "You can go to the Federal Court, and take decision soon". Next day the Secretary of State says: "You may go to the Federal Court; but we were not bound by any decision that the Court takes". Have we not met here in very large numbers in this Assembly? We will go on with our work. We will face any difficulty that arises and try to solve it as we have done in the past. We have already prevented great harm being done to the major community. We have done that in the past and we shall do that again in order to bring about solidarity and drive away the British people from this country. We can do that.

But let me ask why is the Muslim League remaining out? They want the British people to tell us that even if we assemble here and frame a constitution, they would not implement it. Let them say so. We will draw up a constitution and place it before the bar of public opinion. We have in this world unbiassed countries of unbiassed mind who will judge our actions rightly, justly and truly. Only a jaundiced eye will see everything yellow and wrong. In the South African dispute the United Nations Organisation Delegates supported our just cause although Britishers opposed us. Our cause is just, we shall proceed with our work and prepare a Constitution which will be one to be proud of. (*Applause*).

Sri Biswanath Das (Orissa) : Sir, I support the Resolution on behalf of the delegates from Orissa. The Resolution moved by the Hon'ble Pandit Jawahar Lal Nehru is divided into four parts. The first part contains the main objective for which we have been fighting. The second part refers to the territorial jurisdiction of a free, independent republic of India, including land, air and sea. The third is a declaration that we derive power and authority from the people, while the fourth is a very necessary and essential one, beginning with individual freedom in safeguards for tribal areas and the rest.

Sir, these are the necessary preliminaries to any constitution. It would be therefore unfair and undesirable if we do not face the problem at the start. There is no opposition to this Resolution, as the amendment moved by the Right Hon'ble Dr. M. R. Jayakar only seeks to adjourn its consideration for a month. The Hon'ble Member admits that he fully agrees with the subject matter of the Resolution. I fail to understand how a month's adjournment would make any difference.

Sir, a substantial contribution to the discussion was made by my friend, Dr. Ambedkar. He said he has no objection to the other paragraphs of the Resolution except paragraph 3 which has left out the word 'grouping'. Sir, in this connection I have to make an appeal to him. The objection to the omission of the word 'grouping' need not be taken seriously, because we have stated nothing in the Resolution against grouping. That very fact keeps the matter of grouping open, absolutely wide open. I would at this stage refer my friend, Dr. Ambedkar, to paragraph 19 (5) of the Cabinet Mission's Scheme wherein it has been specially stated that the Sections are to decide whether any group constitution shall be set up. Sir, we all know that the Working Committee of the Indian National Congress gave an alternative proposal regarding this. The Cabinet Mission criticised this proposal of the Working Committee and their comments are in para 14(2). Under, this scheme, if the Provinces wish to take part in any economic and administrative planning on a large scale, they would cede to the Centre optional subjects in addition to the compulsory ones mentioned by them. Having stated the position taken up by the Working Committee of the Indian National Congress, the Cabinet Mission offers its comments. The Mission say it would be very difficult to work a central executive and legislature in which some ministers who deal with compulsory subjects are responsible to the whole of India, while other ministers who deal with optional subjects would be responsible only to those provinces. Sir, with this objection the Cabinet Mission has ruled out the suggestion offered by the Working Committee. It will be very difficult, if not impossible, for small provinces to rise to their full stature if they do not have the guidance of the Centre. In this connection, I am not referring to Sections 'B' and 'C'. I am referring to Section 'A' where provinces like Orissa, Bihar, C.P., Madras and the rest are concerned. Sir, the Congress acceptance of the division of India into linguistic provinces means the creation of a number of small provinces. A number of small provinces like Orissa, Kerala, Karnataka and the like will be put to the greatest handicap if they have to make their own plans, administrative and economic. Under these circumstances, it may be that these provinces will cede all the connected powers to the Centre. There is thereafter no reason why there should be any objection. These and many other such considerations may come up later on in Sections. If the door is open without being shut it is for such proposals which may be made later on. Under these circumstances, I believe my hon'ble friend, Dr. Ambedkar, will see that it was not with any ulterior purpose that the word "Group" was omitted. It is done to afford opportunity to those provinces who come under Group 'A' I believe this explanation will satisfy Dr. Ambedkar and he will have no objection to the omission of the word "Group".

In the Resolution that has been moved, the Hon'ble the Mover has very frankly placed all his cards on the table. There is no hide and seek. All the points are placed so that the States and the Provinces will find it convenient to see at a glance. Sir, I see that, the Secretary of the States' Negotiating Committee has made a statement objecting to this Resolution. Their objections, are based on two points. The first is that they object to the term "independent sovereign republic". Secondly, their objection is centred round the fact that power derives from the people. They would not admit that power is derived from the people in the Indian States. Sir, paragraph 14 of the Cabinet Mission's Statement lays down that after the withdrawal of Britain, paramountcy disappears. In Great Britain, it has been recognised by Statutes that power emanates from the people. Parliament derives its power from the people of Britain and the same Parliament is exercising the power of paramountcy. That being the position, I do not see any reason why the State Rulers and their representatives should object to these expressions. Sir, after the withdrawal of Britain, there is no reason for anyone to think that India would think any other form of State than a republic. A republic does not necessarily mean the wiping off the States. That apprehension is unfounded. The Cabinet mission's Statement lays down that these are left to negotiations. Frankly, there is no reason for any apprehensions. They have appointed their Negotiating Committee and we have to appoint our Committee. The whole thing is thus left to negotiation.

Having said so much about the Resolution, I come to the question of certain statements made in the House of Commons. Sir, you know that a discussion on India has been thrust on the British Parliament by the Conservative Party. The leader of that party and a number of other important members of the party have contributed to the discussion, although both Labour and the Liberals stated that a discussion at this stage was unfortunate. Sir, important members of the Conservative Party have stated that this is a Caste Hindu Constituent Assembly. I am very glad that the representatives of the minority communities in India have already given their reply to this unwarranted suggestion, and I hope that other representatives of minorities will by their speeches give a decent burial to this suggestion which has been manufactured for consumption at Home and for foreign consumption and propaganda. Sir, we have in this great Assembly not only the representatives of the Hindu population of the Hindu majority provinces but also the representatives of Hindu minorities in Muslim majority provinces. We have also the representatives of the Scheduled Castes, Christians, Sikhs, Parsis, Anglo-Indians, and of Tribal and partially-excluded areas. We have amongst us also the representatives of the great Muslim community barring the leaders of the Muslim League. Under these circumstances, it is most unfair and unfortunate to call—and more so to utilise the forum of the British Parliament for foreign propaganda—that this great Assembly, the representatives of the Great Indian nation, is a Caste Hindu institution. Much has been made in the speeches in Parliament on the score of minorities. I should like to know a country which has no minorities. Even England has got her own minorities. Are not the Welsh a minority. So also are the Scots. The Welsh people are of a different race and language and are distinctly separate from Britain. In the U.S.A we have got linguistic and a racial minorities. So also in the U.S.S.R. Under these circumstances, it is unfair for the Conservative leaders in England to carry on propaganda against this country and the Constituent Assembly. It has been clearly seen that Mr. Jinnah and Mr. Churchill have become strange friends. My own surprise is that a statesman like Mr. Jinnah should have fallen into the trap of Conservatives and particularly that of Mr. Churchill. Everyone knows and the history reveals how the Conservative Party have made use of persions and institutions in every dependent country. That being the position,

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it is easy for Mr. Jinnah to realise how he and the League have been made use of by the British Conservatives. It remains therefore for us to see who utilises whom and to what extent. Let us hope that the Conservatives pay in the long run to find to their surprise that they and they alone pay in the long run and Mr. Jinnah comes out sane and sober.

The Hon'ble Pandit Hirday Nath Kunzru (United Provinces: General)
Mr. Chairman, judging from some of the speeches delivered in this House, it seems that the amendment before the House has been treated by some speakers as having been inspired by a spirit of hostility. As I view it, however, its object is not to obstruct but to facilitate the work of this Assembly. Its purpose is to create an atmosphere which will enable us to realise rapidly and smoothly the great aim that we have set before ourselves. I think I shall not be far wrong in saying that there are men in every part of the House who sympathise with the amendment moved by Dr. Jayakar. This very fact should suffice to convince every unprejudiced man that the object of the amendment is not to place unnecessary obstacles in our way but to pave the way to certain success. I go further and say that if the newspaper reports are correct that the next session of the Assembly will take place towards the end of January, it shows that the House feels that it ought to postpone the decision of important questions for a while on psychological grounds. The object of such a move can only be to assure all those whose interests are affected by any decisions that we may take that they will have an opportunity of expressing their views before those decisions are taken. I congratulate all those who are responsible for this decision. It is wise on our part to make every section of the people in India realise that we do not want to impose our will on any party or community, but that such decisions as we may arrive at will be the result of joint discussion carried on with the sole object of enabling India to achieve her independence and protecting the just rights of the minorities and the backward classes. This amendment seeks to do nothing more than those who are responsible for the decision that I have already referred to. It only pleads for that comprehension for which Sir Radhakrishnan pleaded so eloquently in his stirring address and which he said was one of the dominant characteristics of the ancient civilization of India.

Sir, Dr. Syama Prasad Mookerjee asked us yesterday whether, if the view embodied in the amendment is accepted by the House, it will be able to do anything for a long while. Would it, for instance, be able to do anything till the representatives of the States were able to take part in the drafting of the Union Constitution? I do not personally think that this objection has any force. If the object on which stress is laid in the Resolution before the House is to be realised, it is obvious that it can be realised in a large measure only by the Union Constituent Assembly which will draw up the constitution of the union.

The resolution may, in some measure, give a lead to the Section Committees; but even Section Committees are hardly likely to meet before April or May next. In any case the principal body whose work will be guided by the directive embodied in this resolution will be the Union Constituent Assembly and it will meet only after the Section Committee have done their work. It is obvious, therefore, that a postponement of the discussion of Pandit Jawaharlal Nehru's resolution will not retard the work of the Assembly in the slightest measure. Since its main purpose is to guide the deliberations of the Union Constituent Assembly, no harm will be done if its discussion is postponed for a while so that we may enable all those sections whose interests are affected by the resolution to have an opportunity of expressing their views. Some of the States representatives

have already protested against the immediate acceptance of the resolution by this Assembly. Their views may be right or wrong. We are not in the slightest degree concerned with this. What ought to concern us is that if the resolution is passed immediately, it will be a unilateral decision. The House will have ample opportunity later of affirming the objectives outlined in the resolution. There need be no fear that postponement of the resolution would mean the torpedoing of the purposes embodied in it. Indeed, I feel that a slight delay will strengthen our hands in dealing with this important subject.

Sir, there is another question of considerable importance which Dr. Syama Prasad Mookerjee put to us yesterday. He asked us whether we accepted the position that unless the Muslims agreed to participate in the work of the Assembly, nothing should be done. I feel that the real reason for the opposition to the amendment is this feeling voiced by Dr. Syama Prasad Mookerjee that any postponement of the resolution would bring the work of the Assembly to a standstill. Dr. Mookerjee rhetorically asked Dr. Jayakar why, holding the views that he does, he agreed at all to join the Constituent Assembly at this time. I think Sir, that it would have been most unwise to lend any Countenance to those who desired that the convocation of the Assembly should be indefinitely postponed. We have, I think, achieved a great deal by compelling the Viceroy to adhere to the date originally fixed for convening the Assembly. Had the Assembly not been convened, its future would have depended on the discretion of the executive. That discretion has, however, now passed out of the hands of the Viceroy or even the British Government. It now rests with this House and with you, Sir, as to when its next session should take place, or how and by what stages its work should be brought to a completion. As regards, Sir, the question whether this Assembly can do anything in the absence of Muslims, my reply to it will be very brief. It has been supposed by a good many speakers that if we admit the right of the Muslim League and the Indian States to participate in the discussion of the resolution before us, we shall be giving them absolute power to block the work of the Assembly. I think this shows a misapprehension of the existing position. Judging from the speeches delivered in the House of Commons and the House of Lords by the spokesmen of the British Government all that the British Government desire is that there should be agreement with regard to the procedure to be followed regarding the formation of Provincial Constitution and groups. The interpretation of para 19 of the Statement of May 16 is the only point at issue. I understand that the matter will soon be referred to the Federal Court. I hope therefore that the way will soon be open for the participation of the Muslim League, in the Constituent Assembly. If, however, this is not the only ground on which the League is abstaining from joining the Assembly, and if even after agreement has been arrived at with regard to the procedure to be followed by Section Committees, the League representatives refuse to come here, I do not think that they will be entitled to ask that the proceedings of this Assembly should be adjourned *sine die*.

The last para of the Statement issued by the Cabinet on 6th December has created a good deal of apprehension. In the present political situation it is obvious that it might be taken advantage of by those in whose interest it might be to prevent this Assembly from functioning properly. But on the whole it seems to me that the speeches delivered in the House of Commons and House of Lords disclose no such sinister intention on the part of the Labour Government. If the Muslims insisted on any condition not contained in the Statement of May 16th. I agree with Sardar Vallabhbhai Patel that we should refuse to agree to it. We cannot allow ourselves to be frustrated by the intransigence of any party. We are prepared to take into account all its reasonable demands but we cannot agree

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in any circumstances, to allow it to decide the fate of this Assembly. Should such a situation unfortunately present itself, we shall be entitled to remind the British Government of Mr. Attlee's promise that the minorities will not be allowed to veto the progress of the country. The Secretary of State for India has himself reiterated this pledge. We need therefore have no fear that if the Muslim League representatives referred to attend the Assembly even after agreement had been arrived at with regard to the interpretation of paragraph 19 of the Statement of May 16th, that their intransigence will be allowed to hold up the work of the Assembly. Sir, for these reasons, I give my hearty support to the amendment that is before us. My support, however, should not be misunderstood as implying that I am in favour of the clause in the Statement of May 16th which relates to grouping. I personally see no reason why any Province should be compelled to enter a group. I see in particular no justification whatsoever for compelling Assam to form a common Government with Bengal for any purpose. What has happened in Noakhali and which has led to the deplorable events that recently occurred in Bihar has justifiably increased the apprehensions of the people of Assam. But grouping as the Cabinet Mission have here been pointing out almost since the very day on which their statement was issued, is an essential feature of their plan. Without agreement on this point, they assert, the Assembly will not enjoy that moral authority which a gathering of this kind ought to. This is not satisfactory from our point of view but we shall be able to deal with the Position of the Provinces that are compelled against their wish to become members of a group later on when the reports of the Section Committees are before us. I repeat, Sir, with all the strength that I can command that the insistence of the British Government on driving unwilling Provinces into groups is morally speaking completely unjustified. But as I have already said before, we shall have time to consider the Constitution as it emerges from the Section Committees and the Union Constituent Assembly later on.

For the time being Sir, we are only concerned with the question whether the discussion of this Resolution should be proceeded with immediately and whether any harm would be done if it were postponed. I have shown that no harm whatsoever will be done if we waited till the representatives of the Muslim League and the States are able to participate in the discussion of this important question. Even if we pass this Resolution now, shall we morally be able to say 'no' to the representatives of these interests, should they ask us later on that the fundamental questions to which the Assembly might assent by passing this Resolution should be re-considered. I am sure, Sir, that should such a position arise we shall not find it in our hearts to refuse the request, of the Muslim League representatives and the Indian States.

One word more, Sir, and I have done. There are plenty of difficulties in our way, both in India and in England. There are still men like Lord Linlithgow who think that British authority can be reasserted in India. They are suffering from a dangerous delusion. If England allows itself to be guided by such men, it will be confronted with a far more serious position than any that she has been faced with during the last 25 years. It may for a while and only for a while, be able to keep India down by force but it will not be able to govern it even for a day. I am sure that the Labour Government realizes this and has no intention of accepting the advice given to it by men like Mr. Churchill and Lord Linlithgow or even by men like Lord Simon who are Conservatives in the guise of Liberals. Nevertheless, Sir, in view of the difficulties, both internal and external, which we

have to overcome it will be wise on our part to act in such a way as to add to the moral authority of this Assembly. We have plenty of friends not merely in this country but also in England. Let us proceed in such a way as to strengthen their hands. Let us not think of what we are entitled to do under the terms of the Statement of May 16th. Rather let us think of what it is in our interest to do on this important occasion. We may consider ourselves completely justified in passing Pandit Jawahar Lal Nehru's Resolution but of what use will be for us to exercise our rights if they only add to that discontent and unrest which it is our desire to allay? I hope, therefore, Sir, that we shall act in such a way that India may, with the assent of all sections of the people—and if that unfortunately is not forthcoming—with the assent of all those who accept the right of the country to move forward, be able to march rapidly towards the aim that we have set before ourselves, *viz.*, that of freedom and unity (*Cheers*).

The Hon'ble Diwan Bahadur Sir N. Gopaldaswami Ayyangar (Madras: General): Mr. President, Sir, I have come forward to support the Resolution and I would add that I have come forward to urge with all the strength in my power that this Resolution be pushed to its conclusion at these sittings (*Cheers*). Sir, my respect for Dr. Jayakar and Pandit Kunzru is very great I have considered with very great care all that they have said in support of this amendment proposing an adjournment of this discussion until the representatives of the Muslim League and the representatives of the Indian states have joined us. There is only one compliment I have to make against this motion for adjournment. I consider, Sir, that it lacks imagination. I say so without disrespect to my friends. say it lacks imagination because it forgets that we have just launched ourselves on a very big task and it is necessary that we should impress our country and the world that we mean business.

Now, Sir, look at this Resolution. It is a Resolution which sets out the objectives that we have to place before ourselves in framing our constitution. Is such Resolution to be postponed till we reach the last stage of our work in this Assembly? Is it not a Resolution which must preface everything that we propose to do in this Assembly? That, I think, Sir, is a complete answer to this motion for adjournment. The Mover and supporters of the amendment have urged reasons for postponing the consideration of this Resolution, but in doing, so they have themselves admitted that there is nothing in this Resolution to which either of them is prepared to take exception. I appeal to them, Sir, that if they believe in this Resolution they must pass it at this series of sittings and before we commence real business and not postpone it till we have practically completed all our business. I know that Dr. Jayakar, towards the close of this speech, suggested that the consideration of this Resolution might be postponed only for about a month or so by the end of which he hoped that the representatives of the Muslim League would have joined us. But what about the representatives of the Indian States? For no fault of this Constituent Assembly, the representatives of the Indian States have not come into this Assembly at the start, as I consider it is their right to do. But the procedure has been so regulated that they come in only at the final sitting of this Constituent Assembly. Are we to wait for them, and after all, the most vocal objection to this Resolution that has come from outside this House has come from people who represent the Indian States.

Now, taking the representatives of the Muslim League themselves, are we doing any injustice to them in proceeding with this Resolution? Their main objection to what we are doing today is the different interpretation they have put upon the clause relating today grouping. We are not discussing grouping. We are discussing this Resolution which lays down the objectives of our work—a matter in respect of which they have a perfect right

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to come and participate in this debate. What prevents them from coming and taking their seats here and debating with us here the other questions that we are taking up as a preliminary to the more important work that will follow? Their main objection will arise only when this Assembly, towards the end of the first session, proposes to split into Sections, and as I shall show in a minute, Sir, it is quite possible for them to arise all the issues that they want to arise at that stage. (*Hear, hear.*)

Now, Sir, the question as regards grouping has entered a new phase with the Statement made by His Majesty's Government on the 6th of this month, but I would not go into the merits of what they have said in that Statement. The only thing I would say is that it is a most astonishing Statement to be made by so august a body as His Majesty's Government at this stage of the controversy. Be that as it may, I do not intend to go into its merits. Now, let us see what flows from that Statement. His Majesty's Government have said that their interpretation of the Cabinet Mission Plan and the interpretation of the Muslim League agree, but they say: "Since you have agreed to refer the matter to the Federal Court, or since you say that the Constituent Assembly will do so, you may do so." And then, we have the statement of Lord Pethick-Lawrence made only yesterday, clinching the matter by saying: "His Majesty's Government would not budge an inch from their position even if you appeal to the Federal Court." Now, Sir, what is the position? If we go to the Federal Court and the Federal Court gives a decision in favour of the view taken by the Congress, the Muslim League has categorically stated that it would not accept it. His Majesty's Government say they would not budge an inch from their own view of the matter. Of course it is not within the jurisdiction of His Majesty's Government, in my opinion, to say whether they would accept the Federal Court's view or whether they would not, because it is entirely out of their hands. The Constituent Assembly makes the reference to the Federal Court and it is for the Constituent Assembly to say before it makes the reference that it will abide by the decision of the Federal Court. What will happen then? Assuming that the Federal Court's decision is in favour of the view taken by His Majesty's Government, what will be the position of those who have taken a contrary view? The only thing they can do in view of all the commitments they have made to individual Provinces and communities, is to move this Assembly for a modification of paragraph 19, which would more clearly express their view. The main difficulty is the method of voting in the Sections as the Secretary of States said in the House of Lords. If you leave paragraph 19 (v) as it is, it is certainly an arguable point that in the absence of any modification of the wording of that clause the voting must be by individuals and a simple majority would decide the question. It is certainly an arguable point. If we want that voting should be by provinces, it is necessary that we should propose a modification of that clause, and that modification can, I think, be done by this Assembly on a motion properly made. Now, are we going to do that? I suggest that, in view of what has come from His Majesty's Government both in the Statement of December the 6th and in the speeches made in the two Houses of Parliament—I suggest that, in the new circumstances that have been created, the wiser thing to do is not to send a reference to the Federal Court but to take the other course which I have indicated, namely, that you bring up a resolution in this Constituent Assembly proposing a modification of clause 19 (v) which will provide that the method of voting should be by provinces in the Sections so far as the grouping matter is concerned.

Mr. Dharendra Nath Datta: Please save us from such prayerful resolutions!

The Hon'ble Diwan Bahadur Sir N. Gopaldaswami Ayyangar: The Resolution I am suggesting is to be moved in this Assembly; we are to take a decision on it. It is quite possible—and I think it would be an arguable position—for the Muslim League representatives to come here and raise the question that such a modification involves a major communal issue. If you decide, Sir, it is a major communal issue, or, if after obtaining the advice of the Federal Court, you decide that it involves a major communal issue, it will be open to the Muslim League to contend that you cannot carry out that modification without a majority of each of the major communities. Why, I ask should we not take that step? We shall take that resolution into consideration at an adjourned sitting of this Assembly, even those who have not presented their credentials and signed the Register—the members of the Muslim League—that we shall consider and move a resolution of that sort. That must be a sufficient indication to them to come and occupy their places in this Assembly and defeat what they consider to be an unconscionable suggestion from the other side. That is one point I wish to suggest to those who may have to take a decision in this matter. Going to the Federal Court is absolutely useless, and so far as I can see, it will solve none of our troubles.

Then, on this main issue of adjournment, I do not propose to deal with the point of law that my Hon'ble Friend, Dr. Jayakar, took. I should like only to refer to some of the other criticisms that have been received. Before proceeding to that I should only like to suggest that, in considering points of interpretation of the document, namely, the Statement of May 16, let us not forget that we are not working under a provincial enactment or as members of a provincial legislature, of the Central Legislature working under a Statute of Parliament. We are in a Constituent Assembly, and whatever is not said in the document under which we have gathered here, is not prohibited to us. We have the residuary powers in full for accomplishing the task which we have undertaken. (*Hear, hear*). That being so, what I would suggest is that we should not rivet our eyes to particular clauses in this document and say, "this is not said in this particular clause, that is not said in the other clause, and therefore we cannot do anything which is not said in those clauses." I think whatever is not said but is necessary for the accomplishment of our task, is within our powers to regulate.

I will leave the rest of the objections to the consideration of this Resolution on the point of law to people who can deal with legal matters more efficiently than I can. I desire in the few minutes that still remain to me to deal only with the objections that have been raised on behalf of the States. There are mainly three objections that on behalf of the Chamber of Princes, have been made public. The first is that the Resolution is objectionable because it is proposed to be considered and passed in the absence of the States representatives. Well, Sir, that I have dealt with already. The second is to the use of the words "Independent Sovereign Republic". I do not propose to occupy your time in dealing with that matter as it has been dealt with already by other speakers. I should like to deal a little more fully with the third objection to clause (4) of this Resolution. This clause says :

"wherein all power and authority of the Sovereign Independent India, its constituent parts and organs of Government, are derived from the people."

Exception has been taken to this in a statement issued by a distinguished Indian who has a right, I think, to speak on behalf of the Rulers of Indian States, in any case, of some of them. He says:

"Such a doctrine may or may not be incontestable, but there is no point in taking it for granted in India, especially when we remember that in legal theory this doctrine is only imperfectly applicable even in England."

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I do not propose to undertake an examination of this doctrine in relation to legal theory. I would rather confine myself to its constitutional aspects. It is definitely incontestable that in spite of a hereditary monarch as head of the State from whom, in the forms of law, all authority is supposed to flow, the substance of real power and authority in England is derived from the people.

Now (what is the case in Indian States? I would only quote from two documents which have the authority of committees established in the two most important Indian States. The first is from Mysore and is from a document which was published nearly a quarter of a century ago. This is what is said in that Reforms Report:

“In such a polity, the head of the State, whether a hereditary ruler or an elected President, exercises, as representing the *people's sovereignty*, a double prerogative, namely, one, in the sphere of legislation, the prerogative of ratification including the veto, and secondly, in the sphere of executive government, the prerogative of creating and uncreating the organ of Government, namely, the Ministry. And both these prerogatives are exercised much more fully, really and substantially than by the constitutional head of a limited Monarchy under responsible government.”

Then, here is an extract from a Report of a Committee on Reforms in Hyderabad:

“The British Constitution has grown out of England's long history and is the result of centuries of strenuous struggle between its King and its Parliament. There, the two-part system, sustained by the spirit of compromise and the conception of the sovereignty of the people, has struck deep roots into the soil. The peculiarity, on the other hand, of the Indian States is this: The Head of the State represents the people directly in his own person and, his connection with them, therefore, is more natural and binding than that of any passing elected representatives. He is both the supreme head of the State and the embodiment of the people's sovereignty. Hence it is that, in such a polity the head of the State not merely retains the power to confirm or veto any piece of legislation, but also enjoys a special prerogative to make and unmake his executive or change the machinery of Government through which he meets the growing needs of his people.”

Those two views of where the sovereignty rests in Indian States tally. The hereditary ruler is supposed to embody in his person the sovereignty of the people, but, in actual fact, he has exercised the sovereign powers in disregard of the people's interest in several cases.

The Cabinet Mission stated that, on the conclusion of the labours of the Constituent Assembly and on the framing of a constitution for India. His Majesty's Government will recommend to Parliament, such action as may be necessary for the cession of sovereignty to the Indian people. Even under existing conditions, the Provinces of British India and Indian States have a common Centre which administers such subjects as, under any unitary or federal constitution for India as a whole, must stand ceded to the Centre. Broadly speaking, sovereign powers over India as a whole now vest in His Majesty subject to the provisions of the Government of India Act, 1935. Those powers are exercisable both over British India and over Indian States, though the quantum of those powers and the manner of their exercise differ in the two cases. The act of ceding sovereignty, that is transfer of the power which Britain now wields in this country will, therefore, relate to the whole of India. When the Cabinet Mission therefore spoke of cession to the people of India, they must be held to have included the people of Indian States also. (*Hear, hear.*) The Mission's

statement, therefore, that when British power is withdrawn, the States become independent, should be construed to mean that such sovereignty as His Majesty in fact exercises over Indian States will stand ceded back to the people of those States.

In this connection it is significant that paragraph 5 of the Memorandum on States, Treaties and Paramountcy Rights issued on 20th May, 1946, which deals with the extinction of paramountcy, speaks throughout only of the Indian States and not merely of their rulers. The rulers of States have, however, up to date, both claimed and exercised full internal sovereignty in their States subject only to the politically inescapable limits set by the paramountcy of the British Crown. The paramountcy of the British Crown really means suzerainty, in other words, the ultimate sovereignty of the British Crown in certain matters. In the assertion of this claim, the rulers have throughout ignored the idea of any sovereign powers vested in the people of the States. They have claimed to exercise both the ordinary legislative power and the constituent power within the sphere in which they claim sovereignty, and any constitutional powers which the people of certain States exercise through their representatives have been a matter of gift from the rulers to them.

Now, this feature of the relations between the ruler and the people in the States is absolutely inconsistent with the idea underlying the framing of a constitution by a Constituent Assembly consisting of representatives of the people in whom the constituent power is deemed to vest. When the cession of sovereignty from His Majesty to the Indian people takes place, the people of the States will, together with the people of what is now British India, be entitled to exercise sovereign powers in respect of the subjects assigned to an All-India Union Government. The exercise of the sovereign powers as regards the subjects vested in Provinces will be in the hands of the representatives of the Provinces in the case of the subjects retained by them and, by the people in the groups, if any, to whom any provincial subjects might have been assigned by the Provinces. This is fairly clear.

The Resolution that is now under consideration puts the Indian States on the same level in regard to the subjects not ceded by them to the Union Centre as the Provinces are in respect of provincial subjects; that is to say, it asserts that all the power and authority of Indian States as constituent parts of the sovereign independent India are derived as such from the people of the States as similar power and authority are in provinces derived from the people of the provinces. It would be extremely anomalous if the constituent power in Indian States is vested in respect of Union subjects in the people of the States, and, in respect to Unit subjects, in the rulers of the States. In the process of building up a new federal structure for India through this Constituent Assembly, it will be found necessary that written constitutions of such States as already have them deserve to be overhauled as in the case of Provinces, and that written constitutions should be newly framed for States which do not have them now. It is possible to defer this work and leave it over for subsequent accomplishment provision being made in the Union Constitution prescribing the steps to be taken and the procedure to be followed in this connection.

If the representatives of the States in the Constituent Assembly so desire, the Union Constitution should guarantee the territorial integrity of the States as they exist today, subject to any modifications of boundaries which might be effected later on according to prescribed procedure and with the consent of the people of the States and other areas affected. The

[The Hon'ble Diwan Bahadur Sir N. Gopaldaswami Ayyangar]

constitution of a State settled by the people of the State in association with the ruler; might make provision for hereditary succession to the headship of the State in the dynasty which is in possession now of the State and the Union Constitution might contain a provision that, if the State's Constitution does say so, it will not be interfered with, though a stipulation would be necessary that, in the overhaul of an existing written constitution or in the framing of a new one in any particular State, the hereditary head of it should be, or in the quickest possible time in the future, should become, a constitutional monarch presiding over at executive responsible to a legislature, the members of which are democratically elected.

Now, Sir, I wish to refer to only one point in order to stress the need for the provision in clause 4 of the Resolution. The existing written constitutions of individual States almost invariably contain a section that all rights, authority and jurisdiction that appertain or are incidental to the government of the territories included in the States are vested in and exercisable by the Ruler, subject to the provisions of the constitution which is granted by the fiat of the Ruler himself. With a view to emphasising the unlimited nature of the sovereign powers claimed by the rulers, such constitutions contain also another provision which enacts that, notwithstanding anything contained in the Constitution Act or in any other Act, all powers, legislative, executive and judicial, are, and have always been, inherent and possessed and retained by the Ruler and that nothing contained in any such Act shall affect or be deemed to affect the right and prerogative of the Ruler to make laws and issue proclamations, orders and ordinances by virtue of his inherent authority. Such provisions in States constitutions are remnants of an all-pervasive autocracy and deserve to be swept away and replaced by a provision which declares that all powers of Government, legislative, executive and judicial, should be deemed to be derived from the people and exercised by such organs of State including the hereditary Ruler as may be designated in the written constitution and to the extent authorised by that constitution.

I am afraid, Sir, my time is over. I do not wish to take up any more time, but I hope I have tried to show how necessary it is that this inclusion of the States in clause 4 should remain in this Resolution. As a matter of fact, unless we get into this Assembly the representatives of the people of the States, they cannot really participate in the work of the Assembly and help in the making of a constitution for their own States as well as in the making of a Union Constitution.

Mr. Chairman: It is already quarter past one. The House is adjourned till Even of the Clock tomorrow morning.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 19th December, 1946.

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 19th December 1946

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eleven of the Clock, Mr. Chairman (The Hon'ble Dr. Rajendra Prasad) in the Chair.

PROGRAMME OF BUSINESS

Mr. Chairman: Yesterday I told the Members that I would be able to give some decision with regard to the programme of the work of the Assembly this morning. I have been considering that matter and some Members have seen me also in that connection. The work we have to get through is this. We have this Resolution, which we are considering. Then we have got the rules to pass. Then there is another question with regard to the reference of the disputed point of interpretation to the Federal Court, with regard to which the Assembly may have to express some opinion and lastly, we must have to elect at any rate some of the Committees which will be provided for in the rules. So, these are the four items that we have to finish before we go home after this session.

The Rules have been practically considered and the final shape is being given to them. I propose to place them before the Rules Committee tomorrow morning and if the rules are finally passed by the Rules Committee, they will be Presented to this House day after tomorrow, *i.e.*, Saturday. If the Members so desire, we can take up the question of referring the point of interpretation to the Federal Court on Saturday and thereafter we may take up the rules. That will take, I think, about two days or so. I think it all depends on the number of amendments which the Rules may evoke. Thereafter we may give a day for the appointment of the Committees. Now in this way if we work on Saturday, also on Sunday and on Monday, we might, possibly finish all this work if Members have some sort of self-denying ordinance and all who speak little and take as little time as possible. If we cannot complete by Monday, then in that case we shall have to go on after Christmas, that is to say, we shall have to take some days in this month after the 25th. I find that 24th, 25th and 26th are public holidays and we cannot sit on those three days. So we can take up the discussion again on the 27th and 28th. 29th is a Sunday and 30th again is a public holiday for Sikhs in connection with the birthday Anniversary of Guru Govind Singh. So unless the Members are prepared to sit on a Sunday and to work harder on Saturday and on Monday, there is no chance of finishing the work before Christmas and I do not like to go over to the next month, *i.e.*, the next year. I want to complete the work within this month. I would therefore suggest that we take up this programme. We start discussing the rules say in the afternoon of Saturday and if Christian Members, particularly have no objection, we should even sit on Sunday and then on Monday we may complete the whole thing. That would be rushing the business to some extent, if you want to avoid sitting after the 25th otherwise we shall have to sit after the 25th and go on until we finish it, in this matter this is the difficulty which I have placed before the Members and I should like to know which they would prefer. Personally, I would like to finish it by Monday, if possible.

Many Hon'ble Members: This is much better.

Mr. Chairman: Let us hope we finish on Monday. First of all, to work during the Christmas week would be very hard on Christians. I hope we will be able to sit on Saturday, Sunday and Monday and finish it. Otherwise we shall have to sit during Christmas week.

Mr. F. R. Anthony (Bengal : General): It is quite impossible. I am personally prepared to sit as long as the Members are ready to sit but not after the 26th.

The Hon'ble Pandit Jawahar Lal Nehru (United Provinces : General): I want to bring to your notice a fact that may interest the House, that the United Nations General Assembly did sit even on Sundays, both the Committees and the General Assembly, in order to expedite its work.

Mr. Chairman: Today we shall sit only up to 1 O'clock, so as to give us time to complete the work in the Rules Committee and tomorrow we do not sit at all. We sit again on Saturday morning. I hope I shall be able to place the Rules in the hands of Members by Friday evening, but in any case they will be available on Saturday morning and in the morning session we might take up the question of reference to the Federal Court and in the afternoon you might commence discussing the Rules. That is the programme now fixed.

Mr. F. R. Anthony: Mr. Chairman, I am afraid the Christian members feel very strongly on this matter. We are prepared to work the whole of Sunday and we will work on Monday. I would only ask that we should not meet on the 27th and 28th, between Christmas and the New Year. It will be quite impossible for the Christian members to attend then. That is the only time in the year when they insist on being with their families. This is very important. We are prepared to work all night and the whole of Sunday. I would ask you not to reconvene the Assembly between the 27th and the 1st.

Mr. Chairman: I hope we shall be able to finish by Monday evening.

Mr. F. R. Anthony: Let us have night sessions.

Mr. Chairman: We shall have it if necessary.

Mr. Kiran Shankar Roy (Bengal : General) : Mr. Chairman, I think that the Members should have copies of the Rules at least two or three days before general discussion so that they may consider the Rules. If the Committee has taken so much time to draft the Rules, surely, it would be unfair to rush through the rules in this house in this fashion. It will be very optimistic to think that we would be able to pass the Rules in two or three days when we have not been able to pass this Resolution in three or four days. I think the passing of the Rules would take at least a week. I therefore suggest that you should give us sufficient time to consider the Rules. It is no use thinking that we shall be able to finish the Rules in two days.

Mr. Chairman: That upsets the whole programme.

The Hon'ble Mr. B. G. Kher (Bombay : General) : May I be permitted to say that the drafting of the Rules is more or less a technical matter for lawyers and 15 men with long experience of drafting rules, with a competent secretariat, have framed the Rules. Are we going to quarrel and debate about a word here and a word there? I would submit that you should fix a time and say that by 5 o'clock on Monday all those who have important amendments will be allowed to move their amendments and vote on them, and by 5 o'clock, the guillotine should be applied, and by 7 o'clock all the Rules may be passed, and we should get on with the other business. Another alternative, Sir, is to sit throughout the night. I would suggest that we should sit up to 11 P.M. every day and finish the rules. I do make a strong plea not only on behalf of the Christians, but there are so many other people who, have come long distances to attend this session,

having made engagements on the assumption that the work will be finished by the 23rd and that they will not be required to sit during Christmas. I do not want to mention names. We are all having engagements of equal importance. But there are some people who find it extremely hard, having come to India after a long time, to sit here during Christmas when they would like to be with their families. We can sit long hours by night and by day and finish it before Monday afternoon.

Mr. Chairman : This seems to be general sense of the House.

Dr. Syama Prasad Mookherjee (Bengal : General): I think we should not meet during the Christmas week. We have very important engagements during the Christmas week which were fixed weeks, months ago and it is not fair that we should be compelled to upset our programme. If we can finish the work, well and good. Otherwise, we must find some day in January. The passing of the Rules will not be quite so easy a matter. They must be circulated to the members who would like to have a reasonable time to study and also propose amendments. It will be left to your discretion whether the time so given is sufficient to enable members to propose amendments and discuss them. If we cannot finish by Monday or Tuesday, we should meet some time in January.

Mr. Chairman: We shall make an attempt to finish the consideration of the Rules and other business also by Monday. If we fail, we shall then think at what other time we will sit.

In the Rules Committee, we have 15 Members representing various groups and shades of opinion and we have been taking time because we have been trying to arrive at conclusions which will be acceptable to all, and that is why the Rules Committee has been taking so much time. As regards, drafting, that is left in the hands of persons who are experts in that work and I suppose there will not be as much difficulty as Mr. Kiran Shankar Roy anticipates. If any discussion arises on a question principle, I shall give time for discussion; but for mere words, I will except members to leave that matter to the Committee which has spent a lot of time over it.

Now, we shall proceed with the Resolution. Mr. Somnath Lahiri.

RESOLUTION *RE. AIMS AND OBJECTS-contd.*

Mr. Somnath Lahiri (Bengal : General): Mr. Chairman, The Right Hon'ble Dr. Jayakar, grown grey in the service of interpreting British Imperialist laws, has probably interpreted the limitations of the Cabinet Mission Plan correctly. The limitations, as he says, are probably correct. But we need not be frightened by them. Dr. Jayakar wants to wait for their Highnesses, the Princes, to come in and have a hand in distorting our future freedom. We need not have that. We do not want the Princes, the autocratic Princes, to come in and have a hand in distorting our future. Of course, so far as the Muslim League is concerned, that is on a different footing altogether. But I am not sorry that the Muslim League is not here; I am only sorry that the Congress also has not gone out of the British Plan and left the British Plan to itself, to stew in its own juice. Agreement with the Muslim League for gaining independence of our country and for drafting a really free constitution of our country, is essential. But if you think that by waiting for the Muslim League, or by the Congress remaining here and the Muslim League remaining outside, you will be able to have a properly framed constitution, I am afraid you are sadly mistaken and you are counting without your host, the British imperialist, who have made this Plan. You have seen the example of the Interim Government.

[Mr. Somnath Lahiri]

Both the League and the Congress are there, but that has not solved the problem of our quarrels and internecine warfare in this country. It has happened there just as the British wanted it to happen, that is, they wanted the parties to fight against each other with the prospect of the British giving support in one party's favour against the other with the result that in between these quarrels the British become more firmly entrenched.

Well, the Interim Government has not brought peace nor freedom to our country. Similarly, whether the Congress is inside this British-made Constituent Assembly and the Muslim League is out or whether the Congress and the Muslim League are both inside this British-made Constituent Assembly and working the British plans as the British should like it to be worked out, then also the same thing will follow, viz., the quarrelling that is there to-day in the country, will only get more intensified inside this Assembly also. That is all and nothing else. Therefore, Sir, I am not sorry that the League is not here but I am only sorry that the Congress also has not gone out leaving the plan to stew in its own juice.

Well, Sir, I must congratulate Pandit Nehru for the fine expression he gave to the spirit of the Indian people when he said that no imposition from the British will be accepted by the Indian people. Imposition would be resented and objected to, he said and he added that if need be we will walk the valley of struggle. That is very good, Sir—bold words, noble words. But the point is to see when and how are you going to apply that challenge. Well, Sir, the point is that the imposition is here right now. Not only has the British Plan made any future Constitution—provided you are able to evolve out something which I-very much doubt—even if you were able to evolve out something, not only is it dependent on a treaty satisfactory to the Britisher but it suggests that for every little difference you will have to run to the Federal Court or dance attendance there in England or to call on Attlee or someone else. Not only is it a fact that this Constituent Assembly, whatever plans we may be hatching, we, are under the shadow of British guns, British Army, their economic and financial strength which means that the final power is still in the British hands and the question of power has not yet been finally decided, which means the future is not yet completely in our hands. Not only that, but the statements made by Attlee and others recently, have made it clear that if need be, they will even threaten you with division entirely. This means, Sir, there is no freedom in this country. As Sardar Vallabhbhai Patel put it some days ago, we have freedom only to flight among ourselves. That is the only freedom we have got and the only other freedom that I noticed is on the order paper of the day where Pandit Nehru is the Hon'ble Pandit Nehru and I suppose Pandit Nehru has not even the freedom to drop that honour. Therefore I say it is no use your thinking that from within the limitations of this British Plan, one part of which is the Interim Government and the other part of which is the Constitution-making procedure, I don't think you will be able to get any independence out of it. The insolence of the Britishers, as you have recently seen, and to which expression has been given by various Members of the House, why is this insolence so growing, it is for the patriots to see. The insolence is growing because they find that the great parties of our country, the Congress and the Muslim League, go on thinking that in getting our parties, may party's claim as against the other party, I will be able to get the help of the British. They want you to go on quarrelling with the only result, that fratricidal fights follow, as it has happened to-day throughout the country, as it is happening everyday before your very eyes. Our strength against the British gets decimated and nothing of freedom comes our way. Only we kill each other as if we are enemies instead of being brothers and Mr. Alexander gets the cheek to say in this month of 1946 in the House

of Commons that the use of the Special powers of the Viceroy has not been changed and whatever power is available there, it is there to back it. Therefore, our humble suggestion is that it is not a question of getting something by working out this Plan but to declare independence here and now and call upon the Interim Government, call upon the people of India to stop fratricidal warfare and look out against its enemy, which still has the whip hand, the British Imperialism—and go together to fight it and then resolve our claims afterwards when we will be free. As a matter of fact, Sir, we have found in the long history of our struggle for the freedom, of the country that, when we are faced to the British, even though we might disagree very much among ourselves, quarrels are generally resolved, no obstacles are put to the man who is fighting the British. It is a way out of the present fratricidal impasse. Mr. Chairman, Sir, and the Mover of this Resolution, I would address him also, that Doctor Jayakar, the fine logician and a cruel logician that he is, has placed before you the only alternatives when he has told you that either we have to work through the limitations of the British Plan or you have to go forward to the seizure of power, revolutionary seizure of power. These are the alternatives and good old constitutional liberal that he is, he has rightly grasped it and playing upon the fear of revolution that some of you might have got, he has asked you to follow his constitutional path and told you ‘I know Congress also is not going to revolutionary seize power’. Yes, Sir, these are the only alternatives before Indian people today and before this Constituent Assembly today, that either you try to follow the British Plan, put one party’s claim against the other and get sunk into the morass of fratricidal warfare everyday with the result that finally the British may be as strong over you as before, or you go forward to the revolutionary seizure of power. I say, you go forward first of all to drive out the British, to drive on the British Viceroy, to drive out their troops, etc., which are holding their guns even now over our heads.

Sri Raj Krushna Bose (Orissa: General): We have a right to know whether the speaker is supporting the Resolution or opposing it. I am afraid all that he is saying at this time is not relevant.

Mr. Somnath Lahiri: That is for the Chairman to decide. I hope I represent a political party which is the third largest in the country... (*Laughter from Back Benches*). Mr. Chairman, I hope you will let me continue without interruption. Our party got 7 lakhs of votes....(*Interruption*) in the last General Election. It is true that it is not a big party but it is the third largest party surely (*Renewed laughter*).

Mr. Chairman: I hope the House will allow the Speaker to proceed. (To Mr. Lahiri) But I would remind you of the time-limit and also of the fact that you should confine yourself to the subject in question.

Mr. Somnath Lahiri: Yes, Sir. I am coming to the point. I hope you will allow me, Sir, the same facilities as you allowed to Dr. Ambedkar or other party leaders. (*Laughter from Back Benches*).

Mr. Chairman: It is true that I did show some leniency to them, but the House was in a mood to listen to them, but it does not seem to be in that mood now. I have to be guided by the mood of the House.

Mr. Somnath Lahiri: Whether the House likes what I say or not, it is for you to let me, as the representative of an independent view-point, to express my views in full.

Mr. Chairman: You may go ahead.

Shri Vishwambhar Dayal Tripathi (United Provinces : General) : Sir, we must know whether he is supporting the Resolution or he is supporting the amendment.

Mr. Somnath Lahiri: The more interruptions there are....

Mr. Chairman: Members will draw their own inferences as to whether he is supporting the Resolution or opposing it or doing neither.

Mr. Somnath Lahiri: I will make it quite clear. You will know it when you listen to my Speech. Sir, coming to the third para of the original Resolution, I understand that you desire the unity of India. It is out of that desire you have given this right of autonomy and residuary power in paragraph three but refused right of session to linguistic, etc., units. I am also as much eager for the unity of India as you are, but the point is: can you get that unity by means of force or by compulsion? I come from Bengal. Look at Bengal. In Bengal the overwhelming majority of the population who are peasants and amongst whom the overwhelming majority is Muslim, are ground down under the double slavery of British Imperialism and the Hindu Upper Class. Now, Sir, in the image of freedom that the Bengal peasants and the Bengali Muslim has before his mind's eye, if he wants that neither British Imperialists nor Hindu Upper Class can exploit him, if he wants that his land—the Bengali speaking territory—should be free and sovereign, free from the control of any other part of India—can you deny that right of freedom to him? You cannot. And if the Muslim League—the reactionary section of the leadership of the Muslim League—are able to distort this freedom urge of the Bengali Muslim into religious separatism, or into demanding the Assamese speaking territory, I should say the responsibility for this is on the Congress leadership. Why? Because the Congress has never unequivocally recognised this right of separation of the nationalities on national-linguistic basis and whatever recognition there was in the ruling of the Congress President that no territorial unit of India will be compelled against its wish to come into the Indian Union, you have given the final good-bye to that in this Resolution. You have said here that no unit however strong its wish might be to go out of India, can go out. The utmost it can hope for is residuary powers and autonomy. Well, Sir, this is not the way by which you would hope to win over the Muslim population of Bengal. This is not the way you would hope to win over the other nationalities which will come into the forefront as time goes by. So you cannot achieve the unity of India by forcing a unitary constitution on them and if you look at the constitutions of recent days in the world you will find as in Yugoslavia, in Czechoslovakia, etc. that they recognise the rights of self-determination including that of separation. For instance, in Yugoslavia the very first article of their new Constitution gives the right of self-determination and separation to the Serbs, Croats, Slovenes, Montenegrins, etc., to the full. That is why today in Europe you find that though Yugoslavia is a small country, yet it is the most united and advancing most rapidly.

Now, Sir, I have heard some Congressmen say that “Well, this right of separation and self-determination we will give, but only later, if the Muslim League presses for it”. Now, Sir, would it not be worst political opportunism to higggle with the rights of peoples across the bargaining counter if the bargain was pressed? Is it not better that you put it clearly and in unequivocal terms not for the leaders but for the people—the Muslim people to see for themselves and have some faith, some guarantee that they may safely come into the Indian Union?

The next point that I would deal with is paragraphs 4, 5 and 6 of Original Resolution. Well, Sir, here you have formulated certain fundamental principles on which the equality and the rights of the people of

India would be based. Good, Good intention. Nobody denies the good intention. But the path to hell is often paved with good intentions and the intentions here may mean everything or may mean nothing. It all depends on how you interpret those principles, in the light of the past and the future. You have said everybody will be equal before law. You have said that full legal rights will be given to everybody. At the same time history tells you there are popular Ministries in this country, the Congress has got Ministers, and even then you find in Bombay people being externed, even women being externed as goondas without bringing them into court. At the same time, you find in U.P. a law being framed whereby detentions can take place without trial. At the same time, you find in Bengal a law being framed under the name of communalism which takes out the liberty of every newspaper and everybody. Now, Sir, people will look at your formulations here in the light of their past experience and if you want these things to be really what you wanted them to be, you ought to have been more explicit and stated clearly what you want. Similarly about the Depressed Classes. You have said that adequate safeguards will be provided. Good. But who is going to determine and when are they going to determine whether the safeguards are adequate or not? Everybody deplores the religious separatism that obtains today in our country. Everybody deplores that, but what is the political provision that you have been in your Resolution to them and to their aspirations?

An Hon'ble Member: What do you suggest ?

Mr. Somnath Lahiri: Well, I would suggest proportional representation with adult suffrage and joint electorates in any election that might take place in the future and thereby each party, whether it be a communal party or a political party, on the basis of the total votes gained by it, will get its representation assured and then the parties, the communal parties like Muslim League and the Scheduled Castes Federation, who would have been assured of their proper representation, could not have any complaint. At the same time, it would give a fillip to the political parties also to get their proper representation, so that we can gradually cut across the religious separatism that has grown in our country, and healthy politics on the basis of political division and political struggle would develop. But you have not made the point clear. I hope you will make it clear when you draw up the fundamentals of the Constitution. You must remember that the people will judge you by your past,—by your immediate past which I am sorry to say, in spite of the good programme of the Congress, in spite of the hard struggle of the Congress, has not been up to its professions. I hope that they will be remedied when you are drawing up the future Constitution.

Mr. H. V. Kamath (C. P. and Berar: General) : I submit, Sir, that Mr. Lahiri when speaking on his own amendment was ruled out of order by you, and is he in order now in doing the same?

Mr. Somnath Lahiri: I have every right to develop my argument. However, I have almost finished and I will take only a minute or two. This Resolution, apart from the generality and the good thing that is in it—I should have liked that you had made the proclamation here and now of our independence. Every Indian would agree with the first paragraph that India should be a sovereign independent power. Apart from these things, your Resolution, to sum up politically, is a resolution of pressure. Part of the pressure is against the British. It tells the British, "Look here. If you think we are going to listen to you, to whatever you dictate, you are very much mistaken. We are going to evolve a constitution of our own for India." Good. Put that more strongly if you like, but the other part of the Resolution is against the Muslim League, "Look here, if you think that there is separation waiting for you, you are mistaken. We are

[Mr. Somnath Lahiri]

going to evolve out a unitary constitution for India and there is no scope in it for separation.” That is pressure against the Muslim League. I do not think the second pressure helps you to increase the first pressure. The more we press against our brothers, the more we fight against the Mussalmans, the more the British are able to deny us what we want. You increase the pressure as much as you can against the British, but do not increase this pressure against your own brothers. Well, Sir, Pandit Jawahar Lal Nehru has spoken of the magic of the moment. Yes, magic. But it is the magic of the British witch which lulls patriots to sleep, the magic of the British witch from whose bloody talons the blood of countless martyrs is dripping and yet she is able to make the patriot think that he will get his claim against the other party by working her magic Plan. I hope that the Congress patriot will remember that and go forward in his struggle against the witch’s plan, against British imperialism and not against the Mussalmans.

Mrs. Hansa Mehta (Bombay : General) : Sir, I consider it a proud privilege to speak in support of this historic Resolution so ably moved by Pandit Jawahar Lal Nehru. I do not wish to refer to the issue raised by Dr. Jayakar or speak on the speeches made six thousand miles away by people who either mean mischief or are totally ignorant of the real situation. I wish to offer a few remarks on that of this Resolution,—the fundamental rights which affect a section of the people, namely, women.

It will warm the heart of many a woman to know that free India will mean not only equality of status but equality of opportunity. It is true that a few women in the past and even today enjoy high status and have received the highest honour that any man can receive, like our friend, Mrs. Sarojini Nadu. But these women are few and far between. One swallow does not make a summer. These women do not give us a real picture of the position of Indian women in this country.

The average woman in this country has suffered now for centuries from inequalities heaped upon her by laws, customs and practices of people who have fallen from the heights of that civilisation of which we are all so proud, and in praise of which Dr. Sir S. Radhakrishnan has always spoken. There are thousands of women today who are denied the ordinary human rights. They are put behind the purdah, secluded within the four walls of their homes, unable to move freely. The Indian woman has been reduced to such a state of helplessness that she has become an easy prey of those who wish to exploit the situation. In degrading women, man has degraded himself. In raising her man will not only raise himself but rise the whole nation. Mahatma Gandhi’s name has been invoked on the floor of this House. It would be ingratitude on my part if I do not acknowledge the great debt of gratitude that Indian women owe to Mahatma Gandhi for all that he has done for them. In spite of all these, we have never asked for privileges. The women’s organisation to which I have the honour to belong has never asked for reserved seats, for quotas, or for separate electorates. What we have asked for is social justice, economic justice, and political justice. We have asked for that equality which can alone be the basis of mutual respect and understanding and without which real co-operation is not possible between man and woman. Women form one half of the population of this country and, therefore, men cannot go very far without the co-operation of women. This ancient land cannot attain its rightful place, its honoured place in this world without the co-operation of women. I therefore welcome this Resolution for the great promise which it holds, and I hope that the objectives embodied in the Resolution will not remain on paper but will be translated into reality. (*Cheers*).

Mr. P. R. Thakur (Bengal: General): Mr. Chairman, Sir, Dr. Ambedkar did not say anything last time about the Depressed Classes. So, I consider it a great honour to speak to the Members of the Constituent Assembly on behalf of the Scheduled Castes in general of India. I stand here to support the Resolution moved by Pandit Jawahar Lal Nehru. After analysing the whole of the Resolution and examining it in detail, I find that it is the best document that has ever extended hopes to the minds of the people of India for freedom. Some of my friends who have spoken before have pointed out some defects in it. Nevertheless, the Resolution as it stands before us will serve to solve many of the problems that have got to be solved before drawing up a constitution. I do feel there are many obstacles in our way, but we know we shall have to surmount them. If we look back into the history of the democratic nations of the world, we would see that every constitution-making body had to face very many difficulties and sometimes deadlocks. But still, they were successful at the end.

It is a pity that our Muslim League friends have kept themselves out and are not taking part in the deliberations of this Assembly. But when we know that we, Hindus and Muslims will have to live in this country of ours, we shall have to solve our differences amicably by some way or other. It is hoped that the Muslim League members will, sooner or later, take up their rightful places in this Assembly, join in the deliberations and help in framing a Constitution that, will be acceptable to all.

Sir, in this big august House of the Constituent Assembly, we belonging to the Depressed Classes, are very few in number, but in the country as a whole our population is 60 millions. We are no doubt a part and parcel of the great Hindu community. But our social status in the country is so very low that we do feel that we require adequate safeguards to be provided for us. Firstly, we should be considered as a minority—a minority, not in the sense in which a community is a minority on religious or racial grounds, but a minority which is a separate political entity. It is needless however to, point out that we are a separate political entity. I think those who have got themselves interested in the uplift of the Depressed Classes will admit, as Mahatma Gandhi himself has admitted by his words and deeds, that adequate safeguards are necessary for these classes for their political salvation. The Poona Pact is Mahatma Gandhi's creation, and his writings in the 'Harijan' amply prove that the interests of the Depressed Classes must be carefully looked after.

The Cabinet Mission's Statement of May 16 does not say anything about the Depressed Classes; but the Press Conference that the British Cabinet Ministers had, after the publication of the Statement in Delhi, clearly shows that the Depressed Classes should be regarded as a minority. The subsequent debates on India in the House of Commons as well as in the House of Lords have also laid stress on the importance of providing safeguards for the Depressed Classes as a minority.

Sir, the minority problem is one of the most intricate problems, specially in a country like India, where so many elements live together with so many different kinds of interests. I believe this Constituent Assembly will have to face very important problems in regard to the minorities and find satisfactory solution for them. If this is done the House will have no difficulty in framing a constitution ultimately. We the members of the Depressed Classes do hope that this Constituent Assembly will do justice to us. There are Depressed Class in all the Provinces and in the States of India. They want representation on a population basis in the Legislatures in the Centre, Provinces and the States. They do not

[Mr. P. R. Thakur]

claim any weightage, but if any weightage is given to any community, they demand proportional weightage for them.

Para 4 of the Resolution says that—

“all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people.”

I think this is the best part of the Resolution: It would infuse real strength into the minds of the common people of India. The people of India might not be as much politically conscious as the people of other democratic countries; but the very idea that all the power of the State will come from the people will make the Depressed Classes of India politically conscious quickly. Para 7 of the Resolution says—

—“Whereby shall be maintained the integrity of the territory of the Republic....”

This is also very important. We the Depressed Classes are the original inhabitants of this country. We do not claim to have come to India from outside as conquerors, as do the Caste Hindus and the Muslims. As a matter of fact, India belongs to us and we cannot tolerate the idea that this ancient mother country of ours, will be divided between the Muslims and the Caste Hindus only.

I come from Bengal. Many of you might have heard of the civil disturbances over there. The Depressed Classes were the worst sufferers. We strongly repudiate any claim of the Muslim League to take away our beloved Bengal and constitute her into Pakistan. We also oppose the idea of grouping. We shall fight tooth and nail to maintain the integrity of India intact. I hope better sense will prevail on Muslim League soon.

In this connection I cannot but say that the leaders of the Muslim League in Bengal are trying to get the support of a section of the Depressed Classes by jostling leaders of their choice over them. I think they are doing it just to pave the way for their fantastic Pakistan. But, fortunately, this section of the Depressed Classes is very small. I do hope that this Constituent Assembly will see that nothing is done in regard to Bengal without the consent of the Depressed Classes. They are of overwhelming number.

Lastly, I cannot but express my joy that very soon India will be free. The time has come for it. There is no power on earth which could stop it. Some of my friends, especially Dr. Ambedkar, said that there would be civil war in the country before India gets freedom. The Depressed Classes will be very glad to meet it. As a matter of fact they are ready to face it.

With these few words I support the Resolution moved by the Hon'ble Pandit Jawahar Lal Nehru.

Mr. Chairman: I propose to call upon Sir Alladi Krishnaswami Ayyar to speak next; but as he is not in a position to stand up and speak, I permit him to sit and speak. I hope the House has no objection to that.

Honourable Members: No objection.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar (Madras: General): Sir, after the eloquent speech of our leader the Hon'ble Pandit Nehru, on the main Resolution and the eloquent speeches of other speakers on the amendment of the Right Hon'ble Dr. Jayakar, I shall try to be as brief as possible.

In support of his amendment, my Right Hon'ble Friend Dr. Jayakar has raised various points, not all of which, I am, afraid, are consistent with one another. His first point was that at this session, it was only

competent for the Constituent Assembly to determine the order of business and that it should immediately resolve itself into 'A', 'B' and 'C' sections, as the Statement of the Cabinet Mission did not contemplate the transaction of any other business than merely determining the order of business. Secondly, he raised a doubt as to whether it is at all competent for this Assembly and in any event advisable to pass a resolution before the representatives of the Muslim League decided to come in. Lastly, he raised a point that before the State representatives come in, it may not be right for this Assembly to pass such a Resolution.

None of these points, I venture to say, has any validity. In regard to the first, the Statement of the Cabinet Mission is not in the nature of a Statute which purports to lay down every detail as to the steps to be taken by the Constituent Assembly in the matter of framing a constitution for India. In the language of the Cabinet Mission themselves, their object was merely to settle a machinery whereby a constitution can be settled by Indians for Indians. It is inconceivable that any constitution can be framed or steps taken in that regard without a directing objective which the Assembly has to set before itself. The formulating of such a directing objective does not of course in any way involve this Assembly deviating or departing from the main principles of the Cabinet Statement. You may search in vain for the proceedings of any Constituent Assembly or Convention which has not formulated such a purpose at the commencement of its proceedings. I do not therefore propose to further elaborate the point as to what exactly is the connotation of the expression 'order of business' in the Cabinet Statement.

Now as to the merits of the Resolution itself: There is nothing in the terms of the Resolution to which either the Muslims or the States can take exception if they decide to come in. In fact, neither of these two parties would have a place, in this Assembly unless they subscribe to the objective of an independent India. The Statement of the Cabinet Mission in several paragraphs declares that the Constituent Assembly "is committed to the task of framing a constitution for an independent India". They make an appeal in paragraph 24 of the Statement that "the leaders of the people of India have now the opportunity of complete independence" and they say that "they trust that the proposals will enable the people of India to attain their independence in the shortest time". The Statement of the Cabinet Mission, in so many terms, declares that the new independent India may choose to be a member of the British "Commonwealth or not" and in any event they express the hope that "India will remain in close and friendly association with the British people". There is nothing to prevent republican India from being a member of the British Commonwealth as is the case with Ireland. In fact, it is common knowledge that the conception of British Commonwealth is undergoing change year by year and day by day owing to the force of international events. The Muslim League has, on several occasions, expressed itself that it is as strongly for independence as the Congress. We have no right in this House to read between the lines and presume that Muslim India does not mean what it says for this purpose. The only issue that was raised by the Muslim League was in regard to Pakistan. On that, the Cabinet Mission's Statement is definitely committed to a single Indian Union. It is only if the Muslim League subscribes to the article of a single Indian Union that the Members of the Muslim League have or could have any place in the Constituent Assembly. There is no guarantee nor any indication that the postponement of the Resolution to some day next month will be a factor in the Muslim League making up their mind in joining the deliberations of this Assembly. The argument, therefore, derives from the Muslim League staying away from the present Constituent Assembly and the possibility of their coming in at a later stage has no validity on the propriety of the Resolution before the House.

[Diwan Bahadur Sir Alladi Krishnaswami Ayyar]

Then as to the State: Here again, the States or the States Representatives have a place in this Assembly only if they subscribe to the creed and article of an independent India and if they are committed to the task of framing a constitution for an independent India. Otherwise, they have no place. They must choose to be constituent parts of an independent India or not. If they come in, it can only be on the footing that they are as much committed to the ideal and purpose of framing a constitution for an independent India as we in what is now British India. While I realise that there may be a certain incongruity in the States coming in only at a later stage in the proceedings of this Assembly—that is not our making—it cannot stand in the way of this Assembly formulating its objective in the form of a resolution at this stage, a resolution which does not commit this Assembly to anything beyond what is contained in the Statement of the Cabinet Mission. Has this Assembly begun to function or not? Or is it in a state of suspended animation until the State representatives choose to come in? We have elected our Chairman; we are proceeding to frame rules of business and we have begun the work of framing a constitution for an independent India? How can it be said that this Assembly has not begun to function? Is there any logic in the argument that the Assembly must not formulate its objective until some other party comes in or can come in? An independent India cannot, as was forcibly pointed out by Pandit Nehru, be a monarchy. The executive head of the Union cannot be a hereditary monarch, Hindu, Muslim or Sikh. He can only be an integral part of a Republic constitution.

There is no substance either in the objection raised on behalf of the States in certain quarters outside the House to paragraph 4 of the Resolution that—

“all power and authority of the sovereign independent India, its constituent parts and organs of Government are derived from the people.”

Is it suggested that in respect of the sovereign independent India, the authority of the provincial parts is derived from the people, and, so far as States are concerned, from the hereditary rules of the States? The constitution of a sovereign independent India is the concrete expression of the will of the people of India as a whole conceived of as an organic entity, and even in regard to the units themselves, the authority of the rulers can rest ultimately only on the will of the people concerned. The State machinery, be it monarchy or democracy, ultimately derives its sanction from the will of the people concerned. The Divine Right of Kings is not a legal or political creed in any part of the world at the present day. I do not believe that it will be possible for hereditary monarchs to maintain their authority on such a mediaeval or archaic creed. The Cabinet Mission was quite alive to this and in their Statement, reference is made throughout to Indians, meaning thereby Indians both of the Indian States and British India, deciding the future constitution of India, no distinction being drawn between Indians in what is now British tract and what is now native State territory. I need only refer to paragraph 1, 3, 16 and 24 of the Statement of the Cabinet Mission.

There was one other minor point which formed the subject of criticism, *viz.*, non-reference to groups in the Resolution, by Dr. Ambedkar, who I am glad to say has made a most useful contribution to the debate by giving his unqualified support to a United India. A close examination of the Cabinet Mission's Statement will point to the conclusion that the formation of groups is not an essential part of the constitutional structure. In the most material parts, the main recommendations are that there should be a Union of India dealing with certain subjects, that all subjects other than the Union subjects and residuary powers should vest

in the Provinces and in the States, the States being assimilated to the position of provinces under the Cabinet Mission Scheme. There is nothing in the terms of the Resolution to prevent Provinces from forming themselves into Groups as contemplated by the Cabinet Mission. There was a further comment as to the reference to 'justice, social, economic and political', being too thin. The expression 'justice, social, economic and political' while not committing this country and the Assembly to any particular form of polity coming under any specific designation, is intended to emphasise the fundamental aim of every democratic State in the present day. The Constitution framed will, I have no doubt, contain the necessary elements of growth and adjustment needed for a progressive society. After all, we have to remember that what we are dealing with is a Resolution setting out the main object of this Assembly and not a Preamble to a Statute.

Without embarking upon a meticulous examination of the different parts of the Resolution, what is important is that at this session we must be in a position to proclaim to our people and to the civilised world what we are after. It has to be remembered that the main object of this Assembly is not the fashioning of a constitution of a Local Board, a District Board or making changes in the present constitution of this or that part of the country but to give concrete expression to the surging aspirations of a people yearning for freedom by framing a constitution for a free and independent India for the good of the people, one and all, of this great and historic land, irrespective of caste, class, community or creed, with a hoary civilisation going back to several centuries. More than any argument, as the resolution before the House has received the blessings and support of Mahatma Gandhi, the architect of India's political destiny, from the distant village in Eastern Bengal, I trust that it will be carried with acclamation by the whole House without dissent and my respected friend, the Rt. Hon'ble Dr. Jayakar, will see his way to withdraw his amendment unless he has very strong conscientious objection to the course suggested. (*Applause*).

Mr. Jaipal Singh (Bihar: General): Mr. Chairman, Sir, I rise to speak on behalf of millions of unknown hordes—yet very important—of unrecognised warriors of freedom, the original people of India who have variously been known as backward tribes, primitive tribes, criminal tribes and everything else, Sir, I am proud to be a *Jungli*, that is the name by which we are known in my part of the country. Living as we do in the jungles, we know what it means to support this Resolution. On behalf of more than 30 millions of the Adibasis (*cheers*), I support it not merely because it may have been sponsored by a leader of the Indian National Congress. I support it because it is a resolution which gives expression to sentiments that throb in every heart in this country. I have no quarrel with the wording of this Resolution at all. As a *jungli*, as an Adibasi, I am not expected to understand the legal intricacies of the Resolution. But my common sense tells me, the common sense of my people tells me that every one of us should march in that road of freedom and fight together. Sir, if there is any group of Indian people that has been shabbily treated it is my people. They have been disgracefully treated, neglected for the last 6,000 years. The history of the Indus Valley civilization, a child of which I am, shows quite clearly that it is the new comers—most of you here are intruders as far as I am concerned—it is the new comers who have driven away my people from the Indus Valley to the jungle fastnesses. This Resolution is not going to teach Adibasis democracy. You cannot teach democracy to the tribal people; you have to learn democratic ways from them. They are the most democratic people on earth. What my people require, Sir, is not adequate safeguards as Pandit Jawahar Lal Nehru has put it. They require protection from Ministers, that is position today. We do not ask for any special protection. We want to be treated like every other Indian.

[Mr. Jaipal Singh]

There is the problem of Hindusthan. There is position of Pakistan. There is the problem of Adibasis. If we all shout in different militant directions, feel in different ways, we shall end up in *Kabarasthan*. The whole history of my people is one of continuous exploitation and dispossession by the non-aboriginals of India punctuated by rebellions and disorder, and yet I take Pandit Jawahar Lal Nehru at his word. I take you all at your word that now we are going to start a new chapter, a new chapter of Independent India where there is equality of opportunity, where no one would be neglected. There is no question of caste in my society. We are all equal. Have we not been casually treated by the Cabinet Mission, more than 30 million people completely ignored? It is only a matter of political widow-dressing that today we find six tribal members in this Constituent Assembly. How is it? What has the Indian National Congress done for our fair representation? Is there going to be any provision in the rules whereby it may be possible to bring in more Adibasis and by Adibasis I mean, Sir, not only men but women also? There are too many men in the Constituent Assembly. We want more women, more women of the type of Mrs. Vijayalakshmi Pandit who has already won a victory in America by destroying this racialism. My people have been suffering for 6,000 years because of your racialism, racialism of the Hindus and everybody else. Sir, there is the Advisory Committee. My people, the Adibasis—they are also Indians—are deeply concerned about what is going to happen about the selection to the Advisory Committee. When I was first given a copy of the Memorandum, as first submitted by the Cabinet Mission, in section 20 the language read as follows:—

“The Advisory Committee on the rights of citizens, minorities and tribal and excluded areas should contain full representation (mark you ‘should contain full representation’) of the interests affected.....”

Now, when I read a reprint of that in Command Paper 6821, the same paragraph 20 seems to read differently. Here it reads:

“The Advisory Committee on the rights of citizens, minorities and tribal and excluded areas will contain due representation.”

Sardar Harnam Singh (Punjab: Sikh): Just a misprint. The original text contained the words “should contain full representation of the interests affected”.

The Hon'ble Pandit Jawahar Lal Nehru: Is it so?

Sardar Harnam Singh: I am definite.

Mr. Jaipal Singh: I want to be quite clear on that point. I think there has been juggling of words going on to deceive us. I have heard of resolutions and speeches galore assuring Adibasis of a fair deal. If history had to teach me anything at all, I should distrust this Resolution, but I do not. Now we are on a new road. Now we have simply got to learn to trust each other. And I ask friends who are not present with us today, that they should come in, they should trust us and we, in turn must learn to trust them. We must create a new atmosphere of confidence among ourselves. I regret there has been too much talk in this House in terms of parties and minorities. Sir, I do not consider my people a minority. We have already heard on the floor of the House this morning that the Depressed Classes also consider themselves as Adibasis, the original inhabitants of this country. If you go on adding people like the exterior castes and others who are socially in no man's land, we are not a minority. In any case we have prescriptive rights that no one dare deny. I need say no more. I am convinced that not only the Mover of this Resolution, Pandit Jawahar Lal Nehru, but every one here will deal with us justly.

It is only by dealing justly, and not by a proclamation of empty words, that we will be able to shape a constitution which will mean real freedom. I have heard pronouncements made by Pandit Jawahar Lal Nehru in different parts of the country. More particularly was I impressed by what he said during his visit to Assam during the elections. When he was in Ramgarh, I invited him to come and address the sixty thousand Adibasis who were assembled at Ranchi, only 30 miles away. Unfortunately, work kept him busy and he was unable to come. Very fine things have been said. Now, Sir, I would like, for example, to quote, if I may, what Maulana Abul Kalam Azad said at Ramgarh:

“The Congress does not want to dictate its own terms. It admits the fullest right of the minorities to formulate their own safeguards. So far as the settlement of their problem is concerned, it would not depend on the word of the majority.”

Sir, the solutions to the various problems of the Adibasis are obvious to my mind and these solutions will have to be thrashed out at some later date. Here I can only adumbrate what is my faith in what seems to be the just solution and it is by a realignment by a daring redistribution of provinces. The case of my own area has been very well put, Sir, by yourself when you were the Chairman of the Reception Committee of the Ramgarh session of the Congress. May I just read out the words of cheer that you gave them?

“That portion of Bihar where this great assemblage is meeting today has its own peculiarities. In beauty it is matchless. Its history too is wonderful. These parts are inhabited very largely by those who are regarded as the original inhabitants of India. Their civilisation differs in many respects from the civilisation of other people. The discovery of old articles shows that this civilisation is very old. The Adibasis belong to a different stock from the Aryas and people of the same stock are spread towards the south-east of India in the many islands to a great distance. Their ancient culture is preserved in these parts to a considerable extent, perhaps more than elsewhere.”

Sir, I say you cannot teach my people democracy. May I repeat that it is the advent of Indo-Aryan hordes that has been destroying the vestiges of democracy. Pandit Jawahar Lal Nehru in his latest book puts the case very nicely and I think I may quote it. In his ‘Discovery of India’ he says, talking of the Indus Valley Civilisation, and later centuries—

“There were many tribal republics, some of them covering large areas.”

Sir, there will again be many tribal republics, republics which will be in the vanguard of the battle for Indian freedom. I heartily support the Resolution and hope that the members who are now outside will have the same faith in their fellow countrymen. Let us fight for freedom together, sitting together and working together. Then alone, we shall have real freedom. (*Applause*).

Mr. Chairman: I want to say just one word. The reprint of the Statement of May 16th, 1946 was taken exactly as it was presented to the Houses of Parliament.

Mr. Jaipal Singh: The one that was given to me bears the signature of the Governor of Bihar.

Mr. Chairman: I do not know who has made the alteration. This book contains the Statement as was presented to the Parliament in the Command Papers.

Dr. Suresh Chandra Banerjee (Bengal: General) : May I know what is the correct word, Sir ? ‘Due’ or ‘Full’.

Mr. Chairman: “Due” is the word I find printed.

Dr. Suresh Chandra Banerjee: The word “Full” has been used in the book given to us.

Mr. Chairman: There seems to be some confusion. I have to find out how it has arisen. This is exactly what was presented to the Parliament.

Dr. Suresh Chandra Banerjee: The book we have got, Sir.....

Mr. Chairman: I shall make enquiries about it. The Statement as it is printed in this book is, I understand, exactly as it was presented to the Parliament.

Mr. Jaipal Singh: Before presenting to the Parliament, the word was "Full".

Mr. Debi Prosad Khaitan (Bengal: General): Mr. Chairman, Sir, representing the mercantile community, I want to look at this proposal from the businessman's point of view. From that standpoint, I heartily support the proposal that has been put forward by Pandit Jawahar Lal Nehru, and oppose the proposal that has been put forward by the Right Hon'ble Dr. Jayakar. Dr. Jayakar, after reminding us that he has been a Judge of the Federal Court and is a sitting Member of the Privy Council, has given us some *obiter dicta* which are perhaps not supported either by the Statement or the circumstances of the case. In my humble opinion, what the Cabinet Mission did was to recognise the aspirations of the people to attain independence, put some fetters on the deliberations of the Constituent Assembly and leave the rest to the talent and genius of the representatives of this country. There are many lacunae in the Cabinet Mission's Statement which we are entitled to fill and shape our constitution in such a manner as we think will give to the people their aspiration and give us a good constitution. Dr. Jayakar seems to think that at this stage we can do nothing but elect the Chairman, and lay down the general order of business. But I am afraid, Sir, that he interprets the words "general order of business" in a very narrow manner. Unless we are prepared to lay down the general objective which we have got to achieve, unless we are prepared to appoint certain Committees which are necessary for the purpose of shaping the constitution of this country, unless we are prepared to appoint a committee and define the Central subjects, I do not see how it is possible for us to go ahead with the shaping of the Constitution of India. According to Dr. Jayakar's argument, at this preliminary session, we would not even be able to appoint a Committee to deal with the Central subjects; I fail to understand how we can go ahead without doing so. If we do not define the Central subjects at this period of time, it will not be possible for the Provinces or the Groups to frame their own constitution. They may assume to themselves powers which may ultimately have to be taken over by the Central Government. It is therefore absolutely necessary that apart from laying down the objective, we should find out what is meant by the Central subjects and what finances are necessary to administer them. Similarly we shall have to lay down other principles, appoint an Advisory Committee to deal with the rights of minorities, how to safeguard their interests and do any other things that are desirable and endeavour, in my opinion, to lay down for the purpose of framing the constitution. He fears that if we put forward the objective now, Mr. Jinnah and his party may not come into the Constituent Assembly. I very humbly differ from his opinion. We have so often approached Mr. Jinnah. Have we ever succeeded in melting his heart for the purpose of joining us sincerely and honestly for the purpose of attaining independence? Even when the Interim Government was formed, he would not accept the invitation of Pandit Jawahar Lal Nehru to join the Interim Government but stated to the contrary that he was accepting the invitation of the Viceroy. When the Congress time and again approached him to reach a settlement, he asked Mr. Churchill—his friend—to get himself invited to London for the purpose of clearing up certain misunderstandings—I call them misunderstandings—between the Congress and himself. Even now as we are proceeding with the work of the Constituent Assembly for the purpose of shaping the destiny of our country, he is

spending his time at Cairo for the purpose of spreading a disease which I may call Hindu-phobia, that Hindu Raj will extend to the Mid-East. I am not sorry or surprised that he is engaged in the Propaganda at Cairo. If he thinks that the Hindus are strong enough to extend their dominions to the Mid-East, it is all the more reason for him to come back to his own country and join us in framing a constitution for attaining independence with due regard to the interests of all minorities consistently with peace and progress. I hope, Sir, we shall not suffer from a disease that I may call Jinnah-phobia and always out of fear of Mr. Jinnah and his Muslim League, make ourselves absolutely helpless and delay the framing of our much needed constitution. We should muster up courage. We should see to it that the Constitution that is framed is reasonable to safeguard all interests so that the economic and political freedom of our country may be achieved as early as possible. If we simply go on delaying, I do not know what further troubles may arise. For the purpose of avoiding trouble in the future, I would submit to this House to take courage and go ahead with the framing of the Constitution in order that we may attain independence as quickly as we possibly can. I hope, Sir, that we shall not lose time but go ahead with our work and I therefore support the Resolution as moved by Pandit Jawahar Lal Nehru. (*Cheers*).

Mr. Damber Singh Gurung (Bengal: General) : Mr. Chairman, Sir, I understand here today as the only representative of 30 lakhs of Gurkhas permanently domiciled in India. It is 30 lakhs, near about the population of the Sikhs, still I am the solitary representative here in this House. I need not give any introduction as to who these Gurkhas are. They have made themselves sufficiently known to the world by their excellent fighting qualities. It has been proved to the hilt during the last World War No. I and No. II that they are the greatest fighting race in the World.

It is on behalf of these valiant Gurkhas that I, as the President of the All-India Gurkha League, whole heartedly support the Resolution moved by Pandit Jawahar Lal Nehru. It is high time that we should take such a strong step. If we adopt the policy of wait and see as has been advocated by Dr. Jayakar and supported by Ambedkar, we will never reach our goal. The Interim Government which is functioning to-day would not have come into existence if we had adopted that policy. Fortunately these two Doctors are not Doctors in Medicine, otherwise they would have killed the patient by delaying the operation. (*Laughter*). We have waited too long and we should not wait any longer. It will be simply showing our weakness.

Sir, it has been very often said that the Gurkhas have been the stumbling block on the path to freedom. It may be true if it is viewed from that angle of vision but it must always be remembered that, especially in the Military Department, duty first and duty last, and the discipline is the most essential thing without which no nation can rule. Now in Free India you will ask us to do the same thing as we were asked to do under the British Government, if there be any disrupter of the constitutionally established Government, and you will praise them for maintaining that discipline.

Sir, the problem of the Gurkhas is quite different. They are scattered throughout India. It is only in the district of Darjeeling and the Province of Assam that they are concentrated to a certain extent. Their number in these two areas is about 14 lakhs and the rest are scattered throughout India. They are very very backward educationally and economically. Though we were made to do the dirtiest work in India for which we have been even called butchers by Indians, though hundreds and thousand of

[Mr. Damber Singh Gurung]

Gurkha lives were sacrificed to keep the British rule in India and elsewhere, nothing has been done by the British Government so far for the uplift of the Gurkhas. We have been very sadly neglected. Only at the time of War they remember the Gurkhas. It has always been the policy of the British Government to keep us backward and ignorant so that we may be sacrificed any time, anywhere they liked.

The Gurkhas are apprehending whether the same policy will be followed by the Congress too. There is strong ground for this apprehension. Before the election of Members to the Constituent Assembly, the All-India Gurkha League approached the Congress High Command to give adequate representation to the Gurkhas too in the Constitution Assembly but our claim was totally ignored and not a single seat was given for 30 lakhs of Gurkhas, whereas as many as 3 seats were given to the Anglo-Indians whose population is only 1 lakh 42 thousand in India. I do not think that Gurkhas will, any more, tolerate this kind of injustice. I have, very recently been to Nepal, leading a delegation of the All-India Gurkha League to His Highness the Maharaja of Nepal and I hope Nepal will not allow any such exploitation of the Gurkhas. Sir, the demand of the Gurkhas is that they must be recognised as a minority community and that they must have adequate representation in the Advisory Committee that is going to be formed. When the Anglo-Indians with only 1 lakh 42 thousand population have been recognised as a minority community, and Scheduled Castes among the Hindus have been recognised as a separate community, I do not see any reason why Gurkhas with 30 lakhs population should not be recognised as such. The Gurkhas whose total population including Nepal is 15 millions shall have to play a very very important part in Free India. I request the leaders to consider this very seriously.

Lastly, I would like to say a word, Sir. If Mr. Jinnah thinks himself to be an Indian, I would request him to come to India and settle the differences here, as this is our domestic quarrel. Why should he seek the help of those who kept us in slavery for centuries? I would think that a kick from a brother is more palatable than a hypocritic pat from an outsider. If the major party does not do any justice to the cause of the minorities, we will combine together and revolt and make India a hot bed and I am afraid, the ancient history of India may be repeated. But I must make one point clear, that no minority will support the fantastic claim for Pakistan of Mr. Jinnah. We stand for a United India.

In spite of all this, if Mr. Jinnah goes on throwing the challenge of civil war, I ask the country-men to accept that challenge and let us fight it out. As for the Gurkhas, we will fight along with those who want one India and oppose those who want to divide it.

Dr. Sir Hari Singh Gour (C. P. and Berar: General) : Sir, as I listened to the speeches of the Hon'ble Members, my mind has been rankling with three different propositions. The first is the Hon'ble Pandit Jawahar Lal Nehru's well-considered and well-phrased Resolution. The second is my friend Dr. Jayakar's blocking motion in the form of an amendment. And the third is the frequent cry against Mr. Jinnah's Pakistan. And the fourth—incidentally—is a mention of the Indian States.

May I, Sir, at the outset refer to the Resolution itself ? It has been said that this is only a Preliminary session of the Constituent Assembly and we are not entitled to go into the question of this Resolution. With due respect to those who take this view. I wish to point out that the Constituent Assembly has been described—and rightly described—as a Sovereign Body. If it is the Sovereign Body of India, it is entitled to pass this Resolution, which sets out the basic principle of the whole constitution of

future India. Hon'ble Members seem to think that the Constituent Assembly is the creature of the British Cabinet Mission to India and that it is conditioned by the terms of the document known as the Cabinet Mission's Statement of May, the 16th. I wish respectfully to point out that the Constituent Assembly is the voice of the people of India (*Hear, hear*) and is not the creature of the British Cabinet Mission in this country, and as the voice of India, it owes its duty to the people of India and when that voice became strong and inflexible the British-Cabinet yielded to the pressure of India to give to India, what India had been demanding for several years—the right to frame its own constitution for this Assembly. Let us not, therefore, dismiss from our minds that while we pay due respect to the wishes of the Cabinet Mission we are not bound by the conditions that they may have laid down, and that our primary duty—and our sole duty—is to discharge our responsibility to our masters—the people of India. If this fact is kept in view, the other questions will recede into the background.

One of them is the terms of reference and Mr. Jayakar's consequential amendment. I beg to submit that the Constituent Assembly would lose its prestige and dignity if it was going about hankering for the support of our friends of the Muslim League. If we have a duty to the public of India that duty must and shall be performed, regardless of whether Mr. Jinnah or Pandit Jawahar Lal Nehru or anybody else comes in or goes out. These are personal accidents and incidents, but our Constituent Assembly must carry on its work regardless of people who come in and people who go out of it. (*Hear, hear.*) Supposing Messrs. Jinnah & Co. had come in on the first stage and for reasons of their own—and for very good reasons, I assure you—they walked out of the Assembly, would that be any ground for adjourning this Assembly to run after them and catching them by their coat tails and saying to them "Please don't run out; come in and if you run out, we also will run out with you" (*Laughter*). I submit no Constituent Body—much less the Constituent Body of Aryavarth—shall demean itself into this position of humiliation and self-negation.

Mr. Jinnah, according to the newspapers, is now at Cairo—influencing the Muslim opinion in favour of Pakistan. I have written to Mr. Jinnah before, and I wish once more to remind this House that we might send him a message that he may perhaps prolong his visit to the ten Pakistans which have been and are enforced for a thousand years in Iraq, Iran, Libya and the rest—let him see and visualise for himself the dreams of these Pakistans and having done that, he will come back to this country, a sadder but a wiser man, thoroughly humiliated and convinced that Pakistan is not suited to the best interests of our fellow-countrymen, the Muslims of India. If India were to be divided into Pakistan and Hindustan, how many hours will this Pakistan be free, and will not be a morsel to the surrounding powers as have been the Pakistans throughout the Muslim world.

Sir, as a student of history, I was reading the history of Turkey and saw how Kemal Pasha Ata-Turk saw the futility and unwisdom of combining politics with religion. The first thing he did was to put an end to Pakistan and establish the Republic of Turkey. And Turkey, of all Muslim countries, is probably the only independent country in the configuration of nations from Iran right up to Palestine. Let our friends the Muslims realise this fact and remember it and they will have no difficulty whatever in renouncing Pakistan as a dangerous and suicidal move on the part of Mr. Jinnah.

Then, Sir, up to now the majority community has been denouncing 'Pakistan on the ground that we are for the unity of India. But we are for the unity of India, not from any sentimental grounds; we are for the unity

[Dr. Sir Hari Singh Gour]

of India because we have often offered—and I wish on behalf of my friends to offer once more from the floor of this House—a constructive suggestion specially designed to benefit the Mussalmans of India. Let there be joint electorates and let the Muslims keep their quota of seats, but let there be a provision in the electorates that no member of one community shall be deemed to have been duly elected unless he polls a certain percentage of votes of the other community. In this way we shall have introduced democratic and territorial elections instead of communal elections, and the severity of caste and communal differences will begin to disappear in course of time. If this proposal is acceptable to the Muslim League, I have no doubt that the majority community and the Congress will probably consider the proposal favourably, as being both democratic and non-communal, and our reintroducing the principle of territorial elections in this country. My friends on the Muslim side ought to have a constructive policy, not for dividing and disuniting India but for the purpose of creating a homogeneous solidarity between the various castes, communities and classes in India so as to bring about a united free India.

Sir, in America we have really fifty different nationalities of all kinds and all grades, but the moment the American war of independence was fought and won, they never thought of thinking their freedom with religion, and this is why America has become now the master race of the world. And India, let me tell you, will equally be not the master but the chief servant of all Asiatic countries, if it remains united and strong for her self-defence.

Another section of the Indian people, the Indian States, are still lingering on the fence. They say, you should postpone the Constituent Assembly till we come in. I beg to submit, as a student of law, that the position of Indian States is extremely simple and it is this. They say they have their treaties with the Crown. I will assume that they or everyone, one and all of them have their treaty with the Crown and that these treaties go far back to hundred or a hundred and fifty years. But what was the Crown of England 150 years ago? It was the voice of the ruling Government, of the British Cabinet, and, consequently, when they speak of their having had treaties with the Crown, what they do mean is that they have had their treaties with the Government of England for the time being in power. It is an ordinary platitude if I say—if the Crown of England accepted the advice of the British Cabinet 100 or 150 years ago, is it wrong for the Crown of England to-day to act on the advice of the Indian Cabinet? Can the Indian Princes complain that the Crown has got no right to choose its own advisers now? Therefore, their position is a futile one when they speak of their treaties with the Crown. Then, they say that the Crown has got the right of paramountcy. But they forget that the British Government in India has got the right of protecting all the Indian States, from the big State of His Exalted Highness the Nizam of Hyderabad to the smallest State in Kathiawar. And he who has the right of protection enjoys *de facto* the right of paramountcy. The defence of British India, having been transferred to the Interim Government, the Interim Government became responsible for the security of the Indian Princes, and, consequently, *pro tanto* that right of paramountcy has passed from the King of England or the Parliament of England to the Interim Government.

The third point that I wish to draw the attention of the Indian Princes to is, even assuming that there was a figurative continuance of paramountcy in the King, it was pointed out in the course of debates in the House of Lords that when the transfer of power to India takes place, that paramountcy will lapse, and, consequently, the Indian States must either join hands with the Interim Government in India or remain isolated and

aloof as a subordinate creature of that free India. I therefore advise my friends of the Indian States that they are waiting in vain for an invitation from the Constituent Assembly to come in. If they wish to come in, they are welcome to do so. As regards treaties with the Indian Princes in the later stages, that again is a matter on which the Constituent Assembly will have a final say. I therefore think that the question of Pakistan and that of Indian States need not worry us. Let us go ahead with our duty, but remember it that this Constituent Assembly has been misunderstood even by the High Command of the Congress, as if we were a creature of the British Government or of the British Mission. It is not the creature of the British Government or of the British Crown. (*Hear, Hear*) It has come into existence by reason of the fact that the political consciousness of the country has grown to an extent that the British Government will either face the constitutional freedom of India or the coercive freedom. Either force or persuasion is left to the British Government. The late Viceroy, Lord Linlithgow in the House of Lords, only the other day, pointed out that the British Government cannot hold on to India unless it has behind it the moral claim of the British support. It has no support in Great Britain and it certainly has ceased to have support in India. Consequently, it has become a question of political necessity; and the British Mission and the British Labour Party are now pledged to grant freedom to this country. Freedom will come. It shall come. But when we are sitting here to frame the future Constitution of India, let us not look askance and cast our eyes as to what the Muslim League would think or what the British Government will think and refer our doubts to the Federal Court.

I do not wish to anticipate the decision of this House on the subject of reference to the Federal Court, but I do wish to repeat once more that this House should be sufficiently self-respecting to carry out its duties regardless of the opposition it may meet and the criticisms it might arouse from whatever source they might come. (*Loud applause*).

Shrimati Dakshayani Velayudan (Madras: General): Mr. Chairman, before I express my views on the Resolution, let me pay my humble homage to our Revolutionary Father, Mahatma Gandhi (*applause*). It is his mystic vision, his political idealism and his social passion that gave us the instruments to achieve our goal. I submit that a Constituent Assembly not only frames a constitution, but also gives the people a new framework of life. To frame a constitution is an easy job, because there are many models for us to imitate. But to renew a people on a new foundation requires the synthetic vision of a planner. The Independent Sovereign Republic of India plans a free society. In our ancient polity, there were conflicts between absolutism and republicanism. The slender flame of republicanism was snuffed out by the power political States. The Lichavi Republic was the finest expression of the democratic genius of our ancients. There, every citizen was called a Raja. In the Indian Republic of tomorrow, the power will come from the people.....

We could understand the attitude of the Princes in this matter from the statement made by the members of the Negotiating Committee who represent the Chamber of Princes. But here comes a Maharaja with a historic message to his people. I mean the Maharaja of the Cochin State, which is one of the most advanced States in India and I am proud to say that I belong to it. Here is a part of the message:

“I believe in pure constitutional rule and, throughout my life, I have sedulously cultivated an attitude towards life and institutions which are antipathetic to autocracy and personal rule.”

From this message it is obvious that the power comes from the people. In the Indian Republic there will be no barriers based on caste or community. The Harijans will be safe in a Republican State of the Indian

[Shrimati Dakshayani Velayudan]

Union. I visualise that the underdogs will be the rulers of the Indian Republic. I therefore appeal to the Harijan Delegates of this Constituent Assembly that they should not harp on separatism. We should not make ourselves the laughing stock of our future generations by harping on separatism. Comunalism, whether Harijan, Christian, Muslim or Sikh, is opposed to nationalism. (*Hear, hear.*) What we want is not all kinds of safeguards. It is the moral safeguard that gives real protection to the underdogs of this country. I am not at all afraid of the future of the Harijans. It is not safeguards that go to improve the status of the Harijans.

The other day we heard Mr. Churchill waxing eloquent over the question of the Harijans. He said that the British Government is responsible for the life and welfare of the so-called Scheduled Castes of India. I would like to ask him one question. What has the British Government done to improve the social status of the Harijans? Did they ever pass any legislation to remove the social disabilities of the Harijans except producing some chaprassis and butlers? And Mr. Churchill also complained that the Harijans were thrown at the mercy of the Caste Hindus, their oppressors. Mr. Churchill cannot take the 70 million Harijans of this land to Great Britain to give them protection. He may give protection to a few communalists who might fly to England. Mr. Churchill should understand that we are Indians. The Harijans are Indians and they have to live in India as Indians and they will live in India as Indians. We also heard recently that the Scheduled Castes are considered as a minority. Nothing of the sort is mentioned in the State Paper of May 16. I refuse to believe that the 70 million Harijans are to be considered as a minority. Neither Lord Pethick-Lawrence, the Secretary of State for India, nor even the Prime Minister, Mr. Attlee, nor even the Leader of the Opposition, Mr. Churchill, is going to improve the condition of the Harijans. What we want is the removal, immediate removal, of our social disabilities. Only an Independent Socialist Indian Republic can give freedom and equality of status to the Harijans. Our freedom can be obtained only from Indians and not from the British Government.

Let me make a personal appeal to Dr. Ambedkar to join the nationalist forces of this country. He is the only leader of the Harijan community and his non-co-operation with the nationalist forces is a great tragedy to the Harijans; his co-operation with the nationalist forces will enhance the emancipation of the Harijans. Here is a unique occasion for you, Sir, (addressing Dr. Ambedkar) to place your services before the country.

The Harijans will be free only in a Socialist Republic India, and let us all support the Resolution and work for its implementation even if it demands the utmost sacrifices from us.

Regarding the amendment brought forward by the Right Hon'ble Dr. Jayakar, I think those who support the amendment get their inspiration from Whitehall and not from the people of this land. Recently we heard much about the postponement of the Constituent Assembly from different quarters Lord Wavell pleaded for it, Mr. Jinnah insisted on it. I feel that Dr. Jayakar by moving this amendment, is questioning the very validity of the Constituent Assembly and is strengthening the argument put forward by Mr. Churchill the other day in the House of Commons.

Dr. Jayakar also expressed a pious sympathy for the people of the States. If by the term 'States' the Hon'ble Members means the real representatives of the States, I can assure the Hon'ble Member that the people of the States are behind the Congress and the Constituent Assembly, (*applause*) and any decision made by the Constituent Assembly will be acceptable to the people of the States.

I think I should make some reference to the views expressed by the Communist leader. In the historic Resolution moved by Pandit Jawahar Lal Nehru, I think every provision is made for the development of every individual in this land. And now the Party which called the war as the People's war, has come here to advise the Constituent Assembly to postpone the consideration of this Resolution for some time. If I am wrong there, I may be excused. The so-called Communists, instead of emancipating the Harijans, are only exploiting them. They promise pieces of land to the Harijans and in that way they try to take them away from the nationalist forces. I think the Communist Party is getting its inspiration from some outside quarter and so it is not for us to accept the views of the Communists. We cannot depend on such a party for our emancipation and our emancipation lies in the national forces which are represented in this Assembly. I therefore hope that in the future independent India the Harijans will have an honourable place as every other citizen of this land.

Mr. Chairman: It is already quarter past one. The House will now adjourn till day after tomorrow, 11 o'clock.

The Assembly then adjourned till Eleven of the Clock, on Saturday, the 21st December 1946.

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CONSTITUENT ASSEMBLY OF INDIA

Saturday, the 21st December, 1946

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eleven of the Clock, Mr. Chairman (The Hon'ble Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

Mr. Chairman: The House would join me in welcoming another Lady Member who has appeared for the first time this morning, having been away attending an International Conference. I request Rajkumari Amrit Kaur to sign the register.

The following members then presented their credentials and signed the Register.

Rajkumari Amrit Kaur (C.P. and Berar: General);
Sir Padampat Singhania (United Provinces: General).

RESOLUTION *RE*: ELECTION OF CONSTITUENT ASSEMBLY NEGOTIATING COMMITTEE

Mr. K. M. Munshi (Bombay: General) : Mr. Chairman, Sir, I beg to move the following Resolution:—

This Assembly resolves that the following members, namely,—

- (1) Maulana Abul Kalam Azad,
- (2) The Hon'ble Pandit Jawaharlal Nehru,
- (3) The Hon'ble Sardar Vallabhbhai Patel,
- (4) Dr. B. Pattabhi Sitaramayya,
- (5) Mr. Shankarrao Deo, and
- (6) The Hon'ble Sir N. Gopaldaswami Ayyangar,

do constitute a committee to confer with the Negotiating Committee set up by the Chamber of Princes and with other representatives of Indian States for the purpose of—

- (a) determining the distribution of the seats in the Assembly not exceed in number which, in the Cabinet Mission's Statement of 16th May, 1946, are reserved for Indian States, and
- (b) deciding the method by which the representatives of the States should be returned to this Assembly.

The Assembly further resolves that not more than three other Members may be added to the Committee later and that they be elected by the Assembly at such time and in such manner as the President may direct".

Mr. Somnath Lahiri (Bengal: General) : I should like to know what is the procedure for submitting amendment to this Motion. I presume that We should be given some hours at least to move amendments.

Mr. Chairman: Is it an amendment with regard to the substance of the Motion or with regard to the names?

Mr. Somnath Lahiri: With regard to the substance of the Motion.

Mr. Chairman: We shall see.

Shri Sri Prakasa (United Provinces : General) : It would be best to fix 1-15 P.m. as the hour by which the amendments may be moved and in the meantime we may go on with the Resolution.

Mr. Chairman: I suppose the mover and the seconder will take a little more than an hour and in that time you will be able to move the amendment.

Mr. K. M. Munshi: This is more or less a formal motion for the simple reason that the Cabinet Mission's Statement as well as Lord Pethick-Lawrence's speech both contemplate that there should be a committee appointed by this Assembly in order to negotiate with the States for the purposes mentioned in this Resolution. I may refer in this connection, Sir, to the recent remarks of Lord Pethick-Lawrence. Lord Pethick-Lawrence said that—

“The manner in which the seats representing the States should be filled in the Constituent Assembly was to be negotiated between the Committee appointed by the Indian States and a committee appointed by the British India side of the Constituent Assembly. The States had appointed the Committee and when the Committee has been appointed by the British India part of the Assembly, Negotiations could begin.”

It is necessary, as the House will easily see, to begin these negotiations at the earliest possible date. It is for that reason that this Resolution has been placed before the House today. The number has been restricted at present to 6 because this Committee, having to deal with delicate negotiations, has to be as small as it possibly could be. Further the purposes, for which the Committee is being appointed, are fully set out in the Statement. I therefore commend this Resolution for the acceptance of the House.

Dr. Sachchidananda Sinha (Bihar: General) : I second it.

An Honourable Member: Will the result of the negotiations be placed before the Assembly?

Mr. K. M. Munshi: I mention for the information of the Hon'ble Members that so far as the Cabinet Mission's Statement is concerned, It provides for Negotiating Committee on behalf of the States. The Negotiating Committee on behalf of the Constituent Assembly will meet it and will decide the nature of the State representation to the Assembly. That so far as I understand is the meaning of the Cabinet Mission's Statement. But certainly the matter will be brought before this House and I have no doubt the House will have an opportunity to express itself upon it.

Mr. P. R. Thakur (Bengal: General) : Sir, I want to move an amendment that after the name of the Hon'ble Sir N. Gopalaswami Ayyangar, the name of one of the Depressed class members of this House be added.

I press this point merely because it is important that in this Committee which is going to determine the distribution of the seats in the Assembly reserved for the States, and decide the methods by which the representatives of the States should be selected, a member from the Depressed Classes should be added. There are Depressed Classes in the

States and their condition, both social and Political, is worse than that of the Depressed Classes in the Provinces. I request the House therefore to add one member of the Depressed Classes from this House.

Mr. Chairman: Have you got any name?

Mr. P. R. Thakur: The House will decide who will be there.

Mr. Somnath Lahiri: I have two amendments, Sir. My first amendment is to make the point clear which was not made clear by the mover of the Resolution whether decisions of the Committee will be subject to ratification by this Assembly.

The amendments are:

(1) Add the following to the Resolution immediately before the last para:

“After the necessary negotiations and consultations the Committee shall place before this Assembly for ratification their final recommendations regarding the distribution of seats to the different States and the method by which the representatives of the States may be returned.”

(2) At the end of item (b) of the functions of the Committee add the following:

“The Committee, however, should negotiate under the clear understanding that this Assembly recognises only the subjects of the States as being eligible to send States representatives to this Assembly and on the basis of direct election.”

These are my two amendments. The objects of these amendments, especially the first is to fix the question of States representatives which, as you know, is something which is not yet fixed. I know that most of the members of the Committee whom you have proposed and most of the members of this House also realise that it is the States People who should have representation rather than the autocratic Rulers of the States. Unfortunately the State paper does not make this clear. There have been different interpretations on it, as was pointed out the other day by, I think, Sir N. Gopaldaswami, Ayyangar. We should make it quite clear that we do not want the Princes and the Rulers of the States to determine what should be the representation of the States in this Assembly, because we fear that they, being autocratic Princes on the one hand and tools of British imperialism on the other, they would like to whittle down whatever little freedom constitutionally we may try to evolve. It is neither fair to the people of the States as a whole.

You know, Sir, at present throughout most of the States, a terrible regime of repression is being conducted by the Rulers of the States. You have seen how in Kashmir even Mrs. Aruna Asaf Ali's meeting was disturbed by the authorities and how the whole National Conference is being thwarted by repression, even though election is supposed to be going on there under democratic rules, or whatever it may be. We have also heard how at Hyderabad, during the last few months, 7,000 people, men, women and children have been butchered by the Military and Police of the Hyderabad State. We certainly do not want that these Rulers should come here and negotiate with us and have a hand in framing our constitution. It is for this reason, Sir, that I move the second amendment that the Committee however should negotiate on the clear understanding that this House recognises only the subjects of the States as being eligible to send States representatives to this Assembly and on the basis of direct election.

[Mr. Somnath Lahiri]

I do not doubt that the representatives whom you have chosen will have the needs of the States people in their mind. But it is something which is finally for the people of the States themselves to decide. Therefore, keeping my good faith in the members chosen, but keeping the final ratification to this Assembly, in the light of future developments, in the light of what attitude the Rulers of the States might take up and in the light of what demands the people of the States might make, I have moved that it should be subject to ratification by this Assembly.

Mr. K. M. Munshi: May I say one word, Sir?

Mr. Chairman: The resolution has been moved and the amendments have been moved. The whole thing will be for the discussion of the House.

The Resolution and the amendments are now open for discussion. Any member, who wishes to speak may come.

Sri K. Santhanam (Madras: General) : I wish to move another amendment. I wish to move that after the words "for the purpose of" the following words be added: "formulating recommendations regarding". And then in (a) and (b), the words "determining" and "deciding" be deleted.

The purpose of my amendment is that this House should not delegate to any Committee whatsoever, the final determination of any matter. It is a matter of principle, not that I have distrust in the Committee Members. I have full confidence in the members proposed. But still this is a vital matter and I strongly object to any final delegation to any Committee whatsoever.

Mr. Chairman: I think your amendment is covered by Mr. Lahiri's amendment.

Mr. K. Santhanam: I have made it simpler.

Mr. Chairman: It is covered by Mr. Lahiri's amendment.

Mr. K. Santhanam: My amendment would read better. The principle that this House should be the final determining authority should be admitted and should be followed in every Committee we appoint and in every other proceeding. Of course my amendment covers practically the ground of the amendment moved by Mr. Lahiri. But the reading of the Rule will be much better if my amendment is accepted.

Mr. Dharendra Nath Datta (Bengal: General) : Mr. Chairman, Sir, I rise to oppose the amendment that, has been moved by my friend Mr. Somnath Lahiri. I have full sympathy with the sentiments expressed in the amendment but Mr. Lahiri has forgotten one thing. This is a Consultative Committee. If you refer to paragraph 19, Clause (ii) it has been stated in the Statement of 16th May, that—

"It is the intention that the States would be given in the final Constituent Assembly appropriate representation which would not, on the basis of the calculation of population adopted for British India, exceed 93; but the method of selection will have to be determined by consultation. The States would, in the preliminary stage be represented by a Negotiating Committee."

So the method of selection is to be determined by consultation, and Mr. Chairman, Sir, it is clear that there should be a Consultative Committee. The States have appointed a Negotiating Committee and we are bound to appoint another Consultative Committee to consult with the

States Negotiating Committee. It is impossible to believe that the whole House will be consulted with the Negotiating Committee for the purpose of determining the number and for the purpose of determining the method. So it is necessary that a Consultative Committee should be appointed and the Consultative Committee should be very few in number. The object of the Resolution will be frustrated if the amendment be accepted by us because the consultation should be made between the two small Committees, one appointed by us and another appointed by the States. Therefore, Sir, I oppose the amendments that have been moved by my friend, Mr. Lahiri, though I am in full sympathy with the sentiments expressed therein. With these words, I support the Resolution moved by my friend Mr. K. M. Munshi and oppose the amendments that have been moved by Mr. Lahiri.

Mr. Jaipal Singh (Bihar: General): Mr. Chairman, Sir, I would make a request to my friend Mr. Lahiri to withdraw his amendments. I think he must have got a copy of the work that has been done by the Procedure and Rules Committee. Therein already is indicated that everything that the Committees may do, will be submitted at one stage or another to this House and it would be for the House to accept the recommendations or otherwise. That being the case, Mr. Lahiri's point is met.

A member of the Depressed Classes—I do not know what the difference is between Depressed Classes and Scheduled Castes—has pleaded that one Depressed Member should be in this Committee. As far as I am concerned, I have no quarrel with the names that have been suggested by the authors of this Resolution at all. They are eminent men, they are men who have worked in the States and they know the States. But, Sir, I humbly submit that I do not think they know much of the Eastern States. The Indian States People's Conference has dealt generally with States in Northern India, Southern India and a part of Western and Central India. They have had hardly anything whatever to do with the Orissa States Agency or the Agencies of Bengal and the North East Frontier. The House must forgive me if I blow my trumpet a bit. Ever since my return from British West Africa, I have been traversing a lot amongst the Adibasis in the Adibasi Tracts and, in the last 9 years, I have traversed 1,14,000 miles and it has given me an idea of what the Adibasis need and what this House is expected to do for them. There are, in Indian India, in Rajasthan, the Princely India, where you have a population of a little of 90 million people, you have 17 million Adibasis, 17 million tribes. Sir I suggest that with such a large population, there should be an Adibasi in this Negotiating Committee. I think he will be able to help the Committee. I am not obstructing the work of the Committee but I want that an Adibasi should be there to fight for the Adibasis. You need an Adibasi when you fight for Adibasis and he will fight along with the Negotiating Committee. Sir, I would suggest to the Mover and the authors of this Resolution that they do include an Adibasi and make it 'We Are Seven'.

The Hon'ble Mr. B. G. Kher (Bombay: General): Mr. Chairman, Sir, I yield to none in my concern for the Depressed Classes or for the Adibasis but to press for a representative either of the Adibasis or the Depressed Classes or the Christians or for the matter of that of any other community in this Committee is to misunderstand the whole purpose and object of this Resolution. The Princes are going to set up a Negotiating Committee and if you refer to the letter that the Chancellor of the Chamber of Princes wrote to the Viceroy on the 19th June, 1946, in para. 4 it says—

“The Standing Committee have decided, in response to Your Excellency's invitation, to set up a Negotiating Committee

[The Hon'ble Mr. B.G. Kher]

whose personnel is given in the enclosed list. The Committee did their utmost to keep the number small, as desired by Your Excellency but they felt that it would not be possible for them to reduce the number, I shall be grateful if I am informed as early as possible of the time and place when this Committee is expected to meet, and the personnel of the Corresponding Committee which may be set up by the representatives of British India on the Constituent Assembly. The result of these negotiations are proposed to be considered by the Standing Committee of Princes, the Committee of Ministers and the Constitutional Advisory Committee, whose recommendations will be placed before a General Conference of Rulers and Representatives of States."

Now if we refer to the terms of this Resolution what it says is—

"This Committee is to be constituted to confer with the Negotiating Committee set up by the Chamber of Princes and with other representatives of Indian States with the limited purpose, *viz.*, to determine the distribution of the seats in the Assembly not exceeding 93 in number and secondly to decide the method by which the representatives of the States should be returned to this Assembly."

So that, Sir, we have, now to elect on behalf of British India those who have upto now shown their interest not only in the best interests of the people of British India but also of Indian India. There is Pandit Jawahar Lal Nehru who is the President of the States People's Conference; there is Dr. Pattabhi Sitaramayya, Shankarrao Deo and others. Now, a mover of an amendment said that there are Depressed Classes residing in the States and therefore they should be represented on this Committee. If that is so, then there are also Sikhs, Indian Christians and Anglo-Indians residing in the States. This Committee is only a body for determining the method by which the representatives of the States should be given representation in this House. For this limited purpose, it is not necessary to bring in the principle of communal representation. The wording of the Resolution makes it clear that our Committee will confer with the Negotiating Committee and the Mover of the Resolution has made it clear that the result of their negotiations will come up before this House for final assent. I therefore do submit to the movers of the amendments, including Mr. Santhanam, to withdraw their amendments. The scope of the Committee is so limited. The other considerations of communal representations, etc., do not, in my opinion, affect the main purpose. There may be some States, the population of which is so small, that to represent a group of them, there may be only one representative. We know there are about 650 States and we cannot expect that there should be 650 representatives. It is for the purpose of giving proper representation to all these States that this Committee has been formed; it is not right to fetter their discretion and I would once again appeal to the movers of the amendments to withdraw them. I support the proposition moved before the House and hope that it will be passed unanimously.

Mr. K. Santhanam: If it is the ruling of the Chairman that the proposals of this Committee will come before this House for ratification, then I would gladly withdraw my amendment.

Mr. Chairman: Pandit Jawahar Lal Nehru.

Mr. Somnath Lahiri: If you can give a ruling, Sir, that the proposals of this Committee will be subject to ratification, then I also withdraw my amendments.

Mr. Chairman: I will give my ruling in time. Pandit Jawahar Lal Nehru.

The Hon'ble Pandit Jawahar Lal Nehru (United Provinces : General): Mr. Chairman, Sir, the Resolution that has been placed by Mr. Munshi before the House is a very limited Resolution. It is meant only to fix the method of representation in this Assembly for the representatives of the States, and not to deal with the innumerable problems which the States have in common with the rest of India. Mr. Lahiri mentioned the case of one or two States where political struggles are going on. Obviously, this Committee will have nothing to do with the internal structure of the States. That matter will have to be considered, I hope, by us when the States representatives come. We can confer with them and discuss and settle these matters; so we have for the present only to consider the method of their representation.

Now, Sir, the amendments that have been moved in regard to members of the Depressed Classes or the Adibasis coming in, seem to ignore the fact that we are only considering this limited problem. Obviously, the Depressed Classes have their particular interests to be protected, but that question does not come in before this Committee. This Committee representing, if I may say so, that part of India which is not the States, will meet representatives of the Rulers—I might say frankly that we have to meet the Rulers Negotiating Committee. I think there should have been on the Negotiating Committee representatives of the peoples of the States and I think even now that Negotiating Committee. If it wants to do the right thing, should include some such representatives but I feel that we cannot insist upon this at this stage. Unless we appoint a Committee to negotiate this matter the proper representation of the States representatives may not be secured. Therefore, in this Resolution we have said not only that we shall meet the Negotiating Committee set up by the Chamber of Princes but also the representatives of other States who are probably not included therein, and as I have already explained, the object of our meeting them is to ensure a proper method of representation for the States, people. If that is so, and if you try and think of the States, as they are, you will see that apart from some States which are big, there will be many small States whom we may have to get represented by doing some kind of grouping or some other way of representing them, because for each State we may not be able to give one representative. Just see how many States there are and how many will be required. States like Hyderabad and Kashmir will get adequate representation on the population basis. Some of the big States may get two, three or four, but most of them just barely one. Many of them may not even get that one, We may have to group them or devise some methods These are our problems. Apart from these, no other problem affecting any particular class or even affecting the internal structure of the states will come up before this Committee. Those problems will have to come up before this Assembly at a later stage, when the State representatives are also here.

I submit that the question of any particular group—communal, provincial or State—coming into this Committee will not arise. We should take of course, competent men who are here, but in this particular

[The Hon'ble Pandit Jawahar Lal Nehru]

matter you cannot enter into group representation, because if we do there is no particular reason why we should deny that representation to the many separate interests that exist here. If you take the Travancore State, thinking only of religious lines, you will find a very great part of the population of the State consists of Christians—Roman Catholics. Now, Travancore is a very important State, the people of which have often come into conflict with the Government authorities. Kashmir, of course, is another important State. In this way, you will get into enormous difficulty if you are going to think of people, being represented on a communal basis in this small Committee. (Obviously, this committee ought to be a small Committee because it will be very difficult to deal with the representatives of the Rulers if it is a large committee.) This Committee should not, therefore, be formed on the basis of separate interests, as suggested by some people.

Now, Mr. Jaipal Singh made a statement, from which I beg to differ, and that is that the States People's Conference is not taking sufficient interest in the Orissa States. The States People's Conference has not done all that it should do because the problem is a vast one, but as a matter of fact the Orissa States have been frequently before the States Peoples' Conference and one of our members of the Standing Committee of the States Peoples' Conference comes from there.

Now, some of the amendments moved by Mr. Santhanam and others say that this final authority should remain with this House. They agree, however, to withdraw them if the Chair could give a ruling in this matter. I have no doubt in my mind that the final decision on such matters should vest in this House, and that this Committee should only be a Negotiating Committee, that it should negotiate and report to this House. If this House does not agree with anything that they have done, they have got to go back and negotiate still further. Of course, in all such matters, a certain discretion is given. For instance, you do give a large measure of authority to your plenipotentiaries to go and negotiate with other countries. The countries have got a right to accept or reject, but normally speaking, when the representatives of two parties come together and discuss a matter and come to an agreement, unless a vital principle is involved, the agreement is accepted because third parties are concerned in it. That will apply to our case also. But I suggest, if possible,—I have not the wording, before me,—that it is might be possible to have some such words as that the Committee should report to the House.

Shri Ajit Prasad Jain (United Provinces: General) : May I ask a question? This Resolution contemplates three bodies, a Negotating Committee set up by this House, another Negotiating Committee set up by the Princes, whose names have been announced, and a third, other representatives of the States. How are these bodies going to function and to reconcile differences? Supposing the Princes take up one attitude and other representatives of the States take up a different attitude and so on, how are they going to work?

Mr. Chairman: I suppose it is the function of the Negotiating Committees to reconcile differences, and this Committee and the other Committee, that you refer to will work in that way, I think.

Dr. P. S. Deshmukh (C. P. and Berar: General) : If I may reply to my Hon'ble friend that is exactly the purpose of this Resolution. If there are differences of opinion between various representatives of the States, we know, Sir, that differences of opinion exist in this Assembly as between various sections of the people of India, as well as States and the people of British India. This Resolution proposes to set up a body, in

whom we have confidence, and it will deal with the representatives of the States who have been elected or selected to a Negotiating Committee. It is precisely because this House cannot be expected to enter into negotiations with the Rulers and representatives of the people of States that this small committee has been proposed. Mr. Chairman, Sir, I am here to support the Resolution as it stands and oppose all the amendments that have been moved. Most of the points made have been met by speakers who preceded me and I am not going to repeat them. I want to draw the attention of the House to one particular factor, and that is, the limit within which this Committee is expected to work. In doing so, I would like to draw attention of the Hon'ble Members to the exact wording in paragraph 19(ii) of the Cabinet Plan. You will be pleased to observe that this Committee is to enter into negotiation with the Negotiating Committee which has already been selected by the States or is likely to be selected. The wording is, "the method of selection will have to be determined by consultation". It is very likely that the word "selection" will have to be interpreted in several different ways. The States representatives may probably place a different interpretation from the one we may put on it and so on. So, it is no good tying the hands of this Committee one way or the other or insisting on a particular method of representation. We must leave it to the negotiators. So, I also submit, Sir, that Mr. Somnath Lahiri's amendment directing what the Committee should do is out of order, because actually it negatives the Resolution as a whole. When we want a committee to act in a particular way it will cease to be a negotiating committee because it will have really to carry out a predetermined dictate of our own. We cannot afford to antagonise many sections of the people of India, and in spite of the feeling in this House that the representatives of the people of the States alone are entitled to speak to us, we will have to approach the subject cautiously and this Committee will have to work very cautiously. We should not prejudice or prejudice the issue at this stage, and the Committee should be left to itself to determine what is the best method of attaining the object in view and serving the interests of the people of India as a whole and those of the States people. If we want to comment on their decisions there will be ample opportunity as Panditji has assured us, for this House to place our opinion before this House. So, I submit that the House should pass the Resolution and that the amendments moved should be withdrawn.

Shri V. I. Muniswami Pillai (Madras: General): I come here to support the resolution moved by Mr. Munshi. When an amendment is moved for the inclusion of a representative of Depressed Classes. I find a hue and cry being raised that communal representation is being pressed in time and out of time. I may inform the House that the condition of Depressed Classes in the States is worse than what is obtaining in other parts. The other day when my sister from Cochin was speaking about social conditions of Harijans, she did not take into account the appalling economic and political condition of the people in the States. I may instance the case of Nayadis in Cochin State, a community which is not only untouchable and unapproachable, but unseeable. This community cannot pass through the King's highways. So I would like to urge on the Committee that has been chosen to negotiate with the representatives of the States that they should take care to have at least a few Depressed Class representatives or somebody who will represent the real needs of the Scheduled Castes.

Shri Dayal Das Bhagat (United Provinces: General) : *[Mr. Chairman, I wish to draw your attention to the fact that I do not know English. I

*[English translation of Hindustani speech begins.

[Shri Dayal Das Bhagat]

know Hindi and many of my worthy friends here know that language only. This we understand nothing useful from the proceedings of the House I pray you to request those of the friends, who know Hindi, to speak in that language so that we may understand easily.]*

Shri V. I. Muniswami Pillai: This Resolution seeks to determine the number and distribution of seats and I would respectfully request my friends to see that the interests of these untouchable communities are properly safeguarded.

Diwan Chaman Lall (Punjab: General) : Though the point has been made perfectly clear by the Hon'ble Mover, Mr. K. M. Munshi, to set at rest any doubts that there may still be, I should like to move an amendment to sub-para. (b), viz., for the word 'deciding', substitute—and word 'fixing' and, after the word 'Assembly', add the following—'and thereafter to report to the Constituent Assembly the result of such negotiation'.

As some doubt has been expressed as to whether the result of the Negotiating Committee's efforts would be brought before the House or not, to make the position clear, I have moved the amendment.

Then, Sir, the word 'determining' in sub-para. (a) of the Resolution, may also be changed to 'fixing'.

I need not say anything in regard to this matter except to emphasise the fact that it is necessary to make sure that whatever negotiation the Committee may enter into, would naturally be brought before this House and a report made to this House in order that this House may be fully seized of all the negotiations that have taken place without the knowledge of this House, between the Negotiating Committee set up by this House and the Committee set up by the Princes Chamber. I think it is necessary that this authority, which vests in the Constituent Assembly, should be stated specifically in the body of the Resolution.

Mr. K. M. Munshi: Mr. Chairman, I made it abundantly clear when I moved the Resolution that whatever the result of the negotiations, it will be placed before the House and there is no reason to fear that this Committee will decide something which this House may not approve. Now that the Hon'ble Member, Diwan Chaman Lall, has moved an amendment making it quite clear that the report of this Committee will come before this House. I have no hesitation in accepting the amendment.

The second point made was that one Member of the Scheduled Classes should be added to the Committee. The Hon'ble Pandit Jawahar Lal Nehru has replied to that point. This is not a representative committee of all sections and minorities. This is a small committee with very limited functions and only intended to negotiate on a certain basis and the Committee's report will be placed before the House.

There was another point made by one Hon'ble Member over there (in the rear seats). He asked why it was necessary to state "to confer with the Negotiating Committee set up by the Chamber of Princes and with other representatives of Indian States....." There is a valid reason why the Resolution has been worded in this manner. The Cabinet Mission has stated thus:

]* English translation of Hindustani speech ends.

“It is the intention that the States would be given in the final Constituent Assembly appropriate representation which would not, on the basis of the calculation of population adopted for British India, exceed 93; but the method of selecting will have to be determined by consultation. The States would, in the preliminary stage be represented by a Negotiating Committee.”

Therefore it is the function of the Negotiating Committee representing the States to determine the representation. The House has been informed that a Negotiating Committee has been appointed by the Chamber of Princes. Neither the House nor I have any information as to whether the Committee that has been appointed by the Chamber of Princes represents all the States and whether all the States have agreed to treat the Negotiating Committee as their representative. Therefore, inconceivable circumstances it may become necessary for our Negotiating Committee not only to negotiate with the Negotiating Committee appointed by the Chamber of Princes, but also with individual States. That is the reason why the words have been used in the manner as in the Resolution. I therefore submit, Sir, that the amendment moved by the Hon'ble Member, Diwan Chaman Lall, may be accepted by the House.

An Hon'ble Member: I look at the question from a different point of view. A Negotiating Committee has been set up by the Chamber of Princes. If there are other representatives of the States, will they be in addition to those on the Negotiating Committee? I expected a reply from the Mover.

Mr. K. M. Munshi: I have made the position amply clear. We want to give our Negotiating Committee complete freedom to deal with the Negotiating Committee on the other side or with any individual States as they think proper. We do not want to fetter their right to come to any decision when they might think fit. The Resolution as it stands is very clear on this point.

(Mr. P. R. Thakur rose to speak)

Mr. Chairman: The Mover has already replied.

(Mr. P. R. Thakur came to the rostrum)

An Hon'ble Member: Sir, is it competent for any Member to make a speech after the Mover has replied?

Mr. Chairman: Mr. Thakur is withdrawing his amendment.

Mr. P. R. Thakur: In view of the statement made by the Hon'ble Pandit Jawahar Lal Nehru, I want to withdraw the Amendment that I have moved., But I want to mention..... (Voices: 'No, no') one thing only. (Several Members: 'No, no'). I want this assurance that at least five out of the 93 seats will be given to the Depressed Classes.

Mr. Somnath Lahiri: Sir, I withdraw my amendment in view of the amendment already accepted.

I want Diwan Chaman Lall's amendment to be read out in full so that We can, understand it properly.

Mr. Chairman: Sub-para. (b) of the Resolution as amended would read thus:

“fixing the method by which the representatives of the States should be returned to the Assembly and thereafter to report to the Constituent Assembly the result of the negotiation”.

The Resolution, with the amendment accepted by the Mover, Mr. K.M. Munshi, will read thus:

“This Assembly resolves that the following members, namely,—

- (1) Maulana Abul Kalam Azad,
- (2) The Hon’ble Pandit Jawahar Lal Nehru,
- (3) The Hon’ble Sardar Vallabhbhai Patel,
- (4) Dr. B. Pattabhi Sitarammayya,
- (5) Mr. Shankarrao Deo, and
- (6) The Hon’ble Sir N. Gopaldaswami Ayyangar,

do constitute a committee to confer with the Negotiating Committee set up by the Chamber of Princes and with other representatives of Indian States for the purpose of—

(a) fixing the distribution of seats in the Assembly not exceeding 93 in number which, in the Cabinet Mission’s Statement of 16th May, 1946, are reserved for Indian States, and

(b) fixing the method by which the representatives of the States should be returned to the Assembly, and thereafter to report to the Constituent Assembly the result of such negotiations.

The Assembly further resolves that not more than three other members may be added to the committee later and that they be elected by the Assembly at such time and in such manner as the President may direct”.

Now, what about the other amendment of Mr. Lahiri?

Mr. Somnath Lahiri: In view of the fact that we will be able to consider the report of the negotiations and at that time press the claims of the States people, if they had not been fully realised, I withdraw the other amendment of mine.

Mr. Chairman: All the amendments have therefore been disposed of. The Resolution, as amended was adopted.

STATEMENT BY PRESIDENT POSTPONING CONSIDERATION OF RESOLUTION ON AIMS AND OBJECTIVES

Mr. Chairman: The next item is the consideration of the report of the Committee on the Rules of Procedure. Before we go to that, I desire to make one statement which I think I should have made earlier in the day but I did not make it by oversight. We were discussing the Resolution moved by Pandit Jawahar Lal Nehru day-before-yesterday when we rose, and the discussion on that Resolution has not been completed. The list of names of the proposed speakers is very large. I have about 50 names still before me. It is obviously not possible to carry on that

discussion any further without holding up the other important work of this Assembly. I, therefore, interrupted the discussion on that Resolution, and now I propose to allow these other important items to be interposed. If we have time thereafter, we may take up further discussion on that Resolution. It may be that before we rise for Christmas, there will be no more time for discussing that Resolution. So, further discussion will be taken up when we meet again. In the meantime we may have the advantage of others, who are not present here today, coming in, and we may have the advantage of their views also on that Resolution. So, further discussion remains suspended till we meet again.

CONSIDERATION OF THE REPORT OF THE COMMITTEE ON
RULES OF PROCEDURE

Mr. Chairman: Mr. Munshi will present the report of the Rules Committee.

Mr. Somnath Lahiri: I should like to know the time limit during which amendments to that Resolution may be accepted.

Mr. Chairman: By this evening.

Mr. Somnath Lahiri : Tomorrow morning, 11 o'clock.

Mr. Chairman: Yes, tomorrow morning 11 o'clock. But we shall, not stop the discussion. We shall go on. If there is any amendment, we may reconsider that point, but I will not stop the discussion. We shall go on discussing the Resolution.

Mr. K. M. Munshi : Mr. Chairman, Sir, I have the honour to present to the House the Report of the Rules Committee. A copy of the Report is already before the Members of this House, and I only propose at this stage to draw the attention the House to a few of the important features of the Rules. But before I do so, I invite the indulgence of the House towards the Rules Committee. The Rules Committee have been working under great pressure. As the House, Sir, knows very well, it is highly essential that before we disperse we should have the Rules adopted and the Organisation set functioning in order to complete the organisation of the Constituent Assembly. The, Members of the Committee, I may mention, have devoted careful attention to every aspect of the Rules and we have had the assistance of the able and distinguished jurist, our Constitutional Adviser, Sir B. N. Rau. The Committee had done its best to give it as perfect a shape as is possible. But I dare say there may be many defects still left, and the House may find some discrepancies. I am sure, points of view may have been omitted; I seek therefore the indulgence of the House. These are the Rules of the Assembly. They can be altered or added to when we next meet. We can always add new points of view if some one are omitted. But it is highly essential that we should adopt the Rules and appoint one or two committees which would keep the, organisation of the Constituent Assembly going.

With these remarks, I would now shortly deal with some of the important points in the Rules so that the structure of the organisation which it is proposed to set up may be clear to the members of this House.

Sir, I may refer the House to Rule 2 Clause (d). We have altered the nomenclature to this extent that our permanent Chairman will be styled the President. The reason is two-fold. First of all, there are going to be a number of Chairmen, Chairmen of Sections, Chairmen of Committees, Chairmen of the Advisory Committees, and so on. It is necessary that the permanent Chairman should have a name which is easily distinguishable from other Chairmen. The second reason is that we are functioning as an independent body. For the moment, an organisation

[Mr. K.M. Munshi]

has been lent to this Assembly by the Government of India, but immediately the Rules are passed, we will have an organisation of our own, and the President will naturally be the highest executive authority of the organisation. The word 'Chairman' therefore would be inappropriate in its application to our Chairman as the head of the organisation. In this connection I may perhaps refer to Rule 27, sub-para. (8)—

"The President shall be the Guardian of the privileges of the Assembly, its spokesman and representative and its highest executive authority."

It is for this reason that the Rules Committee proposed that the permanent Chairman should be styled 'President'.

Chapter II deals with admission of members and vacation of seats. It is more or less mechanical, if I may so put it.

Chapter III deals with the business of the Assembly. It largely deals with the procedure to be adopted in conducting the business of the Assembly and its several branches. The only important provision is the one on page 5, containing Rule 7.

"The Assembly shall not be dissolved except by a resolution assented to by at least two-thirds of the whole number of members of the Assembly".

As the Chairman was pleased to say, in his inaugural speech, we are a sovereign body, and as such it must solely depend upon us whether to dissolve the Assembly or not. This has been made clear in this Rule.

The next important rule to which I would like to draw your attention is Rule 15. Rule 15 lays down the quorum not only for the Assembly but for its branches. When a provincial constitution is being settled, it is required that the quorum should be at least two-fifths of the representatives of that province.

The next important point to which I would like to draw the attention, of the House in Rule 18. It lays down that—

"In the Assembly, business shall be transacted in Hindustani (Hindi or Urdu) or English, provided that the Chairman may permit any member unacquainted with either language to address the Assembly in his mother tongue. The Chairman shall make arrangements for giving the Assembly, whether he thinks fit, a summary of the speech in a language other than that used by the member and such summary shall be included in the record of the proceedings of the Assembly."

Only a few minutes ago there was a complaint from a member who did not know English that he did not understand what was going on. This Rule is intended to obviate that difficulty. Sub-clause 2 of the Rule says this:

"The official records of the Assembly shall be kept in Hindustani (both Hindi, and Urdu) and English".

“The result is that our official record will be kept in 3 languages, Hindi, Urdu and English.”

The next important point is dealt with in Rules 23 and 23-A on page 9. This follows the procedure laid down in the Cabinet Mission’s Statement.

“In all matters relating to the procedure of the conduct of business, the decision of the Chairman shall be final:

Provided that when a motion raises an issue which is claimed to be a major communal issue, the Chairman shall if so requested by a majority of the representatives of either of the major communities, consult the Federal Court before giving his decision.”

That forms part of the Statement.

“Provided further that no Section shall trespass upon the functions of the Union Assembly or vary any decision of the Union Assembly taken upon the report of the Advisory Committee referred to in paragraph 20 of the Statement.”

The Advisory Committee’s functions have been set out in detail in Rule 23-A.

“It shall be the exclusive function of the Advisory Committee referred to in paragraphs 19 and 20 of the Statement to initiate and consider proposals and to make a report to the Assembly upon fundamental rights, clauses for the protection of minorities and the administration of tribal and excluded areas; and it shall be the exclusive function of the Assembly to take decisions upon such report and further to decide the question of the incorporation of these rights in the appropriate part of the Constitution.”

The function of the Advisory Committee is to deal with the specific matters in view of India as a whole, as also in view of the provincial difficulties. And therefore according to Rule 20 they have to be considered by the Union Assembly when it meets.

Chapter IV dealt with the President and the procedure for filling up vacancies if and when it arises. These are more or less formal as the House will see.

Chapter V deals with the Vice-Presidents, and it is proposed that there should be 5 Vice-Presidents. Two should be elected by the House, while the President of each Section, when a section elects its Chairman, will be an *ex-officio* Vice-President, of the Assembly, with the result that the President and the 5 Vice-Presidents will meet together and co-ordinate all the activities of the Assembly and its different branches.

Chapter VI deals with the office of the Constituent Assembly. It is divided into two branches, the Advisory Branch and the Administrative Branch; the Constitutional Advisor will be the head of the Advisory Branch, while the full time Secretary shall be the head of the Administrative Branch.

[Mr. K. M. Munshi]

Chapter VII deals with the Committees and the first and perhaps the most important of the Committees is the Steering Committee, and as Hon'ble Members will see, in Rule 39, the functions of the Steering Committee have been defined. The business of the Steering Committee, as constituted therein, is to group similar motions and amendments and secure, if possible, assent of the parties concerned to composite motions and amendments; and to act as at general liaison body between the Assembly and its Office, between the Sections *inter se*, between Committees *inter se* and between the President and any part of the Assembly. Thus it becomes the central administrative organisation which will coordinate the different activities of the Assembly in all its branches.

Then follows the constitution of the Staff and Finance Committee. The Credentials Committee have also to be appointed for the purpose of deciding questions relating to the validity of the title of elected or other members. There is provision also made for other Committees.

Chapter VIII deals with the Budget.

Chapter IX deals with salaries and allowances which have to be approved by the Staff and Finance Committee.

Then Chapter X deals with doubts and disputes as to elections. Those provisions are more or less mechanical and follow the general lines of those legislation which deal with disputed elections in India. The only important point which is let out is dealt with in Rule 55. Rule 55 says:

“Where such a recommendation has been made, the President shall appoint an Election Tribunal consisting of one or more than one person to inquire into the petition.”

Now so far as the matters to be dealt with by the Tribunal are concerned, they cannot form part of the Rules. What it will be doing is to adjudicate upon the Status of a Member of this House and it is felt that that could only be done by an Ordinance, so that it can become part of the law. Otherwise serious difficulties are likely to arise. It will be therefore for the President to move the appropriate authority for the purpose of issuing the necessary Ordinance.

Chapter XI deals with certain provisions about taking the opinion of the whole country and the provincial constitution. As the House can see, Rule 58(1) deals with provisions to give an opportunity to the several Provinces and States through their legislatures to formulate their views upon the resolutions of the Assembly, outlining the main features of the Constitution, or, if the Assembly so decides upon the preliminary draft of the Constitution.

Then clause 2 provides a similar opportunity to the Provinces concerned to formulate their views on their respective Constitutions. It says—

“Before the constitution of any province is finally settled, an opportunity shall be given to it to formulate, within such time as may be fixed for the purpose, its views, upon the resolutions and the decisions of the Sections, etc.”

This naturally gives the whole country an opportunity to consider the various proposals that may be discussed by the Assembly the sections or any other Committee dealing with parts of the Constitution.

Rule 59 deals with the application of the principle of proportionate representation to all our elections. The amendment of the Rules is dealt with in Rule 61, and Rule 62 provides that the provisions of these Rules shall apply *mutatis mutandis* to the Sections and the Committees of the Assembly. The Sections may make standing orders not inconsistent with these rules.

Rule 63 gives the power to the President to deal with difficulty, if any, which may arise in carrying out these Rules. This is the general framework of the Rules and I hope it will meet with the acceptance by the House. I therefore now formally present the report of the Committee to the House and I further beg to move also that, in order to secure informality of discussion and despatch, the House do go into a Committee of the whole Assembly and that its proceedings may be held in camera.

Shrimati G. Durgabai (Madras : General) : I second it.

(The motion was adopted.)

Shri B. Shiva Rao (Madras: General) : Sir, I want to make a suggestion to the House, which I know, has a fair amount of support of several members.

The Report reached us late last night or early this morning and most of us have not had an adequate opportunity of looking through the Report. The suggestion I want to make is this. Let not the House meet this afternoon, so that those of us who are interested in the Rules may have an opportunity of meeting for ourselves, sorting out our amendments and picking out the major ones to be discussed in the House tomorrow morning. It is possible that if we adopt this procedure, a great many of the amendments which might be moved here today would be disposed of at the preliminary stage, and we might be able to get through the whole work tomorrow itself. Therefore I suggest that we may not meet this afternoon but meet only tomorrow morning.

Mr. Chairman: Personally, I have no objection. Then, we shall have tomorrow only for dealing with the Rules. The day after tomorrow we have to elect some Committees which are provided for in the Rules. If the House thinks that it will be able to go through the Rules and pass them tomorrow and the day after, I have personally no objection. But I do not know if any one will be able to give an undertaking on behalf of the House that we shall be able to complete the work.

An Hon'ble Member: We shall sit tomorrow.

Shri M. Ananthasayanam Ayyangar (Madras : General) : Sir, I got the Rules only this morning. I went through the Rules and I find, Sir, most of the Rules are non-contentious. There is nothing to which we can add except those contentious portions in Rules 20, 23 and 23-A, which are more in the nature of substantial amendments. Therefore, let us not waste time by asking for an adjournment. Tomorrow never comes, let us go on today.

Mr. Somnath Lahiri: Sir, Hon'ble Gentleman has said that there is nothing to add. At any rate, we have got to go through them to make the same discovery that the Hon'ble Member has made.

Mr. K. M. Munshi: Sir, I beg to oppose the proposal made by my Hon'ble friend, Mr. Shiva Rao. After all there is no point in adjourning Tomorrow, we will be sitting and there will be a free and full discussion. As an Hon'ble Member said just now, most of the Rules have been drawn up with care. There may be some defects which may be corrected. Only questions of principle or controversy will take time. As to others we will take up rule by rule and if there is no controversy, we can easily adopt them. I submit this is the shortest way to deal with the Rules.

Sri M. Ananthasayanam Ayyangar: Sir, My Hon'ble friend, Mr. Munshi, will read rule by rule and stand for a while, and we will adopt it immediately if there is nothing to add. Then we will pass on to the next rule. Whichever rule is contentious may be passed over till tomorrow. By that time we may find out if any amendment is necessary.

Mr. Chairman: May I take it is the wish of the House that we will go on with the consideration of the Rules?

Many Hon'ble Members : Yes.

Mr. Chairman: Those who are opposed ?

(None).

Mr. Chairman : We shall take up the Rules. As there is only half an hour more for 1 o'clock, we began at half past two or three o'clock.

Many Hon'ble Members: Three o'clock.

Mr. K. M. Munshi: We may be able to do a few Rules in half an hour.

Mr. Chairman: We shall begin at 3 o'clock and then in camera, the House will go into a committee and meet at 3 o'clock.

The Assembly then adjourned for Lunch till 3 p.m.

The Assembly re-assembled after Lunch, at Three of the Clock, Mr. Chairman (The Hon'ble Dr. Rajendra Prasad), in the Chair.

(The Proceedings were then conducted in *camera*.)

CONSTITUENT ASSEMBLY OF INDIA

Monday, the 23rd December 1946

The Assembly then met in Plenary Session at Thirty five minutes past. One of the Clock, on Monday, the 23rd December, 1946, Mr. Chairman (The Hon'ble Dr. Rajendra Prasad) in the Chair. open
proceeding.

ADOPTION OF RULES OF PROCEDURE

Sri M. Ananthasayanam Ayyangar (Madras : General): Sir, I beg to move....

Mr. Chairman: The Committee stage is over. We are meeting in full House now. Mr Munshi moves that the Rules as passed by the Committee be passed.

Sri M. Ananthasayanam Ayyangar: I would like to move that:

“Notwithstanding anything to the contrary in the Rules that we have passed all the proceedings till now taken in this Assembly shall be valid and regular.”

We have passed Rules and Regulations for the conduct of elections, etc., for the appointment of officers and so on. Whatever we have done till now, whatever may be these Rules all that we have done, will be valid.

Mr. Chairman: That will arise after the rules have been passed.

Mr. K. M. Munshi (Bombay : General): I move that the Rules, as accepted by the Committee of the House, be now adopted by the Assembly in its plenary Session.

Dr. P. Subbarayan (Madras : General): I second it.

Mr. Chairman: I put the Rules to the House.

The Rules, as accepted by the Committee of the House, were adopted.

Sri M. Ananthasayanam Ayyangar: I beg to move, Sir, that—

“Notwithstanding anything to the contrary in the Rules as passed today, all proceedings taken by this Assembly till now, shall be deemed valid and proper and be binding.”

Mr. K. M. Munshi: I submit all things that have been done by the House are by majority. The Rules have been adopted by a majority, and they come into force only on adoption. Therefore, whatever we have done before need not be validated.

Mr. President: I think it is unnecessary.

Now that we have passed the Rules, there are certain Committees which have to be elected under the Rules. Yesterday I announced that you may propose names for these Committees up to 1 o'clock today. We could not pass the Rules before 1 o'clock. It is already 1.35. I would give the Members time till 2 o'clock to make any nominations. They may be handed over to the Secretary.

We will meet at 4 o'clock for the purpose of holding elections and any other matter that may still have to be done.

Rai Bahadur Syamanandan Sahaya: Some members may like to know when the next sitting of the Assembly will be.

Mr. President: That will be announced later.

The Assembly then adjourned for Lunch till 4 p.m.

The Assembly re-assembled after Lunch, at 4 of the Clock, Mr. President (The Hon'ble Dr. Rajendra Prasad) in the Chair.

Mr. President: As the meeting is now in open session after 2 days, I want to know if there are any members who have not signed the Register. If there are, they may kindly sign the Register now. I think there is none.

ELECTION OF COMMITTEES

CREDENTIALS COMMITTEE

Mr. President: According to the Rules which we have now adopted, there are certain Committees which have to be elected and I had fixed 2 o'clock as the time by which nominations for those Committees were to be put in. I will take now each of the Committees and say if we should have election. If we have got only as many names as are required, election will not be necessary. First, I take the Credentials Committee. There are five members to be elected to that Committee and the names which have been proposed are these—

Mr. Sarat Chandra Bose—proposed by Mr. Satyanarayan Sinha.
 Dr. P.K. Sen—proposed by Mr. Satyanarayan Sinha.
 Bakshi Sir Tek Chand—proposed by Mr. Satyanarayan Sinha.
 Sir Alladi Krishnaswami Ayyar—proposed by Mr. Satyanarayan Sinha.
 Mr. F. R. Anthony—proposed by Mr. Satyanarayan Sinha.

These are the only 5 names which have been proposed. These nominations are valid. As there are only 5 names proposed, there is no need for election. These five are elected. (*Cheers*).

HOUSE COMMITTEE

Mr. President: Then the House Committee. Under the Rules, eleven members to be proposed, one for each of the eleven Provinces. These are the names proposed:—

Mr. Radhanath Das—proposed by Mr. Satyanarayan Sinha (from Bengal).
 Mr. Akshay Kumar Das—proposed by Mr. Satyanarayan Sinha (from Assam).
 Mr. Dip Narayan Sinha—proposed by Mr. Satyanarayan Sinha (from Bihar).
 Khan Abdul Ghaffar Khan—proposed by Mr. Satyanarayan Sinha (From N.W. F.P.).
 Mr. Jairam Das Daulatram—proposed by Mr. Satyanarayan Sinha (from Sind).
 Mr. Nandakishore Das—proposed by Mr. Satyanarayan Sinha (from Orissa).
 Mr. Mohan Lal Saksena—proposed by Mr. Satyanarayan Sinha (from U.P.).
 Mr. H.V. Kamath—proposed by Mr. Satyanarayan Sinha (from C.P.).
 Mr. R. R. Diwakar—proposed by Mr. Satyanarayan Sinha (from Bombay).
 Srimati Ammu Swaminathan—proposed by Mr. Satyanarayan Sinha (from Madras).
 Pandit Shri Ram Sharma—proposed by Mr. Satyanarayan Sinha (from Punjab).

These are the eleven names proposed for the Committee. As there is no contest, these are declared to be elected.

FINANCE AND STAFF COMMITTEE

Mr. President: Then we come to the Finance and Staff Committee. There are to be nine members but there are ten names proposed. I will read the names:

Mr. Satyanarayan Sinha—proposed by Mr. Kala Venkata Rao.
 Mr. Jaipal Singh—proposed by Mr. Satyanarayan Sinha.
 Mr. V.I. Muniswami Pillai—proposed by Mr. Satyanarayan Sinha.
 Mr. C.E. Gibbon—proposed by Mr. Satyanarayan Sinha.

Mr. N.V. Gadgil—proposed by Mr. Satyanarayan Sinha.
 Seth Govind Das—proposed by Mr. Satyanarayan Sinha.
 Mr. Sri Prakasa—proposed by Mr. Satyanarayan Sinha.
 Raj Kumari Amrit Kaur—proposed by Mr. Satyanarayan Sinha.
 Sardar Harnam Singh—proposed by Mr. Satyanarayan Sinha.
 Maharajadhiraja Bahadur Sir Uday Chand Mahtab of Burdwan—proposed by The Hon'ble
 Maharajadhiraja Sir Kameshwar Singh of Darbhanga.

These ten names are proposed and there are nine seats. There may have to be election in this case.

(At this stage certain speeches were made which were ordered by the President, with the consent of the House, to be expunged.)

(The Maharajadhiraja of Burdwan withdrew his candidature)

Mr. President: The number of nominations being now equal to the number of Members of the Committee, I now declare the nine Members elected. (*Cheers*).

PRESIDENT'S STATEMENT ABOUT REFERENCE TO FEDERAL COURT—THE STATEMENT OF MAY 16 FOR INTERPRETATION

Mr. President: There is one other matter that I must mention. I said on a previous occasion that we may have to consider the question of referring certain doubts and disputes with regard to the interpretation of the Statement of May 16, to the Federal Court. I have waited these days to get some motion or some suggestion from any member of the House to that effect. So far, no intimation of that kind to refer the matter to the Federal Court has been received. I take it that the wish of the House is that it is not necessary to refer that matter to the Federal Court. (*Cheers*.) So, the question does not arise now.

That brings us to the close of the business which we had to transact during this session of the Assembly. We shall now have to adjourn. Under the Rules which we have adopted, the President has no power to adjourn a session of the Assembly for more than three days. If he wants to adjourn the House for more than three days, the Assembly has the authority to do so. I suggest that the House do adjourn till the 20th January, 1947, at 11 A.M. If that is the wish of the House, you might indicate that.

Hon'ble Members: "Yes".

Mr. President: The House will now adjourn till 11 a.m. on the 20th January, 1947.

The Assembly then adjourned till Eleven of the Clock, on Monday, the 20th January, 1947.

Volume II



**20-1-1947
to
25-1-1947**

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF INDIA

President:

The Honourable DR. RAJENDRA PRASAD.

Vice President:

Dr. H. C. MOOKHERJEE.

Constitutional Adviser:

Sir B. N. RAU, C.I.E.

Secretary:

Mr. H. V. R. IENGAR, C.I.E., I.C.S.

Deputy Secretary:

Mr. R. K. RAMADHYANI, I.C.S.
Mr. B. F. H. B. TYABJI, I.C.S.

Under Secretary:

Khan Bahadur S.G. HASNAIN.

Assistant Secretary:

Mr. K.V. PADMANABHAN.

Marshal:

Subedar Major HARBANS LAL JAIDKA.

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CONSTITUENT ASSEMBLY OF INDIA

Monday, the 20th January, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eleven of the Clock, Mr. President (The Hon'ble Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The following Members presented their Credentials and signed the Register:

1. Dr. H. C. Mookherjee.
2. Shri Balkrishna Sharma.

STATEMENT BY PRESIDENT *RE*: ALLEGATIONS IN PARLIAMENT ABOUT THE REPRESENTATIVE CHARACTER OF THE CONSTITUENT ASSEMBLY

Mr. President: Before we begin, I should like to make two statements in connection with certain matters.

In the course of the debates on India in the House of Commons and in the House of Lords in December last, certain statements were made detracting from the representative character of this Assembly during its last session. Notable among those who spoke in this strain were Mr. Churchill and Viscount Simon. Mr. Churchill observed that the Assembly, as it was meeting then, represented "only one major community in India". Viscount Simon was more specific and referred to the Assembly as "a body of Hindus". He went on further to ask "whether this meeting of Caste Hindus at Delhi can be regarded by the Government as the Constituent Assembly they meant at all".

Both these gentlemen have held the highest offices of responsibility and have had a long and intimate connection with the affairs-of India; and whatever may be their views on current political controversies, they would not, I am sure, like to make statements which are wholly contrary to facts and lead to mischievous inferences. It is for this reason that I have considered it necessary in this occasion formally to state the facts. Out of a total of 926 Members who were to take part in the preliminary session, 210 Members attended. These 210 Members consisted of 155 Hindus out of a total of 160, 30 Scheduled Caste representatives out of a total of 33, all the 5 Sikhs, 5 Indian Christians out of a total of 7, all the 5 representatives of Backward Tribes, all 3 Anglo-Indians, all 3 Parsis and 4 Muslims out of 80. The significant absence is of course that of the representatives of the Muslim League—an absence which we all deeply regret. But it is clear from the figures I have quoted that, with the exception of representatives of the Muslim League, every community in India, whatever the party affiliation of the persons representing that community, was represented in the Assembly; and, therefore, to describe the Assembly as representing "Only one major community in India" or as "a body of Hindus" or as a "meeting of Caste Hindus" is a complete travesty of facts. (Cheers).

STATEMENT BY PRESIDENT *RE*: THE DISCREPANCY BETWEEN THE CABINET MISSION'S STATEMENT OF MAY 16, 1946, AS PUBLISHED IN INDIA AND THE PRINTED PAMPHLET CIRCULATED TO MEMBERS

Mr. President: Members may recollect that, in the course of the debates in the Constituent Assembly on Pandit Jawaharlal Nehru's Resolution, Mr. Jaipal Singh pointed out that there was a discrepancy between the Cabinet Mission's Statement of May 16, 1946, as published in India, and the printed pamphlet circulated by the Assembly Office. The discrepancy referred to was in paragraph 20 of the Statement. His complaint was that whereas the Statement originally published in India referred to *full* representation of the interests affected, our reprint referred only to *due* representation. I have had the matter investigated since.

The Principal Information Officer of the Government of India, who originally published the Statement in India, and who has been consulted, has informed us that it was printed exactly in accordance with the copy handed over to him by the Information Officer of the Cabinet Mission. Our own pamphlet is an exact reprint of the White Paper submitted to Parliament. It appears that the Statement as published in India, underwent some small alterations at the hands of the Cabinet Delegation before being presented to Parliament.

The discrepancy pointed out by Mr. Jaipal Singh is not the only one; there are a few others also. I am, however, satisfied that in practically all cases these changes are purely verbal. Whether the change in paragraph 20 is also purely verbal or not is a matter of opinion. I personally do not think that any material difference has been introduced.

RESOLUTION *RE*: STEERING COMMITTEE

Mr. President: The next item on the Agenda is the motion by Shri Satyanarayan Sinha.

Shri Satyanarayan Sinha (Bihar: General): Mr. President, I beg to move the following motion which stands in my name:

"Resolved that the Assembly do proceed to elect, in the manner required under Rule 40(1) of the Constituent Assembly Rules, eleven members (other than the President) to be members of the Steering Committee."

Sir, with your permission, I should like to read out to the House the Rules which we have passed regarding this Committee in the last session.

"The Assembly may from time to time elect, in such manner as it may deem appropriate, besides eleven members, eight additional members, of whom four shall be reserved for election from among the representatives of the Indian States.

The President shall be an *ex-officio* member of the Steering Committee and shall be its *ex-officio* Chairman. The Committee may elect a Vice-Chairman from among its members to preside over the Committee in the absence of the President.

The Secretary of the Assembly shall be *ex-officio* Secretary of the Steering Committee.

Casual vacancies in the Committee shall be filled as soon as possible after they occur by election by the Assembly in such manner as the President may determine.

41.(1) The Committee shall—

- (a) arrange the order of business for the day;
- (b) group similar motions and amendments and secure, if possible, assent of the parties concerned to composite motions and amendments;
- (c) act as a general liaison body between the Assembly and the Sections, between the Sections *inter se*, between Committees *inter se*, and between the President and any part of the Assembly; and
- (d) deal with any other matter under the Rules or referred to it by the Assembly or the President.

(2) The President may make Standing orders for the conduct of the business of the Steering Committee."

If the House accepts my motion, the President will announce the date and time of receiving nominations and also of the election to be held, if necessary.

Shri Mohanlal Saksena (United Provinces: General): I second it.

Mr. President: Does any one want to speak on this motion? As nobody wants to speak, I will put the motion to the vote of the House. The motion is:

“Resolved that the Assembly do proceed to elect, in the manner required under Rule 40(1) of the Constituent Assembly Rules, eleven members (other than the President) to be members of the Steering Committee”.

The motion was adopted.

Mr. President: I have to inform Hon'ble Members that nominations for the Steering Committee will be received in the Notice Office up to 5 P.M. today. Elections, if necessary, will be held in the Under Secretary's room (Room No. 24, Ground Floor, Council House) between 3 and 5 P.M. on the 21st January.

RESOLUTION RE: AIMS AND OBJECTS—*contd.*

Mr. President: We will now take up the discussion of the Resolution moved during the last session by the Hon'ble Pandit Jawaharlal Nehru.

Sir S. Radhakrishnan (United Provinces: General): Mr. Chairman. Sir, I have great pleasure in commending this Resolution to the acceptance of the House. From the list of amendments tabled, I see that there are three different questions raised: whether a declaration of this character is essential; whether this is the proper time for considering such a declaration; and thirdly, whether the objectives included in this Resolution are matters of general agreement or they require modification or Amendment.

I believe that such a Declaration is essential. There are people who are suspicious, who are wavering, who are hostile, who look upon the work of this Constituent Assembly with considerable misgivings. There are people who affirm that, within the Cabinet Plan, it will not be possible for us to effect either real unity in the country or true freedom or economic security. They tell us that they have seen before squirrels move round in a cage, and that within the limits of this Cabinet Statement, it will not be possible for us to effect the revolutionary changes which the country is aiming at. They argue from history that revolutionary changes are generally effected by violent action overthrowing established Governments. The British people were able to end monarchical despotism that way; the United States of America attained her primary freedom through direct action; the French, the Bolshevik, the Fascist and the Nazi revolutions were also effected by similar methods. We are told that we can not effect revolutionary changes through peaceful methods, through negotiation and discussion in constituent assemblies. We reply that we have similar ends; we wish to bring about a fundamental alteration in the structure of Indian society. We wish to end our political and economic dependence, but those who are strong of spirit, those who are not short of sight, take their chances—they make their chances. Here is a chance that is open to us and we wish to use this to find out whether it will be possible for us to gain the revolutionary ends by methods which are unusual so far as past history is concerned. We want to try whether it will not be possible for us to effect a smooth and rapid transition from a state of serfdom to one of freedom. That is the undertaking which this particular Assembly has on hand. We wish to tell all those who are abstaining from this Assembly that it is not our desire to establish any sectional Government. We are not here asking anything for a particular community or a privileged class. We are here working for the establishment of Swaraj for all the Indian people. It will

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be our endeavour to abolish every vestige of despotism, every heirloom of inorganic tradition. We are here to bring about real satisfaction of the fundamental needs of the common man of this country, irrespective of race, religion or community. If the trumpet gives an uncertain sound, we cannot rally the people to our support. It is therefore essential that our bugle call, our trumpet-sound, must be clear, must give the people a sense of exhilaration, must give the suspicious and the abstaining a sense of reassurance that we are here pledged to achieve full independence of India, where no individual will suffer from undeserved want, where no group will be thwarted in the development of its cultural life. Therefore I believe that a declaration of objectives of this character is essential and it is not necessary for us to wait till this Assembly is fuller than it happens to be at the present moment.

Now let us turn to the objectives themselves. We resolve that India shall be an Independent, Sovereign Republic. On the question of independence there is no difference of opinion. Premier Attlee, in his first statement, made on 15th March, said:

“I hope that the Indian people may elect to remain within the British Commonwealth. I am certain that she will find great advantages in doing so; but if she does so elect, it must be by her own free will. The British Commonwealth and Empire is not bound together by chains of external compulsion. If, on the other hand, she elects for independence, in our view she has a right to do so.”

The Muslim League and the Princes have all agreed to it. In the Memorandum on States' Treaties and Paramountcy, presented by the Cabinet Mission to the Chancellor of the Chamber of Princes on the 12th May, 1946, it is said that—

“The Chamber has since confirmed that the Indian States fully share the general desire in the country for the immediate attainment by India of her full stature. His Majesty's Government have now declared that, if the Succession Government or Governments in British India declare independence, no obstacle would be placed in their way. The effect of these announcements is that all those concerned with the future of India wish her to attain a position of independence within or without the British Commonwealth.”

All those concerned with the future of India, the Congress, the Muslim League, and other organisations and the Princes also, they all desire independence for India within or without the British Commonwealth.

Mr. Churchill, in the House of Commons, referring to His Majesty's Government's offer of independence, said on the 1st of July, 1946—

“However, it is another matter when we try to short-circuit the process and say ‘Take independence now’. That is what the Government are going to get and they are going to get it very soon. They should not blind themselves to the idea. There is going to be no hesitation on the part of those with whom the Government is dealing in taking full and immediate independence. That is what is going to happen.”

This Resolution on the objectives does not wish to disappoint Mr. Churchill. (*Hear, hear*). It tells him that the expected is happening. You gave us the choice to get out of the British Commonwealth. We are electing to go out of the British Commonwealth. May I say why? So far as India is concerned, it is not a mere Dominion like Australia, like New Zealand or Canada or South Africa. These latter are bound to Great Britain by ties of race, religion and culture. India has a vast population, immense natural resources, a great cultural heritage and has had an independent career for a very long time, and it is inconceivable that India can be a Dominion like the other Dominions.

Secondly, let us consider the implications of what happened at the United Nations Organisation, when the Indian Delegation, headed by our distinguished colleague, Mrs. Vijayalakshmi Pandit, so ably defended the

rights of Indians in South Africa—look at the attitude that was adopted by Great Britain. Great Britain along with Canada and Australia supported South Africa, New Zealand abstaining from voting. It shows that there is a community of ideals between Great Britain and the other Dominions in which India has no share. There is no sense of belonging in the British Commonwealth. We do not feel that we are all members, enjoying similar rights as parts of the British Commonwealth. Some of you may also have heard of the recent move launched by Mr. Churchill and Lord Templewood for a European Union under the fostering care and leadership of Great Britain. That also shows in what way the wind is blowing.

Yet, even though India may elect to quit the British Commonwealth, there are a hundred different ways of voluntary co-operation, ways of mutual collaboration, in trade, in defence, in matters of culture; but whether all these forms of mutual co-operation are going to develop in a spirit of friendship, trust and harmony, or whether they will be allowed to die out in mutual distrust and recrimination, depends entirely on the attitude which Great Britain will adopt in this crises. This Resolution about the Indian Republic seems to have irritated Mr. Churchill and his followers. Our Chairman today referred to one statement by Mr. Churchill and I will refer to some others.

When the debate on Burma took place, Mr. Churchill stated that the annexation of Burma happened during his father's Secretaryship, and that now Burma is given the liberty to get out of the British Commonwealth. He seems to look upon Burma and India as parts of his ancestral estate and now when they are passing out, he seems to be terribly disheartened.

On the debate on India, he asked His Majesty's Government to remember its obligations "to the Muslims, numbering 90 millions, who comprised the majority of the fighting elements of India"—truth is not rated high in Indian debates and international intercourse—"and of untouchables of anything from 40 to 60 millions." He refers to the representatives of the Great Congress Party as the mouthpiece "of actively organised and engineered minorities who, having seized upon power by force, or fraud or chicanery, go forward and use that power in the name of vast masses with whom they have long since lost all effective connection." A party of men who have braved the perils of life, who have suffered for their patriotism whose love of country and capacity for sacrifice are second to none in the whole world who are led by one who is today leading a lonely trek in a far off corner of India, bearing on his ageing shoulders the burden of a nation's shame and sorrow, to talk of that party in the way in which Mr. Churchill has done is—I do not know how to describe it (*Cries of shame*). Mr. Churchill's outbursts are bereft of dignity or discretion. Provocative and irrelevant remarks, sneers of derision in regard to our communal divisions, have punctuated his speech on that occasion and on other occasions. I shall only say here that such speeches and such statements cannot prevent the end but can only postpone it and thus prolong the agony. The British connection will end, it must end. Whether it ends in friendship and goodwill or in convulsions and agony, depends upon the way in which the British people treat this great problem.

Republic is a word which has disturbed some of the representatives of the States in this country. We have said from this platform that a Republican India does not mean the abolition of Princely rule. Princes may continue; Princes will be there so long as they make themselves constitutional so long as they make themselves responsible to the people of the States. If the great paramount power which is sovereign in this country by conquest, is now transferring responsibility to the representatives of the people, it

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goes without saying that those who depend on that paramount power should do what the British have done. They must also transfer responsibility to the representatives of the people.

We cannot say that the republican tradition is foreign to the genius of this country. We have had it from the beginning of our history. When a few merchants from the north went down to the south, one of the Princes of the Deccan asked the question, "Who is your King?" The answer was, "Some of us are governed by assemblies, some of us by kings."

Kecid deso ganadhina kecid rajadhina.

Panini, Megasthenes and Kautilya refer to the Republics of Ancient India. The Great Buddha belonged to the Republic of Kapilavastu.

Much has been said about the sovereignty of the people. We have held that the ultimate sovereignty rests with the moral law, with the conscience of humanity. People as well as kings are subordinate to that. Dharma, righteousness, is the king of kings.

Dharmam Kshatrasya Kshatram.

It is the ruler of both the people and the rulers themselves. It is the sovereignty of the law which we have asserted. The Princes—I count many of them amongst my personal friends—have agreed with the Cabinet Statement and wished to take their share in the future development of this country, and I do hope that they will realise that it is their duty to take notice of the surging hopes of their peoples and make themselves responsible. If they do so, they will play a notable part in the shaping of our country. We have no ill-will towards the Princes. The assertion of republicanism, the assertion of the sovereignty of the people, do not in any manner indicate any antagonism to the Princely rule itself. They do not refer to the present facts of past history of the Indian States but they indicate the future aspirations of the peoples of the States.

The next thing that we find in this Resolution is about the Union of India. The Cabinet Statement has ruled out the partition of India. Geography is against it. Military strategy is against it. The aspirations of Hindus, Muslims and Sikhs from the very beginning have been against it. The present tendency is for larger and larger aggregations. Look at what has happened in America, in Canada and Switzerland. Egypt wishes to be connected with Sudan, South Ireland wishes to be connected with North Ireland. Palestine is protesting against any division. Again nationalism, not religion, is the basis of modern life. Allenby's liberating campaigns in Egypt, Lawrence's adventures in Arabia, Kemal Pasha's defiant creation of a secular Turkey, point out that the days of religious States are over. These are the days of nationalism. The Hindus and Muslims have lived together in this country for over a thousand years. They belong to the same land, speak the same language. They have the same racial ancestry. They have a common destiny to work for. They interpenetrate one another. It is not a kind of Ulster, which we can separate; but our Ulster is a ubiquitous one. Even if we have two States, there will be large minorities and these minorities, whether really oppressed or not, will look across their frontiers and ask for protection. This will be a source of continual strife which will go on, as long as we do not have a United India. We realise that while a strong Centre is essential to mould all the peoples into one united whole, on account of the grievances real or imaginary, we have to be satisfied with a Centre which is limited to the three subjects, which the Cabinet Plan has put before us. Therefore, we are proceeding on the principle of Provincial Autonomy, with the residuary powers to the Provinces themselves. Events

that have happened in Bihar and Bengal, tell us that there is an urgent need for a strong Centre. Yet as there are these difficulties, we propose to develop a multi-national State which will give adequate scope for the play of variations among the different cultures themselves.

Grouping has given us a lot of trouble. But grouping is subject to two essential factors—which are the integral parts of the Cabinet Plan,—a Union Centre and residuary powers in the Provinces; and in these Groups also we will have large minorities. Those who are insistent on the rights of minorities will have to concede these rights to others who happen to be included in the Groups. In a statement made by Sir Stafford Cripps on July 18, 1946, he said:

“A fear was expressed that somehow or other the new Provincial Constitutions might be so manoeuvred as to make it impossible for the Provinces afterwards to opt out. I do not myself see how such a thing would be possible, but if anything of that kind were to be attempted, it would be a clear breach of the basic understanding of this Scheme.”

That is what Sir Stafford Cripps said. If any attempt is made to so manipulate electorates as to make it difficult for the Provinces to opt out, then that would be, in the words of Sir Stafford Cripps, “a clear breach of the basic understanding of this Scheme”. After all we have to live together and it is impossible to impose any constitution against the wishes of the people who are to be governed by that Constitution.

There is also a reference to fundamental rights in this Resolution. It is a socio-economic revolution that we are attempting to bring about. It is therefore necessary that we must re-make the material conditions; but apart from re-making the material conditions, we have to safeguard the liberty of the human spirit. It is no good creating conditions of freedom without producing a sense of freedom. The mind of man must have full liberty to flower and mature and to grow to its fullest stature. The progress of man is due to the play of his mind, now creating now destroying, always transmuting. We must safeguard the liberty of the human spirit against the encroachments of the State. While State regulation is necessary to improve economic conditions, it should not be done at the expense of the human spirit.

We are actors today in a great historical drama. We are involved in it and therefore we are unable to perceive the large contours of it. This declaration, which we make today, is of the nature of a pledge to our own people and a pact with the civilized world.

The question was put by Mr. Churchill to Mr. Alexander whether this Assembly is functioning validly. Mr. Alexander said:

“I repeat the scheme for elections for the Constituent Assembly was carried out. If the Muslim League abstained from going there, how can you prevent a duly elected Assembly from going on to do its business?”

That is what Mr. Alexander said. There was some difficulty about the interpretation of the grouping. Much against its will, the Congress has accepted His Majesty's Government's interpretation. The only two clauses that remain are adequate safeguards for minorities, and a treaty on the problems which arise out of transfer of power. The Constituent Assembly is legally functioning. Every part of the State Paper has been completely accepted and if we are able to frame adequate safeguards for minorities, safeguards which will satisfy not so much the British or our own people, but the civilized conscience of the world, then while yet the British have the power to put it into action, they must give this Constitution the force of law. It is essential that they should do so. If after all these conditions are satisfied, if some excuse is invented for postponing the independence of India, it would be the most callous betrayal of history. If, on the other

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hand, the British argue that the Constituent Assembly has started functioning on the basis of the Cabinet Plan and they have accepted every clause of the State Paper of May 16, and have provided adequate safeguards for all minorities and therefore they should implement it, then it will be an achievement of history which will secure the co-operation and goodwill of two great peoples.

In that very speech which Mr. Attlee made as the Prime Minister on March 15th, he said:

“In the mass of Asia, an Asia ravaged by war, we have here the one country that has been seeking to apply the principles of democracy. I have always felt myself that political India might be the light of Asia.....”

may, the light of the world giving to its distracted mind an integral vision and to its bewildered will an upward direction.

Here are the two alternatives. Accept the Constituent Assembly. Take its findings. Find out whether there are adequate safeguards for minorities or not. If they are there, give them the force of law and you may get cooperation. If, after all these conditions are fulfilled, you still try to make out that something is lacking, the British will be understood as violating the spirit of the whole State Paper, and the dark possibilities which will lie ahead of us in the present world conditions, I do not wish to contemplate.

Mr. N. V. Gadgil (Bombay: General) : Mr. Chairman, I have great pleasure in supporting the Resolution which has been moved by the Hon'ble Pandit Jawaharlal Nehru. In the course of the discussion it was pointed out that this Constituent Assembly was not competent to pass a resolution of this character. In this connection, I respectfully draw the attention of this House to the opening paragraph of the Statement in which a quotation from the speech of the Premier Mr. Attlee is given. Therein he says that—

“My colleagues are going to India with the intention of using their utmost endeavours to help her to attain her freedom as speedily and fully as possible. What form of Government is to replace the present regime is for India to decide; but our desire is to help her to set up forthwith the machinery for making that decision.”

It is clear, Sir, that this Assembly is here to evolve not only the form of Government but to lay down what the content of the same will be. I wish to state here, Sir, that we are not here as mere drafters of a constitution or choppers of logic. We are here, as a matter of fact, as a council of action, and this meeting of the Constituent Assembly is a stage in the progress of the struggle for freedom. It may possible be the penultimate battle or the last battle that will end the war of freedom, which has been carried on for over 75 years or more, from generation to generation. An inheritance of struggle has been left to us by our predecessors; but I do hope that when this generation is over, the inheritance it will leave, will not be an inheritance of struggle, but an inheritance of creative effort, whereby the future society of India will be built up.

Sir, there is a clear necessity for defining the objective. In the past those who have really contributed to this struggle are not the few professors and Privy Councillors, but they are the people who have been toiling in poverty, in ignorance. They have got to know what is it that they have fought for so far, and what is it in the ultimate they will be asked to fight for in case the Constitution we may frame here is not acceptable to the British Government. Now, Sir, in this Resolution, as I see it, there is nothing to which any person or any party, who is anxious to have freedom, can take objection. In the first place, the main objective is defined as an Independent Sovereign Republic. As far as I know, Sir, from the various resolutions that have been passed by the Muslim League in the course of

the last six years or more, they have always stated that they are for democratic freedom. In fact, the Islamic country that leads the Islamic world, namely, Turkey, today, is a Republic. Therefore, there is nothing in this to which the Muslim League can take any objection. Let us therefore see what are the merits in this proposition and if it can be pointed out that there is anything objectionable, then, certainly, it is a matter which can be adjusted when those who want to take objection are here. But as far as I am able to see there is nothing, no phrase, no clause in this Resolution to which anybody can take objection.

Taking the several sub-paragraphs in this Resolution, the main thing that is provided for is one State, one Union. At the same time here is enough scope for every province to grow and expand and there is nothing to prevent any province from reaching its utmost goal, consistent with the common obligation. At the same time, I wish to point out that it provides a field which gives wider scope for higher statesmanship, for higher scholarship, for better commerce and larger industries. If there is such a Union, it means there is greater political security and the Union will have economically more bargaining power. Viewed from any point of view, a State covering all the geographical unit, known as India, is a necessity for every province, for every constituent State that may go to constitute this Union. By joining they will have nothing to lose and, in my humble opinion much to gain.

Now, Sir, it also provides for fundamental rights and these fundamental rights are, what are most cherished by the common man. It provides freedom of association, freedom of speech and all other civil liberties which are to found in the Constitution of every country. Some objection was raised because many things are not clear. Obviously, all things cannot be included in a Resolution of this kind. But if one carefully goes through the relevant portion which deals with fundamental rights, it lays down that there will be economic justice, which can only be secured if the production in the country ultimately comes to be socially owned. Private enterprise may be there, but in a limited manner. If economic justice is to be secured, it can only be, if the means of production come to be owned by the State as such. Therefore, if matters today appear somewhat not very clear, I am sure, that when these principles are incorporated in the sections of the Constitution, these matters will be made perfectly clear.

Sir, this is a sort of building. The whole Resolution has a unity just as this hall in which we are assembled. The dome is standing on the various arches down below. Similarly, the freedom contemplated is supported by the various principles which are incorporated in the Resolution and that has given balance and poise to the structure. As I said, this Resolution is absolutely necessary and though textually it may not be a part of the Constitution, that may come ultimately to be framed, it is a sort of a spiritual preamble which will pervade every section, every clause and every schedule and as I said, Sir, it is necessary. It is a sort of a dynamic, a driving power which will be available to those who will be charged with the framing of the Constitution in detail. This is in fact the foundation. People will know what they are to get. It will be a constitution which will evoke the necessary loyalty from every citizen whom it is to govern. For no constitution can evoke loyalty, no constitution can evoke the necessary sentiment unless it offers every citizen sufficient inspiration to defend it, if it comes to it, by laying down his own life.

Sir, as I said, this is not an assembly in which are gathered mere drafters of the Constitution; it is a sort of a council of action. We are here because of the struggle that has been carried on by the people, and we have to frame the Constitution. If that Constitution is framed and not granted, people ask what is the sanction. To that my humble answer is that there

[Mr. N.V. Gadgil]

are two kinds of sanctions, one, the moral sanction and the other physical. If our Constitution is just and fair to every legitimate interest in this country, that provides the first kind of sanction; and the second kind of sanction is the determination of the people to see that whatever form of Government they have decided to adopt, is there, and if it is not granted by any power, then that determination will not be merely academic but it will work in concrete forms, though the forms may be stated today. I submit that as the Constitution proceeds from clause to clause and section to section, people will gradually know how things are moving and in fact, I feel, Sir, that there will be created such an atmosphere in the country that the necessary temper for revolution will be augmented and will be ready for use. I submit that as we proceed from clause to clause and section to section, British power in this country will be withering and by the time we reach the last schedule, we will find that the British State, so far as India is concerned, has withered away. What will be left then, will be a formal repeal of the British power, for do we not read the writing on the wall, do we not see that the pictures of those who ruled India with repression ruthless repression, with extraordinary laws and Ordinances gone? Where are the pictures? They are all gone. There you can see the writing on the wall. Mr. President, it has been pointed out that the Britishers are very anxious to leave this country. In fact years ago, Macaulay wrote that it would be a glorious day for Britishers when Indian people would ask them to vacate. We have been asking them so long; but apart from what Lord Macaulay has said, the Empire that had begun in perjuries and forgeries of Clive and Hastings, sustained throughout by broken promises, and which is still sought to be continued by diplomatic clarifications, by fleeting and flexible explanations, must end. These explanations will not make it survive a day more. There must be an honest deed of transfer in favour of the masses who have suffered so long and so much under the foreign rule. The day must come when they must come into their own. If the transfer is peaceful, well and good; but if it does not come peacefully, and if a struggle becomes necessary and history demands that there must be a struggle, I can only say that we do not want to fight but if we have to, then we have got the men, we have got the material and we have got the mind too. But in that case what will happen? Britishers will go—stocks and shares, shops and workshops,—they will leave nothing behind, not even goodwill or good memories. Their trade and flag both will disappear. It is for them to decide whether they want to live upto their great ideal which was stated by Lord Macaulay or they still want to cling and ultimately meet the fate which I have just visualized.

Mr. President, we have come to a stage when it becomes necessary to say in the clearest possible terms what we want to have. We have been told that other questions, such as minorities are there, difficult of solution, I want to make it clear, Sir, that this is a problem which is the creation of foreign power. Nobody has ever succeeded in preventing the coming together of the waters of Jumna and Ganges beyond Allahabad (*hear, hear*); because there the three streams Ganges, Jumna and Saraswati (Wisdom) join and after that nobody can distinguish the waters of Jumna from the waters of Ganges. The time has come when wisdom will dawn on both the communities and the result will be that they will form a higher unity, a higher synthesis, in which everybody will have his opportunity to rise to the highest level of life and personality. Now it has been said that it will not be possible in the near future to get what we desire. It may be a short or a long struggle but whether it is a long struggle or a short struggle although we do not want it or invoke it, if it comes, everyone of us must be prepared for it. Sir, the task that has been cast on these representatives

who are gathered here, is great and historic. I have no doubt that they will rise to the occasion and lead this ancient country to its goal of freedom. They will bring into existence a society where men will be valued not by what they have, but by what they are, where men will be measured in terms of character and not in terms of coin, where pride will be a back number and prejudice will be tongue-tied, where men and women can hold their heads high, where they will be happy, because they will be equal, where religion will not be a battle-field, for all will be the worshippers or one Goddess—the Goddess of Duty, where race will not evoke arrogance on one hand and inflict humiliation on the other, for all will belong to one race, *viz.*, the race of workers, where creeds will not disintegrate the people, for their creed will be of service to all, where freedom and plenty will be available, for none will have the monopoly of power or prosperity. All will be happy because all will be equal. It is a vision no doubt but a vision is necessary if one wants to live a life, a life with aim and purpose and for that one must have a vision; otherwise it will be the life of a crow.

Kakoni Jivati Chiraya Balimcha Bhunkte. “Even a crow lives long on crumbs.”

We do not want that sort of life. It is a vision no doubt. All I can say in conclusion is, that unless we have vision, we cannot progress, for a people without vision perish. (*Cheers.*)

The Hon'ble Mrs. Vijayalakshmi Pandit (United Provinces: General): Mr. President, it was my privilege in 1937 to move the first resolution after the inauguration of Provincial Autonomy in my Province, demanding a Constituent Assembly to draw up a constitution for an independent India. Today, ten years later, that Constituent Assembly is meeting here. This is a historic milestone in our progress toward freedom and yet, Sir, freedom remains just a little beyond our grasp. Imperialism dies hard and even though it knows its days are numbered, it struggles for survival. We have before us the instance of what is happening in Burma, in Indonesia, in Indo-China, and we see, how in those countries, in spite of the desperate efforts that the peoples are putting up to free themselves, the stranglehold of imperialism is so great that they are unable easily to shake it off. Reactionary elements in every country are getting together, Sir, under the guise of seeking protection, clinging to the Imperialist power and trying thereby to strengthen it. We have seen the sorry spectacle of what happened in San Francisco when the United Nations Organization was being born. The Asiatic nations assembled there, were dominated by the Imperialist powers and could not speak independently but only echoed the voice of their respective Imperialist powers. The result has already been seen in the fact that in spite of the brave words of the Charter, that came into existence at that time, no implementation of that Charter was possible because there was not enough strength behind it. The peoples of Asia were silent and could not insist upon its implementation. Even today, Asia is far behind the peoples of Europe in representation in the United Nations and it was perhaps the first time in history that at the last United Nations Assembly, a country, not free itself, was able to raise its voice for the freedom of oppressed and dependent peoples all over the world. (*Cheers.*) The fact, that the United Nations Assembly has recognized this, is because India even today has shown within herself the power of giving a lead to the world. An Independent India would no doubt assume leadership not only of Asia but of the world, and so when we meet here in this Assembly to draw up the future Constitution of our country, we must not forget that it is not only to ourselves we owe a duty but also to the world which looks to us.

[The Hon'ble Mrs. Vijayalakshmi Pandit]

The Resolution before us stresses complete freedom for the individual and concedes guarantees to every legitimate group. Therefore in this there is no justification for fear for the minorities. Even though certain minorities have special interests to safeguard they should not forget, that they are parts of the whole, and if the larger interest suffers, there can be no question of real safeguarding of the interest of any minority. In an Independent India minorities will not be able to look to outside powers for help without being termed 'traitors'. We have had too much talk of rights in recent years and very little about obligations. This approach to any problem is unfortunate. The Resolution before us deals with problems which are fundamental to all of us and only to the extent that they are solved, can we safeguard the rights of any special minority. The Resolution indicates clearly that in an independent India the fullest social, economic and cultural justice to individuals and groups will be conceded and through our design for living, we shall be helping other nations to decide the pattern of their own lives. Our own design must therefore be right and must be made with the co-operation and strength of the entire country.

Of all the Asiatic countries, India alone has stood for democracy throughout the years. In all our chequered history we have fought for the will of the people to triumph. In recent years, even at great peril and at personal sacrifice, the people of this country have adhered to the ideal of democracy, and, today, we are in a position of showing to the world that we can implement our ideals. The Resolution under discussion is clear in substance and in wording, but I would like to stress two points.

We have before us two aspects—the positive and the negative. The negative aspect is concerned with the ending of the imperialist domination of our country and in that we all agree. But the more important side to the question is the positive side, which means the building up in our country of a social democratic State which will enable India to fulfil her destiny and point the path of lasting peace and progress to the world. At this moment in our national history, we cannot afford to fritter away our energies in any talk or action which will defeat our objective, nor must we indulge in unreasoning fears. We must accept the challenge that has been offered and march together in order to realize the positive side of this picture.

The end of the War has created many problems, difficult in themselves and made more complex by the fact that individual demands are placed before the interest of the whole; that many nations, being still dependent, are unable to raise their voice in support or protest. But India is in a position to contribute substantially to a solution of the present problems and also in maintaining peace and security in the world. A free India becomes a power for the forces of progress. In this age of the building up of one world, we cannot talk of separate nations. We have to work in order to build up one world, of which India shall be a worthy partner. India has the right to lead because of her heritage, and also because of her present, when, in the face of the complexity of her own problems, she has stood up and estimated values and not let go all those ideals which she had placed before her. Our contribution to the future is one of neutralisation of political and social discontents and to that end, we must work by the establishment of freedom in our own country and helping all those who strive for freedom in the world. Unless Asia comes into her own, the world can not function as a whole. A world which is divided into groups cannot be secure. A famous American has said, "No nation can exist half slave and half free". The same applies to the world, since freedom is not divisible. India must free herself socially, economically and then free others, and in the Resolution

before us we find an attempt to work towards that end. By it, we redeem the pledge we have taken. I appeal to the Members of this House to pass the Resolution in order to show that this ancient land is conscious of the challenge that has been presented to her and can live up to the ideals and heritage of her past.

Prof. N. G. Ranga (Madras: General): Mr. Chairman and friends, I am extremely glad to be able to support this Resolution. It does not mean that I am quite satisfied with it; but so far as this Resolution goes, it places before us the most effective, the most comprehensive and liberal idea of the future that our people can look forward to, once our new Constitution comes into existence. But it is much more than a liberal view of things, because it is not content with placing high ideals and noble ideas before our people. It also takes into consideration the need for assuring to our people the actual enjoyment of the rights that are stated herein, and it is in this manner that this Resolution goes far beyond similar resolutions that had been moved in other constituent assemblies and similar ideas incorporated in other constitutions of the world.

There is one other respect also in which this Resolution is very much in advance. While in other constitutions, no specific mention has been made to assure the people the right of freedom of action in pursuance of their ideals, in pursuit of their aims, this Resolution makes it perfectly clear that our people will have the right to act whenever they find it necessary, provided such action is within the law and also in conformity with the moral standards of our people. That is a very important matter, because from time to time, both in this country and in other countries, governments used to come forward to deny the right of the people to rebel against any particular law, any particular ordinance, nay particular dictate of that particular government, and threatened the people and fold them that they had absolutely no right whatsoever to go against the established law. But, Sir, while political philosophers were merely content in other countries, philosophers like Harold Laski and others, with exhorting the people to be ever ready to stand up to their rights, their obligations and civil liberties, here in India alone, the opportunity has been given—thanks to the leadership of Mahatma Gandhi—to offer *satyagraha* on a mass scale and to claim that right not only for large bodies of people, organised and unorganised, but also for individuals. Again and again, we have been able to reiterate our right to rise against injustices to go against any particular law or system of laws and thus maintain that only in that way can the civil liberties of the people and also all their personal and individual rights be maintained. The State as well as human beings are liable to err and there must be some safeguard against their mistakes, and the only safeguard that can be found will be *satyagraha*. Therefore, Sir, I welcome this Resolution for that reason also.

Several people in this country have been complaining that such and such parties have not taken part in this Assembly and such and such other sections have not been able to come into the orbit of this Assembly and its work, and therefore, we have no right whatsoever to consider a resolution like this. Is it necessary, Sir, that all the members in a family should be present in council where the point for consideration is that the total property of that family should be increased, should be augmented? Can there be a member of any family who would be opposed to the increase of the moral and material prosperity and the rights of that particular family? This Resolution is nothing but that. We are here assembled to consider in what manner the rights and obligations, the powers and duties of every individual in this country, groups of people and the whole country, can be raised, increased and augmented. At this juncture it does not matter, if

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some of us are not able to be in this House. It may be that for various reasons of their own, certain parties have kept themselves away; but that need not prevent us from trying to go ahead in order to increase the total heritage of our people, in order to augment the total rights and strength of our country.

Sir, at the same time, I said this is not enough and I would like to say a few words about that. It is all very well to go back to our villages and to our friends and tell them that we have passed a resolution like this and that in future all their rights will be safeguarded and they will have no fears in regard to the future. But will it be enough if those people get the right to live, to have full employment, to gain their fundamental rights, if they are only told that they will be able to have their meetings, their conferences, their associations and various other civil liberties? Is it not necessary to enable them to create such conditions in life as will enable them to enjoy these rights that we have enumerated here? It is a fact, Sir, it is a miserable fact, that millions and millions of our countrymen are not yet able to take advantage of the various liberties that we have laid down here, the various privileges, that we say, are being thrown open for everyone to enjoy. They are not educated. Economically, they are oppressed and suppressed also, and socially, they are backward and down-trodden. For all these people, so many more things have to be done, may be for some time to come, before they come to enjoy these rights. They need props. They need a ladder by which they can reach on to the stage when it will be possible for them to come to appreciate the value of the rights that we are placing before them and enjoy them.

Sir, there is a lot of talk about minorities. Who are the real minorities? Not the Hindus in the so-called Pakistan provinces, not the Sikhs, not even the Muslims. No, the real minorities are the masses of this country. These people are so depressed and oppressed and suppressed till now that they are not able to take advantage of the ordinary civil rights. What is the position? You go to the tribal areas. According to law, their own traditional law, their tribal law, their lands cannot be alienated. Yet our merchants go there, and in the so-called free market they are able to snatch their lands. Thus, even though the law goes against this snatching away of their lands, still the merchants are able to turn the tribal people into veritable slaves by various kinds of bonds, and make them hereditary bond-slaves. Let us go to the ordinary villagers. There goes the money-lender with his money and he is able to get the villagers in his pocket. There is the land-lord himself, the zamindar, and the *mal-guzar* and there are the various other people who are able to exploit these poor villagers. There is no elementary education even among these people. These are the real minorities that need protection and assurances of protection. In order to give them the necessary protection, we will need much more than this Resolution.

But it is quite possible that we cannot incorporate all those things in a resolution of this character. It is the spirit of the Resolution that has got to be taken into account; it is in that light that the Constitution has got to be formulated. And in framing that Constitution we will have to see that there is a charter of fundamental rights. We are agreed upon that, but that will not be enough. Several other countries also have had their charters of fundamental rights. Yet these fundamental rights have been neglected by their own Governments. Therefore we will have to stipulate certain provisions in our own Constitution, by which it will be possible for our masses to invoke the aid of the law as against the State, as against the Government and its incumbents from time to time in order to see that these fundamental rights are actually enforced. For instance, in France

they had noble ideals of equality, fraternity and liberty, and they laid it down that no Member of Parliament could possibly be put in jail while the House was in session. Yet that right was denied. Several Deputies of the French Parliament were put in jail and there was no safeguard against it. In America, before the law all the people are equal, but yet you know how depressed are the Negroes in that country. We have to prevent a repetition of that sort of thing in our country. In order to be able to do that, we must enable our own workers, our own peasants, our own ordinary masses to demand from the State necessary financial assistance to go to the Courts, the Supreme Court of the country and to seek its protection. Poor men, as you know, are not able to go to Court, and when they have to fight against the State, it is impossible for them to think of it at all. Just as you provide for a poor man's lawyer in criminal cases, so also if you were to make a similar provision for enforcement by the ordinary masses of the fundamental rights that we formulate, then there might be some safeguard.

The masses are the real minorities, and yet they are not asking for all these safeguards, and even when they ask for the safeguards they do not make it a condition precedent to constitutional progress. What is more, they care more for the country, for our own national progress and therefore, they not only say, let us go ahead, but they exhort us to go ahead. They stand by us, and I appeal to our own so-called religious minorities to take a lesson from these people. Whom are we supposed to represent? The ordinary masses of our country. And yet most of us do not belong to the masses themselves. We are of them, we wish to stand for them, but the masses themselves are not able to come up to the Constitutional Assembly. It may take some time; in the meanwhile, we are here as their trustees, as their champions, and we are trying our best to speak for them. While we are doing this, our friends, the Muslim Leaguers, wish the rest of the world to believe that we are trying to do them some harm therefore they cannot hope to come over here, they cannot be expected to come over here. I wish to tell them from this forum, it would be the greatest possible tragedy not only for the Muslim masses but also for the masses of the country in general, if the Muslim League were to follow this policy of non cooperation, this policy of do-nothing. What more can the Indian National Congress be expected to do in order to conciliate them than what it has already done? Our friends, the Muslim Leaguers, instead of trying to come to us and negotiate with us, reason with us or argue before us—they have gone over to the Britisher. They have tried to gain one after another a number of concessions. Each one of these concessions has come down as a sort of black curtain in blotting out the vista of freedom and Swaraj that this country is aiming at; and in addition they have done enough to embitter the people of this country. In spite of all this, the Indian National Congress has chosen to accept all these various safeguards and rights and various other things that they have been gaining from the British with the only hope, with the only intention, with the only appeal to our Muslim League friends, to come over here and co-operate with us in the shaping of the Constitution for our country. If they do not come, are we going to stop where we are? Certainly not. They ought to know, and other people also who are backing them ought to know, that the Indian National Congress cannot be stampeded in this fashion. We are making history, we have been making history for the last 25 years. Again and again, in spite of our constitutionalists who have been telling us, "For God's sake do not go against the law, these things will not get us Swaraj, you negotiate with the British, work with the British", we have resorted to saytagraha on many an occasion in order to safeguard the rights and privileges of our people. We have made progress,—who can deny that? Could we have been in this

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Constituent Assembly if we had not been able to launch direct struggles? Could there have been even this possibility for the Muslim League to try and obstruct as they are doing now, if it had not been for the sacrifice and struggle that we have been carrying on all these years? We have reached a stage when it is impossible for British imperialism to prevent us from making progress. British imperialism goes to the pitiable plight of trying to have some allies in order to arrest our progress—may be for a day, may be for a few minutes. But British imperialism will not succeed, and these allies of British Imperialism cannot succeed. What is more, our own masses will soon be in a position to set aside not only British imperialism but also their allies in this country and go ahead and help us to go ahead. What has been the position of the Muslim League itself? There was a time when Mr. Jinnah used to say that independence was a sort of mirage, that it was absurd for India to claim independence for India. He himself said that direct action was an absurdity, and yet he has himself come to claim independence for India, he has declared himself in favour of independence. He has himself come to declare from the Muslim League rostrum the “Quit India” slogan, though he would like to have it, as “divide the country between us, and quit India.” Nevertheless he followed in our own footsteps. He wants today two Constituent Assemblies, whereas not long ago he was not prepared to think of any Constituent Assembly at all. What does this show? I say, that if we go ahead, the Muslim Leaguers also are obliged to go ahead for the simple reason that the ordinary masses, whether Hindus or Muslims, to whichever community they belong, are impelling their political leaders, in spite of their own peculiar partisanship, to go ahead in the manner in which alone India can go ahead. Therefore, I appeal to our Muslim Leaguers, at least in the name of their own masses, to come into this House and co-operate with us, if they are not for their own vested interests, for their Nawabs, or for their Jagirdars.

Mr. Jinnah and others have been claiming in recent past that they are also as democratic as the Indian National Congress. If they are democratic, let them think over the fact as to which of the communities contains the largest number of poor people. Among the Hindus a good percentage are not poor, but among the Muslims, the rich people can be counted on your fingers. The poorest among our people are the Muslim masses. They need most urgently a free India without which there is no chance for the Tribal people or for the *Harijans* or for the Muslim *Mazdoor* or the *Kisan*, and, the longer Mr. Jinnah and others prolong this agony of slavery, the longer they will be delaying the possibility of their own masses making any progress.

Lastly, I wish to appeal to this House to see to it that the necessary provisions are made in the Constitution proper in order to enable our people to enjoy the various rights indicated in this Resolution. Without such provisions this Resolution will have become useless. It will only be a sort of pious hope and nothing more. It is true that, when it comes to be incorporated in our text-books and our boys and girls read them in their lessons, it will do a lot of educational work. But that will not be enough. Similar work was done in America and yet the ordinary rights of the people were set at naught by the Government. Therefore we should take care to incorporate the necessary sanctions in the Constitution in order to safeguard the interests of the masses and to ensure to them the necessary opportunities which are needed to enable them to enjoy these rights.

Dr. P. K. Sen (Bihar: General): Mr. President, Sir, I rise to accord my heart-felt support to the Resolution. A great many speakers have spoken before me during this session as well as in the last and a great many

aspects have already been discussed fully. I do not wish to go over those aspects again or repeat any of their observations. But I do feel that this Resolution, in all its different branches, is very very necessary before we undertake to it down and frame a constitution for an Independent India. It is also important that we should proclaim, as the Resolution does, India an independent Sovereign Republic.

As the Hon'ble Member, who spoke first today observed, there are many who may be regarded as doubters, waverers and scoffers. It is necessary, therefore, that we should proclaim to the world our determination to carry out our undertaking and frame a constitution for an Independent Sovereign Republic—a Republic in which the ultimate power is vested in the people and all power and authority are derived from the people. There can be no doubt at all today that all sections of people are agreed on this point. Whether we speak of our friends of the Muslim League or of the Congress or of the different 'minorities', so-called, or of the Untouchables—a word that I hate—or the suppressed, depressed to oppressed people,—indeed, all are our brothers who have been put under Schedule Castes classes. Take any of these sections of political opinion,—is there any doubt whatsoever today that their common, objective is Independence? Even the British Government, which is now prepared to transfer power, has definitely declared the objective as being Independence and Freedom. Under these circumstances it is incumbent upon us to frame our Resolution in these terms.

I remember some of the words with which the Hon'ble Mover introduced this Resolution,—they are ringing in my ears. He said: "It is a resolve, an undertaking, a dedication..." Yes, it is a dedication. We have just come to the threshold of our work—we have not as yet crossed the threshold. We are, as it were, pilgrims gathered together in the vestibule and on the point of crossing the threshold to the temple. Now is the time and the moment for a vow of dedication and self-consecration to the task which we have taken upon ourselves. A tremendous responsibility rests upon our shoulders and it is but meet and proper that, at, this moment, before we have actually commenced the work, we should make a firm resolve in our mind to discharge our duty, as befits the worthy representatives, of framing a constitution for a free and independent sovereign republic.

There is another aspect of the matter which the Hon'ble Member touched upon and that I think is a very important one. If what I have already spoken of is the subjective side of the Resolution, this is the objective side of it. We have to think not only of ourselves, but of those who are not here yet. Behind the 'visible We' are the 'invisible We'—our friends of the Muslim League, and the representatives of the States are yet to be ascertained. Even when they are here, when this House is fully constituted and is full to capacity, the 400 million people whom we represent will not be here. Therefore, I repeat, in the work that lies before us, we have always to be intensely conscious that this 'visible We' is not all that constitutes the Constituent Assembly, but that it has the 'invisible We' behind it. Then only shall we be able to frame a constitution which will really confer upon this nation at large, true freedom, true right of living as human beings,—call it fundamental rights, call it rights of minorities, or call it what you like. It is only when we realise that we are framing a constitution for an Independent Indian Republic that, as we get along with the work, these problems will gradually clear up and we shall see with a clearer vision further problems that await solution. In all the work we cannot help feeling every moment the presence with us in spirit, of Mahatma Gandhi, that lone but luminous figure who carries on his

[Dr. P. K. Sen]

shoulders the sorrows and afflictions which spring from narrow-mindedness, envy, jealousy, suspicion and distrust, between man and man, and community and community; but who carries in his heart the hope that springs eternal from faith in the Province that shapes our ends. There can be no doubt that in this Constituent Assembly is visible the hand of Providence that shapes the destinies of this country, as of others. Inspired by that conscious hope and trust, I have no doubt this Resolution will be passed unanimously with our heart-felt support.

Shri S. Nagappa (Madras: General): Mr. Chairman, Sir, I have great pleasure in supporting the Resolution moved by our Hon'ble Vice-President of the Interim Government, Pandit Jawaharlal Nehru. This is a resolution Sir, that gives wide scope for all the communities and classes of this country. Sir, some of my friends who were speaking prior to me have been expressing some sorrow for the sections that are not present here. I think Sir, that we should not have any sorrow for the people who are not present. Really speaking, they do not deserve to be here because they are not Indians. They are more Arabs than Indians; they are more Persians than Indians; they are more Turks than Indians. That is why they look towards foreign countries than towards the independence of this country. If they were really interested in the independence of this country, they would have been present here in this august body and helped this country to be free. Now, Sir, I think those of my friends who felt sorrow for them, can also vacate and go out, if they like. We, the Harijans and Adibasis are the real sons of the soil, and we have every right to frame the Constitution of this country. Even the so-called Caste Hindus who are not real Indians, can go, if they want. (*Interruptions.*) Sir, today we are asking the Britisher to quit. For what reason? Is he not a human being? Has he not a right to live in the country? We ask him to quit because he is a foreigner. So, Sir, we have also a right to ask the Aryan, the migrator to go. We have a right to ask the Mohammedan, the invader, to go out of this country. There is only one consideration. The Caste Hindus of this country do not have any other place to go to. That is the only consideration that they deserve. Sir, now we are all Indians. Everyone of us must feel like that. With fellow feeling, we must all join together and help to see our country free as early as possible. None of us want to be a slave to a third person or a second person. Everyone wants to be free. Now, Sir, this Resolution gives equal opportunities to all. Equal opportunities should not be in the statute book only. They must be translated into action. Every individual of this country must realise that he is the administrator of the country. He must be made to realise, he must be made to understand that he is the real ruler of this country.

Now, Sir, I need not dwell on the safeguards for the unfortunate children of the soil. Ever since we were defeated by the Aryans, we have been slaves of these people. We have been suffering, but we are prepared to suffer no more. We have realised our responsibilities. We know how to assert ourselves.

Now, Sir, much has been said by so many friends who spoke, before me as regards the minorities. Well, Sir, I do not claim that we are a religious minority or a racial minority. I claim that we are a political minority. We are a minority because we were not recognised all these days and we were not given our due share in the administration of the country, but that cannot be for ever. You know, Sir, what has been our position? This Resolution gives us a scope and a chance and an opportunity to be equal, to feel like equals and take our due share in the administration of the country.

Now, Sir, we are one-fifth of the population of the whole country. It is impossible for a democratic country to ignore one-fifth of its population. My friends who are outside this House, or who are not taking part in this august Assembly, it is for them to realize. Congress has gone too far in order to facilitate them. Even in accepting this Statement, I fear, Sir, we have been granting what all they have been asking. Our aim should not be simply because a particular section cries, we must be liberal and go on granting whatever they want. It looks as if you have been going on in order to placate a particular community or a section. You have been so tolerant, so liberal, even without caring for your own interest, you have been granting. Now, Sir, what I would request you is that you must be fair to all. If you give any weightage to any minority, that itself gives a scope and chance for other minorities to ask. At that rate I ask you is it possible for any majority to satisfy all such minorities? So I want you to be firm, to be strong, to be fair to all communities. Simply because one section asks, we should not go on granting. It has been said here—I am glad Panditji was kind enough to accept and include in the Resolution safeguards shall be provided for minorities, Backward and Tribal Areas and Depressed and Backward Classes. This gives equal opportunity to all communities, irrespective of their races or religions. I do not understand, why a particular section should go on asking what is not due, and what is not fair. Simply because they ask, you have been granting. Now it gives an opportunity for the minorities to ask for more and more. What all is said is clear and the Resolution has been very carefully worded, and my only humble request will be to say that every word of it, with all the spirit behind it, be translated into action. There is no use of simply passing a resolution and allowing it to be a resolution. The Resolution must find a place cent. per cent. in action. Only then it has the value of a resolution. It is said, "Equality of status and of opportunity." I must say, Sir, that equal opportunity means, one day or other, even a Harijan should be the Premier of India. That sort of opportunity must be there. Equal opportunity must be translated into action. That must be the motive. There is one more thing I would like to place before this Assembly, when I support this Resolution. The masses have been looking forward to this august body when they are shaping the destiny of 400 millions and I hope, Sir, every letter, every word, that has been included in this Resolution, will be translated fully into action.

Mr. Jagat Narain Lal (Bihar: General): Mr. President, Sir, I consider it a great privilege to be called upon to accord my support to this Resolution. It is in the fitness of things that this memorable Resolution should have been moved by Pandit Jawaharlal Nehru. For it was he, at whose instance the Madras Congress, in the year 1926, passed the Resolution for complete independence. It was under his Presidentship, that, in the year 1929, the Congress adopted the complete independence of India as its creed. Again speaking in 1934, Pandit Jawaharlal Nehru said 'politically and nationally if it is granted, as it must be, that the people of India are to be the sole arbiters of India's fate and must therefore have full freedom to draw up their constitution, it follows that this can only be done by means of a constituent assembly elected on the widest franchise. Those who believe in independence have no other choice.' Therefore, Sir this Resolution moved by Pandit Jawaharlal Nehru on this memorable occasion in the Constituent Assembly on behalf of this country has a particular value. I consider, Sir, this Resolution as a pledge and a solemn resolve on the part of each one of us sitting in this Assembly and on the part of the country as a whole. Now since this Constituent Assembly has started its sittings and even before it started its sittings, we have noticed a certain

[Shri Jagat Narain Lal]

amount of change in the mentality of the British Government. Well, we would like to say there have been several constitutions, evolved by Constituent Assemblies of different varieties in this century and in the previous centuries. It is for the British Government itself to choose what variety of Constituent Assembly it would like this Assembly to be and what variety of constitution it would like this Assembly to adopt. There is, for example the instance of the United States of America, framing its constitution after the War of Independence, which was waged in the year 1774-75. That was a violent revolution, as we would like to call it. The Constitution that was framed after the War of Independence was one of those constitutions. Later on we find in the 19th century a number of constitutions being evolved by negotiation. In 1867 the Dominion of Canada became a Federation. It was through a peaceful negotiation that the Constitution of this Dominion was framed and evolved and accepted by the British Government. Again in 1900, the Australian Commonwealth was brought into being and that also by a constitution which was negotiated peacefully. We have another instance of the Union of South Africa. It became a Commonwealth in 1909 and that also through a constitution framed and accepted peacefully. The latest instance thereafter, is that of Ireland. In 1921 Ireland was asked to enter into a treaty with the British Government. That was after a guerilla war-fare and after the Sinn Fein agitation, a prolonged agitation, and after the British Government had done all it could do, to bring about Ulster into being. The case of Ireland is the latest instance and is one which ought to be borne in mind by the British Government and by the present British Cabinet. The sores that are rankling in the minds of the Irishmen will remain fresh as ever and the result has been an alienation which has not yet ceased to exist. If India is to sit in this Constituent Assembly, and if India is to frame a constitution I again repeat, it is for the British Government to decide whether that Constitution will be of the Irish model, whether that Constitution will be of the U.S.A. model or whether that Constitution will be evolved peacefully. Signs are that the British Government have not ceased to try the Ulster methods which they tried in Ireland and so many other countries. If they insist on pursuing those methods, the results will be of the Irish model. I will therefore repeat, I will therefore warn the British Government, that it will be better if it brought about all its methods of persuasion and diplomacy into making this Constituent Assembly a success, by its own efforts combined with that of ours.

Well, Sir, I do not like to say much more at this late stage. I want again to repeat that I treat this Resolution as a pledge and as a solemn resolve to bring an independent India into being and that resolve is backed by sanction. The sanction is our own will and our own determination and the will and determination of the entire country which has sent us here. I hope, Sir, when the time comes, as it will, we shall see this Constituent Assembly, evolving a Constitution for a free and independent India which will come into being peacefully or if not peacefully, by any other method which the British Government choose or we find it necessary to adopt. I have not much more to say, Sir, I support this Resolution and I hope that at the end, the amendment which was moved by Dr. Jayakar, which has no more purpose in being left to stand now, will be withdrawn when the time comes for it.

Shri Algurai Shastri (United Provinces: General): *[Mr. President, I am here to support the Resolution moved by Pandit Jawaharlal Nehru, the beloved leader of our country. No Indian is more fortunate than those who

[] English translation of Hindustani speech.

have assembled in this House to frame the Constitution for a free and independent India. What more proud privilege can there be for an Indian than to fashion the Constitution for his country in this House? Every Indian is eager to support the sentiments and words contained in the Resolution. The noble ideas and sentiments embodied in the Resolution have been the cherished desires of Indians for centuries. There was a day when our country was great, glorious and independent. For centuries India has been in bondage and the young men and women of this country and its old people have been struggling hard, with a burning desire to break the chains of slavery. At last the moment has come when we have assembled here today to declare our land free and independent as stated in the first para of this Resolution. Nothing can be more desirable today than the declaration of independence of our country. Here, we are not declaring India actually independent, but from a practical point of view, we announce that we are going to declare the land independent. It is our firm determination to declare it free and independent. It has been stated in the Resolution that the country, which we declare here independent, shall include all the territories unfortunately termed today as British India. British India is not India but India as a whole is India. I wish, not only the parts of India having at present British governance, but the territories outside British India termed as Indian states, constituting separate units under paramountcy, should also be included in this great and free country and the Resolution declares so. The territories such as Pondicherry, Goa, Daman, and Diu, at present under foreign domination, also form parts of India. I wish these all together with Nepal, Bhutan and Sikkim, which constitute our frontier, should also be included in this free land. Such is the conception of this Resolution. All the human ideals of ages—equality, fraternity and brotherhood—are embodied in this Resolution. In the eighth ‘Mandal’ of the ‘Rig Veda’ is a hymn which says:

“All human beings are equal. The King should have the same regard for his subject that a mother has for her sons.”

I am glad that all such higher ideals, we have been taught for ages, are enunciated in the Resolution and therefore I am here to support it.

The Resolution visualises a State where there is no dearth of food and cloth and distribution is equitable. It embodies scientific socialistic ideals when it says “to each according to his needs and from each according to his capacity”. All the ideals of a State conceived in the ‘Bhagwat’ are embodied in the Resolution. It is the sacred duty of a State to provide its people with all their necessities, says the ‘Bhagwat’:

Annadeh Samvibhagah Prajanam Yathahitah.

The Resolution affirms the equality of men. We wish to eliminate all class distinction existing at present. The behaviour of men with one another should be on the basis of equality. The Resolution affirms this equality and hence I support it. The Resolution does not visualise the creation of a State which will remain isolated from the world and indifferent to its good and bad. But it says that this great land, independent according to its ancient principles, will fulfil its aspirations for advancement and prosperity. Our country and all its resources shall be used for the good of the world and we will have our relations with the world on the basis of the fundamental principle of human welfare and equality. We shall try to live up to the high human ideals enunciated in the ‘Rig Veda’—*Devahitam Yadayuh.*

Our powerful, advanced and flourishing State shall not exist for its own welfare; rather it shall use all its resources for the welfare of the world. The Resolution places before us a very noble ideal. The most important feature of the Resolution is that it declares that the State we are going to create will have its complete independence of which it has been deprived.

[Shri Algurai Shastri]

To preserve the independence thus regained, we shall protect the State well. The determination embodied in the Resolution is consistent with the ancient high ideals enunciated in the 'Rigveda'—*Indrastwa Bhiraksatu*.

No State, even having gained its independence, can survive and protect itself if it is weak in military power. This truth is accepted in the Resolution and hence I support it. Only the State which has the backing of the people can enjoy a sure existence. When the Resolution promises social and economic equality to all, it visualises a purely democratic State with the people's Government. In the Resolution we picture a State with power of legislation vested in the people and with no discrimination between the ruler and the ruled. According to the famous poet Kalidas, an ideal State, like a father, provides its people with protection, education and maintenance.

Only such a State can claim to be an ideal one where the present deplorable discrimination between the ruler and the ruled does not exist, where the people are not oppressed and exploited by the rulers. The people will imagine and desire a State which is based upon these high ideals of the 'Rigveda'. The Resolution before the House visualises such a State and hence I support it. This Resolution enables us to show to the world that the independence we conceive is not to serve selfish ends and to rule the people against their will. We find all the Vedic ideals embodied in the Resolution. The noble ideals of state-protection and maintenance of subjects, held high during the Muslim regime, beginning from the reign of Hazrat Umar to Bahadur Shah, are embodied in this Resolution. When Muhammad Bin Qasim had conquered and occupied Sind he sent a letter to the then Caliph asking for his directions as to how he should rule the conquered people. The letter from the Caliph in reply is an important document and a treasure in History. The Caliph's directives, based on the ideals held by Hazrat Umar, said that he (Muhammad Bin Qasim) should treat the subjects with paternal feelings and protect their life, and property and places of worship. Humayun too, following these very ideals, taught his son Akbar to rule the people. In the *Ain-e-Akbari* by Akbar, where the relations between the ruler and the ruled are defined, we find nowhere that the people should be oppressed and deprived of their freedom. The former rulers acted on these ideals and we are here to revive them and the Resolution leads us to this noble task.

The Members from Madras follow us easily when we express ourselves in English, and the proceedings of the House also receive convenient publicity. But I thought I should here speak in Hindi. I hear the voices of the sons of Bahadur Shah, now lying in their graves, saying "In what language are you expressing yourself? You are here to fulfil our desire cherished for centuries. Please express yourself in such a manner that we also may follow." The spirits of Jayasi, Prithviraj and Sanyukta are eager to hear what we say in this House, they are eager to know that we are here for; they want to know your aspirations and ideals. We are here not to address the people of England but that of India. Numerous dynasties and empires are lying in the old tombs on all sides of Delhi. These tombs and the ashes therein ask us to tell them what we are here for. I want to tell them that we are here to go ahead in spite of all obstacles, with the ideals in defence of which the sons of Bahadur Shah laid down their lives, the Mutiny of 1857 was enacted and for which many old and young men and women, of India have been sacrificing their lives for centuries. We are, firm in our pious determination; nothing can daunt us; no power can bend

us. The spirits of our ancestors resting in their graves are calling upon us to address them in their own language. This is their wish and this is why I have attempted to address you in Hindi.

The Resolution before you is acceptable from all points of view. Dr. Jayakar had pleaded for its postponement and so far as the question of reconciliation is concerned we did so. Dr. Ambedkar had also advised its postponement and agreeing to his pleas, we did postpone. But if anyone wants to stop us his policy of obstructions, certainly we will not stop. The fight for freedom once begun, though baffled often, is ever won. We will march on and for the sake of reconciliation we will not give up the task we have undertaken. The waves of our ambitions and determination have risen and subsided; today they are immovable like a mountain and cannot be cowed down by the attacks of the British Imperialism.

Mr. Shyama's amendment to this Resolution is a patch of hession on this Kashmiri *pashmina*. His amendment and that of Dr. Jayakar too, should be rejected and the Resolution, in its original form, should be passed.]*

Mr. President: The meeting now adjourns till 11 a.m. tomorrow.

The Assembly then adjourned till Eleven of the Clock, on Tuesday, the 21st January, 1947.

[] English translation of Hindustani speech.

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CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 21st January, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eleven of the Clock, Mr. President (The Hon'ble Dr. Rajendra Prasad) in the Chair.

ELECTION OF THE STEERING COMMITTEE

Mr. President: I have to inform the Hon'ble Members that the names of the following thirteen members have been validly proposed for election to the Steering Committee:

1. The Hon'ble Maulana Abul Kalam Azad.
2. The Hon'ble Sardar Vallabhbhai J. Patel.
3. Sardar Ujjal Singh.
4. Shrimati G. Durgabai.
5. Mr. S.H. Prater.
6. Mr. Kiran Sankar Roy.
7. Shri Satyanarayan Sinha.
8. Sri M. Ananthasayanam Ayyangar.
9. Mr. S.N. Mane.
10. Mr. K.M. Munshi.
11. Diwan Chaman Lall.
12. Mr. Somnath Lahiri.
13. Sri Lakshminarayan Sahu.

Only eleven members are to be elected, and if there are no withdrawals, an election will be held in accordance with the principle of proportional representation by means of the single transferable vote in the Under Secretary's room (Room No. 24, Ground Floor, Council House) between 3 and 5 p.m. today.

The next item is the Resolution to be moved by Pandit Jawaharlal Nehru, I do not find him here. We shall therefore proceed with the discussion and wait for this to be taken up at a later stage.

Mr. Rajkumar Chakravarty (Bengal: General): May I enquire what is the time for withdrawal of candidature for the Steering Committee?

Mr. President: Any time before the actual voting commences at 3 p.m. today.

Then we shall proceed with the discussion of the Resolution. Mr. Madhava Menon.

RESOLUTION *RE*: AIMS AND OBJECTS—*contd.*

Sri K. Madhava Menon (Madras: General): Mr. President, Sir I stand here to support the Resolution moved by Pandit Jawaharlal Nehru, I know, it does not require much more support from anybody, as very little opposition has been made to the proposition. It is absolutely necessary that we pass this Resolution without any further delay. As Sir Alladi pointed out

[Sri K. Madhava Menon]

in his speech, you may search the proceedings of any constituent assembly in vain to find that no such Resolution had been moved or passed before the other business of the Assembly began. We have already waited too long in this matter and I think we shall be failing in our duty if we delay it any further. We must realise that the whole country is looking towards us with hope, as to what we are going to do for them. The only objection, if I can call it an objection, is the amendment moved by Dr. Jayakar. In principle, Dr. Jayakar's amendment does not differ much from the Resolution moved, except that Dr. Jayakar wants us to wait, or if I may say so, give an opportunity for those who are absent here, to partake in the Resolution. Dr. Jayakar says that two of the partners are absent, one for reasons not known to us, the other being impossible for it to come here. It is fair that we should wait for them. He mentioned why not we wait till the 20th January, when we are meeting again. We have waited, Sir, as he wanted and we hope that he will have no reason to complain that his request has been disregarded by us.

The objection raised by Dr. Jayakar that under the terms of May 16 Statement of the Cabinet Mission, we are precluded from passing a resolution like this at the preliminary meeting, is contradictory to his own resolution which says what the objects and aims of this Assembly should be. Dr. Jayakar said that the fundamentals of the Constitution need not be mentioned here, and I do not think we have mentioned fundamentals of the Constitution here, but have only mentioned our objects and aims. He said—and I was rather surprised when he said it—that if the Muslim League will not come in, the States also will not come in, and Dr. Jayakar mentioned or rather visualised, that if we passed this Resolution here before the Muslim League comes in, there will be a Hindustan, a Pakistan and a Rajasthan in this country. I felt that his imagination was running riot when he visualised the coming in of three sthans—Hindustan, Pakistan and Rajasthan. I am sure that no such contingency is going to come and no such contingency should frighten us from passing this Resolution. If we delay further on the ground that others are absent here, I am afraid we are only putting a premium on intransigence. I wish we will not do so but proceed with the Resolution and pass it without further delay.

Mr. B. Das (Orissa: General): Mr. President, some of us were hesitating during the last session that this Resolution may be adjourned to a later date so that the absent ones can come; not that I was not whole-heartedly for the Resolution. As a Congressman and as an Indian, I concur whole-heartedly with the principles enunciated in the Resolution of Pandit Jawaharlal Nehru. Not that it was not enunciated before, but at the beginning of our constitution-framing career we wanted that an enunciation of our goal and objectives should be made in this House, in which all the Members of this House should take part. It is my sorrow, however, that the Muslim League, some of whom have been our co-workers in public life, are absent. At that time, foolishly some of us thought that they will come now and participate in the declaration of our national objectives and rights and at the same time take a willing share of the joys of the coming dawn of freedom. But that is not to be. One cannot understand how the members of the Muslim League, who are our friends intimate friends, intimate associates and intimate co-operators in our life-time for the last twenty-three years, how they can abstain from coming in at this stage.

I cannot understand what they want. It is said that they want two nations; they want Pakistan. Mahatma Gandhi, the other day has said, let them have the Pakistan provinces or a Pakistan country whereby we will know what is the greatest ideal of the Muslim nation, whereby they can

show that a Pakistan country is a better governed country than the Hindustan or the Panthistan that the Sikhs want. What are our Muslim friends afraid of, and why is it that they are not here? Sir, there are three parties concerned, the British, the Muslim League and the Congress. The British Government are the stumbling block in our way. Even the Declaration of His Majesty's Government's further clarification of the Statement of May 16, by their Statement of December 6th, shown that the British are not helping India to achieve independence. What is it that is obstructing our Muslim friends? Sir, the Qaid-e-Azam has been my political *guru* at the beginning of my career in the Indian Legislative Assembly. I still admire him as a friend. But I cannot understand him as a leader of the party. I do not understand what he wants. There are members in the Working Committee of the Muslim League who are my personal friends, and friends of many of the people who are here. I cannot understand how Abdul Matin Chaudhury or Nawab Ismail Khan or Raja Ghazanfar Ali Khan or Hussain Imam and others, cannot live with Hindus in Hindustan or in the Union of India as brothers. Unfortunately, I am sorry I find that most of the leaders of the Muslim League live in the so-called Hindustan. I have not yet found any Muslim League of the Pakistan Provinces of Bengal or Punjab who has got great political principles for the guidance of this country or the world, or has enunciated his principles. I am not here to point out the differences between the Congress and the Muslim League. I am here to appeal to the Muslim League from this forum that it is high time that they, who are our friends outside, should be friends in this House. If they differ from us on the point of Pakistan, let them give us their views. Let them tell us whether they want an independent Republic Pakistan or whether they want a Dominion Pakistan? What do they want? I want to appeal to my friends in the Muslim League to think of their old, old associations, the old neighbourly feelings and to come early to this House so that we can all take part in securing independence for India which is so dear to our hearts.

I have said nothing on the main Resolution because I agree with everything that is enunciated there. That has been our dream for these years. I conclude my speech again with an appeal to Mr. Jinnah and my Muslim League friends to come and tell us where we are making a mistake, to tell the Hindus also where the Hindus are making a mistake and are not allowing Mr. Jinnah to build up an independent nation. With that I conclude my remarks.

Mr. Devendranath Samanta (Bihar: General): Mr. President, I thank you for kindly giving me an opportunity of expressing my views regarding the memorable Resolution moved by our revered leader, Pandit Jawaharlal Nehru.

Sir, I feel happy to rise to give my whole-hearted support to the Resolution. The Resolution has already received support from a large number of speakers who have preceded me, and they have discussed the necessity, the utility and propriety of moving and passing the same. They have discussed the Resolution from various points of view, and I do not want to take the precious time of the House by repeating the same arguments; I would simply like to make a few observations with your permission while supporting the Resolution.

It has been admitted in all quarters, that the Constituent Assembly which is to frame a constitution for a free India, is the outcome of untold suffering and immense sacrifice of the masses of this country. Therefore the Constitution to be framed should be such as to promote the interests of the masses and to benefit the country as a whole.

[Mr. Devendranath Samanta]

The framers of the Constitution, who are the elected representatives of the people, are highly responsible persons and they would, in the due discharge of their responsible duties, frame the Constitution cautiously and wisely for the best interests of all concerned.

We should have full confidence in the sincerity, honesty and integrity of the members who have undertaken this responsibility of producing a Constitution which will fulfil the aspirations of our countrymen and will promote peace and prosperity of the country.

The principles to be followed in framing the Constitution and the provisions to be made herein have been enunciated by the Resolution.

It has been fortunately and appropriately laid down in the Resolution that in the Constitution shall be guaranteed and secured to all the people of India Justice, social, economic and political, equality of status, of opportunity, etc., which indicate that all people will be afforded suitable facilities for development.

It has also been laid down that in the Constitution adequate safeguards shall be provided for minorities, Backward and Tribal Areas and Depressed and other Backward Classes, and this should be quite sufficient to allay the suspicions entertained, if any, of the minorities and others whose safeguards are so assured.

I should like to point out that in certain quarters apprehension arises from alleged inadequate representation in the Constituent Assembly, but in connection with this, my respectful submission is, that the framing of a constitution suitable or unsuitable to a particular minority, does not depend upon the extent of representation only but upon the goodwill of the masses who ultimately guide and control the framing of the Constitution. So, in my humble opinion, it is the goodwill of the masses that counts much and not the strength of representation of a particular community in the Constitution-framing body.

So any minority community making a grievance of the fact that the community is, inadequately represented is not right in making a grievance of this fact on this ground alone that they cannot get effective representation. Because representation, a little more or less, will be of no use if the community alienates the sympathy of the other communities upon whom the decision of a particular matters will depend to a great extent.

Having faith in the integrity and honesty of the framers of the Constitution, the minor communities, namely the Scheduled Classes, the Adivasis, Sikhs, Indian Christians, Anglo-Indians and Parsis have rightly cooperated in framing the Constitution in spite of their small and inadequate representation in the Assembly. Now the aspirations of the people and their strength will be the guiding factors in framing the Constitution.

One section, namely, the Muslim League, could also have joined the Constituent Assembly in framing the Constitution, had they not been under the impression that vivisection of India and formation of Pakistan would promote their interests best. I would like to point out that, barring the Muslim League, no one in the country favours the idea of vivisection of the country. It is hoped that in future the necessity of United India will be appreciated by every section of the people.

Sir, there is no necessity now for pressing the amendment moved by the Right Hon'ble Dr. Jayakar, and it is to be expected that the mover of the amendment will find his way to withdraw the amendment.

Sir, our great country, which has unfortunately been subjected to foreign domination and which has been exploited in every possible way by the British Imperialists, may soon have the chance of being independent and free from all sorts of exploitation.

The Adivasis, Sir, who along with other have been exploited to the greatest extent by the Britishers and their agents, are happy to think that in future they will be free from such exploitation and will get a chance of developing socially, economically and culturally.

Now, Sir, as the Resolution has already got support from a large number of Hon'ble Members, I should not like to take much of the precious time of the House. With these few observations, Sir, I support the Resolution, and, I hope that it will be unanimously accepted and passed.

ELECTION OF THE STEERING COMMITTEE

Mr. President: Before calling on the next speaker to address the House, I have to announce that Srijut Somnath Lahiri and Sri Lakshminarayan Sahu have withdrawn their candidature. (*Applause*). So, the following Members are declared elected to the Steering Committee:

1. The Hon'ble Maulana Abul Kalam Azad.
2. The Hon'ble Sardar Vallabhbai J. Patel.
3. Sardar Ujjal Singh.
4. Shrimati G. Durgabai.
5. Mr. S.H. Prater.
6. Mr. Kiran Sankar Roy.
7. Mr. Satyanarayan Sinha.
8. Sri M. Ananthasayanam Ayyangar.
9. Mr. S.N. Mane.
10. Mr. K.M. Munshi.
11. Diwan Chaman Lall.

They are declared elected. There is no voting in the afternoon.

RESOLUTION RE: AIMS AND OBJECTS—*contd.*

Rev. Jerome D'Souza (Madras: General): Mr. President, I wish to pay a warm and sincere tribute to the spirit which has animated this momentous Resolution of the Hon'ble Pandit Jawaharlal Nehru. Sir, it is the custom among all sections of our people to accept in an unquestioned manner the democratic creed as universally applicable to us. But I do not know, Sir, if people who make this verbal profession realise all the implications of it and are prepared to carry it out in every way in practical life to the extent to which such profession really does imply.

Sir, whatever may be the objections that may have been raised against this or that part of the Resolution, I take it as an adequate, as a careful, and as an entirely acceptable profession of the democratic creed, of the Government of the people, for the people, and by the people. I think, Sir, that if the spirit that animates it, continues to be applied to the details of the Constitution that this great Assembly will draw up, if it is applied in the daily administration of the Provinces and of the Centre, there will be no section of our people that will have reason to complain, and contentment is bound to follow.

Dr. Ambedkar remarked in the course of his speech, that the ideological or the theoretical part of it contained an expression of opinion which is accepted by all, almost implying that it was something of a common-place in political and journalistic thought. I am not sure, Sir, if that is quite true for any part of the world, and even if it were broadly true, there are occasions when these ordinarily accepted things need to be repeated and asserted solemnly and forcefully. It is said of a great European statesman, Talleyrand, that, when a certain sentiment was declared to be unnecessarily repeated, that "it went without saying," he remarked that "it would go all the better for being repeated, once again". I take it, Sir, that on this solemn occasion, this profession of our democratic belief is made in

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a solemn, public, and irrevocable manner. In this sense I believe that every section of our people will welcome the very carefully-weighed and poised manner in which these convictions have been expressed. No doubt, Sir, all this will require amplification, elucidation. Permit me, Sir, to draw the attention of this House to a double danger which, I think, it is necessary to be prepared against. On the one hand, in applying those principles of individual liberty, for which ample provision has been made in this preambulatory declaration, it will be difficult to resist, I say it will be difficult to resist from the very motive of love of country and the desire for rapid improvement and progress in our land, the desire to do things more by force and regimentation, more by the authority and power of the Central State, than by agreement, than by persuasion. It is a temptation to which many great men and lovers of their country have succumbed. But in the manner in which provision will be made to prevent such suppression of individual liberties, I hope and trust, that our great country may give an example of a consistent adherence to those principles of agreement and consensus of opinion, and not overweight the power of the State in a manner, as one of the previous speakers said, that will reduce the individual to a mere robot. That is one danger, Sir.

The other danger, undoubtedly present, is one which affects us as members of a minority community. The danger would be not that the minorities would have any of their special rights or necessary safeguards overridden by any mistaken some of jealousy or opposition or lack of fairness;—I do not think that the great majority communities of India or any of their most honoured representatives would be guilty of all that unfair overriding of privileges and safeguards; but by a genuine, though mistaken love of country and desire for unanimity and homogeneity, which it is not possible to have and which perhaps is not even necessary, they may try to pass measures which will seriously wound and grieve the minorities or special groups.

In the last session of this Assembly one speaker said, among things which were acceptable to every part of the House,—used an expression in regard to minorities which I respectfully submit we could not possibly accept. It was said that no nation, no great people could prosper and survive with permanent minorities within, that, somehow or other, they have got to be “absorbed”, and he quoted the example of the United States as a country in which this process of absorption is taking place. I do understand, Sir, the sense in which this was said, *viz.*, that there should be a certain degree of homogeneity and that there should be a common recognition of common interests and rights and that the State and the nation should be organised on the recognition of these common rights and interests. This is essential. But, Sir, “absorption” in the sense of cultural or religious or any other absorption is something against which it is necessary for us to guard, and it is, I am sure, not the wish of the majority communities nor the sober reflecting opinion of this great House, that they should impose any thing on any minority, which would lead to such absorption. Sir, I wish the example of a country like Switzerland is borne in mind. Even in the United States, in spite of their common language and a universally accepted Constitution, linguistic minorities are permitted to develop the culture of their motherland, whether it be Germany or Italy or France. There remain still, in the great Commonwealth of Canada, two sections of people, Scottish and English on the one hand, and the ancient French community on the other, living in complete amity following the customs and the spirit of their own motherlands and developing their own literature. One section of the Commonwealth of Canada finds it easy to cooperate and collaborate with the other sections and work

for the glory and success of a country which is recognised to be a single nation. In Switzerland, three groups with three languages and with a difference of religion, sometimes sharply pronounced, are maintained in a confederation which has known how to defend itself against the onslaught of envious people and has defended itself in no uncertain manner through centuries. I am sure, Sir, that the strength of this land will be based upon the strength of individual members of the different communities. And they will not achieve their full strength unless they base themselves upon convictions and ideals which are their very own. Cultural autonomy for which I am pleading and which has been promised as far as it is not inconsistent with national strength, even though it may appear in some sense as opposed to national unity, is still consistent with it. Undoubtedly there is a way of exaggerating these cultural peculiarities. I am sure that quite apart from subscribing to different beliefs, it is possible for members of all communities, Hindu, Muslim, Christian and Parsi, to accept the common heritage of this great land and secure that degree of uniformity, that degree of common agreement, on the basis of which national unity can be built up. I know, Sir, speaking for my own community, the Christian community, that there have been times when our countrymen looked upon this community and religion as being unduly associated with a culture that was not Indian, unduly identified with what has been called Europeanising ways, but I should like to assure this great Assembly that it is not necessary, that it has not always been the case, that again and again people of my persuasion, whether they came from another land or whether they were from this land, have acted in complete conformity with the finest traditions of this country. On the opening day, Sir, the esteemed Vice-Chancellor of the Benares University, Dr. Sir S. Radhakrishnan, referred to the first Englishman who had come to this land, the Jesuit Thomas Stevens, and said that after him there came merchants and conquerors and that now we see that end of that "invasion". I should like to assure this House, Sir,—what I am sure, Sir S. Radhakrishnan knows—that the merchants, the traders and the conquerors had nothing to do with the Jesuit who preceded them. On the contrary, Sir, he came to India at a moment when there was no hospitality for him in his own land, from where he was banished under the threat of persecution. This great country offered him hospitality and he made this land his own, learnt its language and has written a book which Marathi scholars tell me is a classic, the "Purana" of Thomas Stevens. It is in that spirit, Sir, that the adherents of that faith wish to come here and it is in that spirit that we wish to collaborate in the task of national reconstruction for the prosperity and the greatness of this land.

I should not like to take the time of the House much longer, but I cannot avoid saying something upon another point about which much has been said, but I hope to be able to say something about it, which may perhaps be a new point of view. Much has been said about the sovereignty of the people, about the possibility of that principle being inconsistent with the principle of monarchy, and about the dangers and difficulties which might arise therefrom. Sir, this doctrine of the sovereignty of the people is not a new doctrine. It is not a 19th century doctrine. The history of political thought in Europe shows that there was a struggle round about that doctrine in the 16th century when certain kings claimed the Divine Right of Government; and against them, it may interest this House to know, even conservative thinkers, thinkers who were monarchists, asserted the sovereignty of the people. St. Robert Billarmine and Suarez asserted this against James I of England, though they interpreted it in a different way from Rousseau, who in later times conceived that the power of the State came from the people by the pooling and the coalescing of all the rights of the people which they are imagined to surrender. But the State, Sir, is not a sort of undesirable excrescence resulting from the

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surrender of individual liberty. The State is a natural outcome of the nature of man who has to perfect himself in social and community life, with a necessary central authority. That authority comes, as Sir S. Radhakrishnan stated, from the moral law and that is the basis upon which the rights of individuals and of the State have to be maintained. That ultimate authority, Sir, some would prefer to express it as coming from Almighty God as the author of nature and of all moral law. I cannot help expressing a regret, Sir, that the name of Almighty God finds no place in this momentous declaration. I understand, Sir, the reasons which moved the hon'ble framer and mover of this Resolution is not bringing in anything which may look like a religious profession, but you will permit me, Sir, to say before concluding my remarks, that if by some way in this momentous preambulatory declaration the name of Almighty God had been brought in, it would have been in conformity with the persuasion, with the convictions, with the spirit of this vast land of ours and its ancient civilisation. Sir, although it has not been brought up here, I do believe that the State ultimately receives from Him that sanction and approbation which gives it a certain sacredness. I am not pleading here for a doctrine by which the State is made divine. But I do mean that the subjects of the State, when they accept that State and are citizens of it, must obey it conscientiously, must feel that it is their duty to accept the authority of the Government of their land. Sir, we believe in Providence; we believe that the unfolding of History with all its vicissitudes still reveals a Providential design. Even though His sacred name is not here, I sincerely believe that we have met here under the covert of His protection and His Grace which alone moves the hearts of men. We hope and pray that the deliberations that we have begun this solemn and preambulatory declaration will be taken to their legitimate conclusion by the same grace and that the land for which we are labouring will rise again with new strength, with new prosperity, with new happiness.

Mr. H. J. Khandekar (C. P. and Berar: General): *[Mr. President, I am here to support the Resolution moved by the Hon'ble Pandit Jawaharlal Nehru. We are going to frame the Constitution for India today. The people of India and we sought for such an opportunity to frame it ourselves and I am glad the occasion has come now. When the Constitution for India is going to be framed by us, it should be drafted in our national language. It is our duty and in pursuance of this I am delivering my speech in Hindustani. I belong to a community which has been backward and depressed in India for many thousands of years. I am a Harijan and I shall place before you the voice of 90 millions of Harijans in India. The Harijan Community is accepting this Resolution with great pleasure for the sole reason that the Resolution embodies safeguards for all the minorities in India. Speaking against this Resolution and for Dr. Jayakar's amendment, my friend, Dr. Ambedkar said that India should remain united and have a strong central government. He was not happy and satisfied with his recent visit to England. I am very pleased by the speech he has delivered on his return to India and I hope he will stick to it.

I hope, God grants him a little more good sense, he will give up the demand for separate electorates and also stop saying henceforth "I am not a Hindu" which he has been telling up till now. I pray to God to give him good sense and I have hopes that He will.

If I describe to you the condition of Harijans, you will be moved. They have been and are still being subjected to endless oppressions and cruelties. We endured these cruelties with patience and never thought of abandoning our faith. We are Hindus, will remain Hindus and will secure

*[English translation of Hindustani speech begins.]

our rights as Hindus. We will never say we are not Hindus. Undoubtedly we are Hindus and we will, as Hindus, fight the Hindus and secure our rights. We know that 90 per cent. of the victims of the atrocities committed in Noakhali and East Bengal were Harijans. Their houses were burnt, their children were killed and women were molested. Above all, many thousands of Harijans had to submit to forcible conversion. If any community is given weightage more than in proportion to its numerical strength, certainly Harijans will also fight for weightage according to their numerical strength. What was done to the community which is backward and down-trodden today? I remind you of the Poona Pact. I place before you the example of my own province. In Central Provinces where we constitute 25 per cent. of the population and we are entitled to twenty-eight seats, we are given only twenty seats in pursuance of the Poona Pact. Where have our eight seats gone? In my province our Muslim brethren form four per cent. of the population. On the basis of their numerical strength in the Province, they are entitled to get six seats only. But I am sorry the eight seats of Harijans were taken away from them and given to Muslim brethren and thus they got fourteen seats instead of six. Harijans cannot tolerate such injustice. They should be given representation according to this numerical strength. May be, your census records shows the number of Harijans in India as 40 or 50 millions but I can emphatically say that our population is never less than that of Muslims. We are ninety millions and we should get representation according to our numerical strength.

One thing is wanting in the Resolution, and, if the mover agrees, it can be modified. The Resolution promises safeguards and rights to all the minorities. But unfortunately there are 10 million people in India who, without any fault on their part, are described as criminal tribes from their very birth. Hundreds of thousands of men and women in India were declared as criminal tribes according to the current law. To deprive them of their rights they are declared so. No matter whether they are criminals or not, from their very birth they are made criminals. Some provision to abolish this law must be embodied in this Resolution. I hope the mover will realise it and provide some safeguards for this Class in the Resolution.

The Congress has passed a resolution accepting the grouping clause in the Cabinet Mission Plan. Though a Congressman, I feel apprehension as to what would happen to the Depressed Classes in "B" and "C" groups. I have been thinking over it since the Congress accepted it. Though directly there is no Pakistan in Bengal today, still Harijans were subjected to great atrocities there. The members here, who have witnessed the happenings there, are greatly surprised. From the newspapers it appears that to the extent of ninety per cent. it was the Harijans who were subjected to cruelties there. I am afraid no untouchable will remain alive in regions where Pakistan is established after the acceptance of the grouping clause. The Harijans of those regions, where the establishment of Pakistan is dreamt of, will have to accept either forced conversion or death. They are weak and are likely to be subjected to various atrocities and even at present people commit atrocities on them. Every community is increasing its strength to achieve its political demand. A day will come when because of the grouping provision our numerical strength will be weakened and that of other communities will be strengthened. And with the growth of their strength, no Harijan will exist in their provinces. Therefore, when considering this Resolution we must provide special safeguards for the Harijans of those Provinces, where they are in such plight. It is in view of this fact that Dr. Ambedkar has pleaded for a strong central government. If in Provincial Legislatures the Harijans are not given representation according to their numerical strength, the fears which we feel in the case

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of Bengal, and to which I have been an eye witness, will continue to remain. If we are given full representation in the Central Legislature, all such fears will vanish. I support the Resolution whole-heartedly and hope that all the members in the House will do their best to restore the rights, of which our backward community has been deprived for thousands of years. Wherever the question of allotting seats arose, we were given one or two seats. This is happening in the case of local bodies in many provinces. Many times we demanded representation according to our numerical strength. But laws have been enacted merely to the effect, that if no Harijan is elected, one should be selected and if this is not possible, a nomination should be made.

Even where the Harijans form more than fifty per cent. of the population, there also only one member from them is selected or nominated. It shows that the attention of the people has not yet been drawn towards us. Therefore whenever occasion arises attempts should be made to secure us representation according to our numerical strength. And then alone we can feel that you are doing something for us. If you want to satisfy us, by giving one or two seats, that will not do. The Harijan Community is awakened now; it is politically conscious of its rights, to secure which, it will throw in its full strength. With these words I conclude my speech and hope you will pay due consideration to our rights and will not let us remain in the position in which we have been so long. With this hope I support the Resolution.]*

Shri R. V. Dhulekar (United Provinces: General): †[Mr. President, the Resolution moved by the Hon'ble Pandit Jawaharlal Nehru has been seconded; many speeches have been delivered on it and many objections have been raised to the clauses of the Resolution. Dealing with the speeches made and objections raised, I shall express my views in support of the Resolution.

Mahatma Gandhi has summarised the philosophy of human life in two words—truth and non-violence. Truth is justice, right action and that which is obligatory; truth and non-violence is not to injure others, not to deprive others of their liberty and possessions and is to protect live and the social rights of others.

These two, truth and non-violence, are the essence of the teachings of the *Vedas and Upanishads*, the two form the creed of the Congress and the Resolution before the House is based on them. The Resolution is the true expression of the sentiments, ambitions, good intentions and objects of the people of India. The Resolution is a picture of what the country, which is at present under the British domination, wants to do and how it wants to exist in the world after it has attained independence.

The important clauses of the Resolution are:—]†

“This, Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution

WHEREIN the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories, as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all; and

WHEREIN the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the Law of the Constitution, shall possess and retain the status of autonomous Units, together with residuary powers, and exercise all powers and

] * English translation of Hindustani speech ends.

† [] † English translation of Hindustani speech.

functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom; and

WHEREIN all power and authority of the Sovereign India, its constituent parts and organs of government, are derived from the people, and

WHEREIN shall be guaranteed and secured to all the people of India justice, social, economic and political: equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and

* * * * *

WHEREBY shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea, and air according to justice and the law of civilised nations, and

This ancient land attain its rightful and honoured place in the world and makes its full and willing contribution to the promotion of world peace and the welfare of mankind."

Mr. Deshbandhu Gupta (Delhi) : On a point of order, Sir, is it open to an Hon'ble member to read from manuscript?

Mr. President: I do not think he is reading. He has got copious notes. (*Laughter*).

Mr. R. V. Dhulekar: **[I can always speak as if I am reading. Mr. President, no right thinking man can entertain any objection to any of the clauses of the Resolution. The Resolution guarantees the rights of the people of the whole of India; it provides safeguards for the minorities and promises to remedy injustice done to the Backward and Depressed Classes; it promises them full opportunity for their advancement.*

As for Indian States, the Resolution gives them complete freedom in regard to their internal administration and assures that all their just and legitimate rights will be safeguarded. Of course, their present unjust and despotic rule will no more be allowed to continue. Despotism and Democracy are at variance and the two cannot go together. I believe that no longer will any ruler venture to suppress the fundamental rights of his people. Neither the people of the States will allow such irresponsible government to function, nor this Assembly can render any assistance to the ruler in their unjust cause. An objection has been raised as to the necessity of such a resolution and it is suggested that if the Resolution is at all necessary, it should not be moved till the States' representatives participate. It is said that the States' representatives have not had enough time to consider the Resolution. The objection raised about the absence to the States' representatives has no foundation at all. According to clause 19(2) of the Statement of the British Cabinet Mission, the representatives of the States cannot participate in the Assembly at the preliminary stage. To deal with all the matters relating to the States, the Assembly will negotiate with the Negotiating Committee formed by the States. It is unwise not to declare our aims and objects to the rulers of the States, to the people of India and to the people of the world at large. If we do not so now; many false fears and vicious thoughts may arise. The Resolution conveys our basic principles to the world. Every one should consider and weigh them well and then give us his co-operation.

An objection to this effect has also been raised that the Muslim League members are absent and, therefore, the Resolution should not be moved for the present. Firstly, this objection is groundless. When the League has taken part in the election of the Constituent Assembly and has already elected its members to this body in pursuance of the Cabinet Missions Plan, it is improper on the part of the League members not to participate in the Assembly. The League's demand of representation on the basis of numerical strength and separate electorates having been accepted, the responsibility for their absence rests with them. The House has no power of force its members to be present here. If one does not participate, he

*[] English translation of Hindustani speech.

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the Constitution to be framed should be such as to promote the interests deprives himself of his rights. The members that are present cannot be blamed for it. Apart from this, their absence causes harm to their own electorates.

Secondly, after the H. M. G.'s Statement of the 6th December, 1946, there can be no objection whatsoever to the Resolution. The Congress accepted the said Statement by passing a resolution and gave the Muslim League a chance to direct its representatives to join the Constituent Assembly. The preliminary session of the Constituent Assembly, along with this Resolution, was postponed for month. I am sorry the Muslim League did not accept the hand of goodwill and friendliness extended by the Indian National Congress. May be, the Muslim League has thought of extending its co-operation but has not yet had enough time to come to a final decision. I still hope, the League representatives will soon take their right place in the House and help to make India an Independent Sovereign Republic.

Enough opportunity has been provided by us to our adversaries to cast on us the undeserved blot that we are divided and can never be united. Still, there is time to remove this blot and, with all humility, I would request my brethren in the Muslim League to be earnest about it.

Some selfish Englishmen including the notable statesmen, Lord Simon and Mr. Churchill, throw unjustified aspersions on this Assembly. They say that this Assembly is a truncated body in the absence of the Muslim League representative, that its decision carries no weight and that the British Government should neither accept the Constitution framed by the Assembly nor work it. What a baseless and mean charge it is! It is much below culture and civilization and against all canons of wisdom and statesmanship. Such "Wise" fools of politics lost and destroyed big empires that had been acquired by dint of wisdom and power. We have seen with our own eyes the downfall of Tsarism and the dictatorships of Hitler, Mussolini and the Mikado. The mighty armada of British Imperialism is gradually going down under the onslaughts of the mass upsurge. The British Empire cannot escape the doom. It will be fortunate if Mr. Attlee, the political pilot of England, could save his land and the people by taking a lesson from the recent history of Germany, Italy and Japan. It is my duty to offer this reasonable advice but it is up to them to pay heed to it or not.

Human history is itself a book. Endlessly it writes and writes the hard facts alone. It makes no discrimination between the strong and the weak. Yudhisthir the embodiment of truth, only once in his life told a half truth "*Narava Kunjaro va*"; and for this minor untruth, the cruel pen of *Vyasa*, the celebrated author of the famous epic, the *Mahabharat*, lined him with the liars and made him undergo the sufferings of hell.

There is now the occasion before Great Britain to do justice to the four hundred million people of India. It is with British either to lose or use the chance of acquiring the friendship. It will be useless to repent when the game is over.

I wish to address the representatives of the minorities and the Depressed classes a few words with regard to the Clauses embodying safeguards for them. The question of safeguard arises when there is any fear of injustice. In absence of such fear, no one wants safeguards. If you turn the pages of Indian history you will find the existence of some disabilities or discriminations that have been created by the society itself out of either foolishness or selfishness. Take for example, untouchability. To turn a major part of community into untouchables and to deprive them of human rights is a crime that can never be excused. The only atonement for this is to acknowledge their rights and to return the same to them. We are resolved to do

so. But the point, to which I wish to draw your attention, is this, that no doubt our country or community stands guilty for creating social barriers and divisions but the Britishers aggravated these evils in order to establish and consolidate their imperialistic hold, on us and thereby created a sense of hatred and ill-feeling between us. They never made any attempt to solve the complicated problems which they had themselves created; on the contrary, they intensified them. With their duplicity they created a gulf between the Brahmins and the non-Brahmins, between touchables and untouchables, between the Hindus and the Muslims, between the Sikhs and Muslims, even between man and woman, brother and brother. Are we to shoulder the responsibility for their guilt? If so, I am ready to own the entire responsibility single-handed. But to continue the safeguards and perpetuate the division is not a wise course. I wish to tell you and tell you rather bluntly, "Please wake up." The English played their game under the cover of safeguards. With the help of it they allured you to a long lull. Give it up now. When are you going to frame the Constitution yourself and remove these disparities? Now there is no one to misguide you. Safeguards cannot remove the existing disparities and divisions. You cannot make the ground even by preserving pits and mounds. Let us to bold and make united efforts to remove the disparities so that one and all may enjoy equal rights. Please remember that a larger representation cannot be a guarantee of safety. On the contrary, the tussle for representation will create conflict.

In 1916, The Indian National Congress conceded to the Muslims their demand for separate electorates and reservation of seats. Within the last thirty years, this vicious system has brought the country to the verge of civil war and partition; it made the two sister communities thirsty for the blood of each other. The trick played by Lord Minto in 1906 proved successful.

Some say that the Constituent Assembly is not a sovereign body; it is a creation of the British; its very existence has no meaning and the Constitution drawn up by it has no importance. I cannot have the audacity to say that they are devoid of sense but I do say that they are ignorant of Indian history. I need not dwell much on this point. One thousand years ago, India, for some reason, was decentralised or divided and failing to withstand the invasions of foreigners came under their sway. Since that very time the fire of freedom has been constantly blazing in the hearts of the Indian people. It was never extinguished. On the one hand, this fire appeared in the form of sages. Swami Ramdas, Goswami Tulsidas, Guru Nanak, Swami Dayanand, Ram Krishna Paramhansa, Vivekanand and Ram Teerath are symbols of this very fire. On the other hand, statesmen and politicians like Shivaji, Guru Govind Singh, Rana Pratap, Rani of Jhansi Rani Lakshmi Bai, Raja Ram Mohan Roy, Lokmanya Tilak, Motilal Nehru and Subhash Chandra Bose were also political symbols of this very fire. Mahatma Gandhi and Khan Abdul Ghaffar Khan are saints and politicians both. The Indians owned Babar, Humayun and Akbar to the extent they identified themselves with India. During the British regime in India not a single day has passed that has not seen some torture done to some Indian in jail for his zeal of freedom. The fight for freedom has been going on continuously for the last two hundred years. The sixty years history of the Congress is a history of sufferings and sacrifices. Khudiram Bose, Bhagat Singh, Rajguru, Chandrashekhhar Azad and many other patriots in thousands sacrificed their lives for the cause of India's independence. Millions of Indians have shown wonderful heroism and patience because of the sacrifices made by Congressmen, England is gradually conceding power. The Acts passed in 1899, 1909, 1919 and 1935 go to prove that Indians have been gradually snatching power from the British. The

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national movement of 1940-52 and the international situation created by the recent Great War, have forced England to quit India. This Constituent Assembly represents the power that has been forcibly taken from the British. It is not their gift. The hands of Britain are not strong enough to take it back. England will have to accept the Constitution framed by us. There is no doubt about it. The recent triumph of India in the Assembly of the United Nations proves that India is no more a family concern of the British Imperialism. India has attained the status of a free and powerful nation. I can find no word to praise the unique work done by Mrs. Vijayalakshmi Pandit in this direction. She has held the head of India high and the immortal glory of Mrs. Pandit shall ever remain in the history of India in golden letters.

Mr. President, I will not take much more time; two words more, and I have concluded my speech.

All the Indians and particularly the Muslims, the Sikhs, the Depressed Classes and other minorities should have no fear. Their rights are safe in the hands of leaders like Mahatma Gandhi, Khan Abdul Gaffar Khan, Pandit Jawaharlal Nehru and Sardar Patel. Through this Resolution the Assembly declares and promises equal treatment and justice to all.

Other nations had also felt the necessity of such declarations; I would commend the Declaration of the 21st January 1919, by the Irish Republic to the members.

I wish to tell the members of the Assembly that India is determined like a rock to attain her freedom. England should take note of these words of mine.

With these words, I support the Resolution.

Dr. H. C. Mookherjee (Bengal: General): Mr. President, so far as my own community is concerned, I have always tried to adhere to the principle contained in that English proverb "Little children should be seen and not heard". On this particular occasion, I feel compelled to support the Resolution moved by Pandit Jawaharlal Nehru because I submit it is absolutely essential that the world should know that behind this Resolution we not only have the great Indian parties but also small, minute minorities, religious and social groups to one of which I belong. That is the reason why I am standing here. Those who have preceded me have amplified in much detail everything that can be said upon the Resolution in question. What is of special interest to me, is to be found in the 5th and 6th paragraphs of the Resolution. These are the things which appeal to me, because I believe, that the leadership which has come hitherto from the Congress, will be retained by the Congress so long as it adheres to the principles laid down therein.

So far as other points are concerned, I am not immediately interested in them, but what strikes me with great grief, is the fact that difficulty should have arisen amongst ourselves and inside India. I shall not specify the different parties but it seems to me that so far as the difficulties of minorities, whether major or minor, are concerned, the difficulties are to be found as regards enjoyment of civic and political rights. These rights are fundamental and would be applicable to every social and religious group. So far as religious rights are concerned, we have freedom of worship. Every religion today is militant. Those days are gone when the Christian missionary, the Muslim *maulvi* or the Sikh *guru* could afford to make inroads upon the great Hindu majority community with impunity. Every religion is militant today and enjoys the power of converting people into its own fold. I do not see why we should be doubtful in this matter,—I

am referring to the Christian group—about our rights in the matter of propaganda.

The Congress has been the spear-head of nationalism and so long as it looks to the progress of the country, I will not question it. It will not only gain the allegiance of the rest of India but also of the smallest of minorities including my own.

Mr. Promatha Ranjan Thakur (Bengal: General): How long are we to go on with this Resolution?

Mr. President: I do not know. (*Laughter*)

Shri Balkrishna Sharma (United Provinces: General): Can anybody move the closure here?

Mr. President: Of course, anybody can move closure.

Mr. H. V. Pataskar (Bombay: General): Mr. President, I rise to support this Resolution moved by the Hon'ble Pandit Jawaharlal Nehru. Many persons of diverse interests and political thought have already expressed their views on this Resolution. I wish to confine myself to only a few aspects of this question, and that, too, in as few words as I possibly can.

The first and most important question is why this Resolution is necessary at this stage. The simple answer is that the enormity and the complex nature of the task, with which we are faced, is the principal reason why it is necessary to pass such a resolution at this stage. Let us, Sir, look at the task before us. We are burdened with the task of framing a constitution which will be suitable for 40 crores and odd of the people of India, who form one-fifth of the human race. Then again, these 40 crores are divided religiously into Hindus, Muslims, Christians, Jains, Sikhs and various other sects and sub-sects. One-third of the Indian territory is covered by what we call States. They are an anachronism, and they are about 516 in number. They, again, are different and divergent in their economic status. Some of them have an income of only, I am told, less than Rs. 100 per year. Again, in the matter of administration, some of these administrations are highly despotic and there is personal rule. In other States we find there is some sort of attempt at constitutional government. Then again, these 40 crores of people inhabiting this land are in various stages of evolution, as we know from the various claims that have already been put forth on behalf of Backward Classes and Tribal Areas and so forth. Economically, also we are divided, and while we have some multimillionaires on the one hand, there are also people who are on the verge of starvation or are actually starving. Administratively also, the foreign rule is responsible for dividing our country into non-homogeneous provinces, and that has again created so many problems with which we are faced. It is for such a large mass of people, so divided and cross-divided and subdivided, partly by foreign aggression in pre-British days, and largely, by British imperialism, that we have to frame a constitution, which will be suitable or acceptable to many of these elements, or at any rate which will satisfy the needs and aspirations of as many of them as we possible can.

Naturally, when we begin the task of framing a constitution for such a mass of people, these divisions, sub-divisions and cross-divisions multiply themselves. There is, in fact, a scramble for securing the interests of this division or that sub division of this cross-division. Many of these interests are mutually conflicting as we have seen from many of the views expressed even on the floor of this House. India, we know, is a land of ignorance and poverty, and it is very easy in this state of the country to exploit religious fanaticism for so-called political activities of certain people. There is no modern and efficient constitution in the world which is based on a particular religion. The basic principle of every religion is to make a better

[Mr. H. V. Pataskar]

order of society, throughout the world, irrespective of territorial boundaries. We postulate 'God' by whatever name called, in order that humanity may be formed into a true and real brotherhood. Religion which thus starts with the object of raising humanity to a higher and nobler level, is being used as an instrument to perpetrate the worst horrors by man against man and for degrading man to the level of a beast.

We have, thus, before us a problem of such complex and vast nature. We have, the problem of antagonism between the Muslims and the Hindus, the antagonism between Hindus and Hindus, the problem of the Christians, the Anglo-Indians, the Depressed Classes, the Backward Classes; and lastly, there is the problem of the rights of women.

Every section and cross-section thinks of its own individual rights and claims a charter for itself. Sir, I am afraid, in the general scramble for different charters for different sections, the charter for the common man is likely to be lost sight of—the charter for the common man which is the thing, most needed. This Resolution, Sir, embodies the charter for the common man. As I understand it, the purpose of this Resolution is to make it clear not only to all Indians, but also to those who are interested in the welfare of the world as a whole, what we propose to do. More than any statements or counter-statements of various political leaders either in India or outside, this Resolution must satisfy all those who have any doubts regarding our intentions. They should look at this comprehensive statement and feel convinced that the interests, of every Indian, irrespective of caste, creed, religion, sex, and social or economic status, will be safeguarded in the future Constitution which we propose to frame. If this does not satisfy those who have chosen to stay out, nothing else can satisfy them. We shall try to be fair and just to every section. But we shall also see that we are not coerced into any wrong action by threats of any nature. Having made our objectives clear, we shall march forward with our task and on our way to independence fearlessly, and we shall face all difficulties that may be placed in our path. We shall achieve our goal of independence; and a free independent India will play an important role in stabilising the world conditions which are in ferment to-day.

With these words, Sir, I support the Resolution which has been moved by the Hon'ble Pandit Jawaharlal Nehru.

Mr. S. H. Prater (Madras: General): Sir, in an earlier stage of the debate on this Resolution, a representative of my community supported an amendment of Dr. Jayakar for the postponement of this Resolution. We now feel that such postponement is no longer valid or justifiable (*hear, hear*), and this House should proceed forthwith to accept and pass this Resolution.

This Resolution embodies what should be the objective of this Assembly—to create and establish a system of government which will give India the status of an independent sovereign State. And in accepting this Resolution, this Assembly will be taking the first step in implementing this purpose, by declaring our will to vest India with complete control and authority in her domestic affairs, and to vest her with complete independence of action in the field of international relationship.

The attainment of this independence will depend upon our solving for ourselves the problem of self-government. The terms of this Resolution lay down the basis of this solution. It is a resolution of compromise. Its terms fall completely within the Cabinet Mission's Proposals, which are designed to provide a *via media* between opposing claims of the Congress

and the Muslim League. These proposals may be repugnant to this party or that. But the need of to-day is the need for men to recognise those truths which they most dislike and to sacrifice their several ideals to the common good. There are; two truths which must be recognised, and those truths are embodied in the terms of this Resolution—one, that any constitution that we build up, must be based on provincial autonomy, and two, that there must be a union of all the autonomous States and Provinces. The history of India teaches that, from the time of the Mauryas down to the days of the British, India has remained a country of separate States, Kingdoms and Provinces with separate national identities, separate national cultures, which engender and have always engendered strong local patriotism. It is not the communal differences of the hour, but it is these local patriotisms which have governed the political evolution of India, as we know it to-day. A strong unitary government a confirmed policy of centralisation which marked the earlier stages of British administration and rule, had to give way before these inexorable forces to decentralisation, to the increasing devolution of power from the Centre to the Provinces and to the increasing independence of provincial administrations. Provincial autonomy came to us not as an extraneous proposition, it was directed by the peremptory need of a country, composed of various States and Provinces, peopled by various races, whole cultural, economic and political needs could only be met by autonomous rule. The grant of provincial autonomy and residuary powers to the Provinces as envisaged in this Resolution meets this need. But if history teaches that provincial autonomy can be the only basis upon which we can build a new constitution, it equally proves that there must be a union of these provinces in a single State governed by a single central authority. Whenever such supreme power was absent to hold the balance between the various provinces, there was always struggle and strife, with its disastrous consequences to the country as a whole. It is only by a Union such as this Resolution envisages that we can secure mutual peace and common prosperity of the peoples of this country. It is only by such a Union that we can secure their integrity from foreign aggression. It is only by such a Union that the peoples of India can, as a group, become a dominant power in world politics. This Union, whatever the factors against it, will be established, because it arises from and is based on reality and truth. It is, based on deep human needs. But if this Union of ours is not to be a mere geographical name, but a real union of the hearts and minds of men, it must be founded not on suspicion, not on the advantages that this political party or that may gain, but on a spirit of sympathy understanding and compromise which is the essence of true statesmanship.

And this brings me to the question of minorities. The Resolution advocates the fundamental rights of every citizen in this country. It also advocates the fullest protection to the minorities. This is a question which not only concerns the smaller minorities, it is a question which also concerns the major elements of the population,—Hindus and Muslims, who may relapse into the position of minorities in various areas of the country. As such, the protection of minorities becomes the key to the framing of the whole Constitution, because if we are aiming at unity, such unity can only be achieved by measures which will give to the minorities in the Provinces and in the groups of Provinces the fullest protection for social, economic, religious and cultural needs. Eventually, the whole question will depend upon the goodwill, sympathy and understanding of this Assembly. We are a sovereign body, but let us approach our task, not in the spirit of legislators moved by no emotion, but by a majority vote. Let us approach our task rather in the spirit of negotiators, who in every decision that we make seek to obtain the acceptance of those whom those decisions will most affect. Once we establish such a convention, I think our work will go

[Mr. S. H. Prater]

smoothly. In this Assembly we have the means of reaching a common measure of agreement between all 'elements of this country. Let us by common effort, common endeavour, in a spirit of true compromise, endeavour to achieve the common good. (*Cheers*).

Mr. President: I understand that the Right Hon'ble Dr. Jayakar wishes to make a statement in regard to his amendment. He may do that now.

The Right Hon'ble Dr. M. R. Jayakar (Bombay: General): Sir, I am very grateful to you for giving me a few minutes to make a short statement in connection with the amendment which I moved at a very early stage of this debate. The Assembly will recall that that amendment was dictated by a few considerations, mainly, the desire to make it easier for the Muslim League and the Indian States to take part in our deliberations. In connection with the Muslim League I can, say that the Assembly practically accepted the proposal which was contained in my amendment. It postponed its deliberations to the 20th of January. It has gone further and accepted the Statement of His Majesty's Government of the 6th December. Though it did all this, the Muslim League has still not come in. Whether they propose to, come in, nobody knows. They have held their cards up to the 29th January knowing full well that on the 20th of the month, nine days before they meet, we shall meet here. In the course of my speech I suggested as a compromise one course, namely, that if this Assembly was not willing to wait until the stage was reached according to the terms of sub-clause 6 of paragraph 19 of the Cabinet Mission's Statement after the sections had met and framed their Constitutions,—I said that if this Assembly was not prepared to wait till then because that stage would be reacted at a very late date,—I suggested that we should at least wait until the date of our next session, namely, 20th January, which I thought would give the Muslim League enough time to make up its mind. I, having made that suggestion, and the House having accepted it, realize that I am in honour bound not to press my amendment any further. (*Cheers*.) I do not want however to appear as if I was backing out of the considerations which prompted my amendment, but as the House accepted the proposal I definitely made, the contract is complete. I do not therefore, propose to press my amendment. But in doing so, I may be permitted to urge a few considerations before the House. If those considerations appeal to the House, it might, of its own motion, take such course as it thinks best. Those considerations are just a few and I ask for your patience for a few minutes.

Mr. President: Is it any new proposal that the Right Hon'ble Member is making now?

The Right Hon'ble Dr. M. R. Jayakar: Sir, I am not making a new proposal. I wish only to suggest that in considering the Resolution now before the House a few considerations.....

The Hon'ble Pandit Govind Ballabh Pant (United Provinces: General): Sir, may I just submit that Dr. Jayakar has, I understand, withdrawn his amendment? Having withdrawn his amendment, it is not, I think, proper and also not regular that he should make a fresh speech now. He has had his opportunity to express his views fully on the day, he spoke during the last session. Now, having withdrawn his amendment.... (Voices: 'Go to the microphone, please')..... I was submitting that Dr. Jayakar had now withdrawn his amendment. A person who has already delivered a speech may be allowed a special opportunity for withdrawing his amendment if he chooses to do so. Having withdrawn his amendment he should not however complicate the situation further by proposing, in some form or other

a new and a fresh amendment at this stage. Whether he puts his idea forward in the precise form of an amendment or otherwise, makes no difference. In any case, if he chooses to make a new suggestion now and thus put the Assembly in an awkward and embarrassing position, the difficulty is not met by his refraining from calling it an amendment. It remains an amendment nonetheless. The stage for that is past. So, I submit it is not open to him to make any fresh proposals now, whether under the guise of remarks or observations. He has exhausted the opportunity, the special opportunity that was given to him. Now he may well be requested to resume his seat. (A *voice*: Is there any new proposal?)

Mr. President: Now new proposals at this stage. I only allowed Dr. Jayakar to declare his position in withdrawing his amendment.

The Right Hon'ble Dr. M. R. Jayakar: While withdrawing my amendment and explaining my reasons, I am entitled to place before the House some points for its consideration.

Dr. P. S. Deshmukh (C. P. & Berar : General): I should like to point out that the Hon'ble Member should be permitted to complete his statement. (*Hear, hear.*) The mere fact that he has stated that he has withdrawn his amendment should not debar him from making a statement. The opportunity that was given by the Chair was for him to make a statement. He is not proposing any fresh amendment, and he should be at liberty to complete the statement he wants to make, supposing he had chosen not to use the sentence that he was withdrawing his amendment till the end of his speech, would the Hon'ble Member, who has opposed the continuance of his speech, have been in order? So, the mere fact that Dr. Jayakar has used the sentence that he was withdrawing the amendment, should not debar him from completing his speech and making the observations he wishes to make. He should be at liberty to do so and we are prepared to hear him.

Mr. R. K. Sidhwa (C. P. & Berar : General): Mr. President, I differ from the last speaker on this question. Dr. Jayakar has definitely stated that he wants to make two suggestions. Now, Sir, if you allow him to do so, you would necessarily have to give an opportunity to other members to speak on those suggestions—on the merits of those suggestion. Therefore this House would be put in an awkward position as was rightly pointed out by the Hon'ble Mr. Pant. Dr. Jayakar distinctly stated that he wants to make two suggestions. I do not know what those suggestions are. They may be good or they may be bad. But it should not be allowed to remain on record, unless an opportunity is given to other members to give their opinion on the matter. I therefore second the suggestion made by the Hon'ble Mr. Pant.

Mr. President: I do not think it necessary to have any further discussion on this point. I understand the position. I think Dr. Jayakar has exhausted his right of making a statement with regard to the amendment.

I will now put to the House whether it allows the amendment to be withdrawn.

The amendment was, by leave of the Assembly, withdrawn.

Mr. C. M. Poonacha (Coorg): Mr. President, Sir, I wish to express myself wholeheartedly in support of the Resolution moved by the, Hon'ble Pandit Jawaharlal Nehru. In doing so I have to draw the attention of the House to the discussions that have taken place outside this Assembly. There has been a sort of questioning of the competence of this Assembly so far as the passing of a resolution of this kind is concerned before addressing ourselves to the tasks ahead, I think it is necessary for us to take up for consideration, a resolution setting out the objectives for which we are

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assembled here. For that purpose I do feel that our action in this respect is not contrary to what is already contained in the State Paper. We are by this Resolution, more or less, attempting to cross the t's and dot the i's of what is contained in the Statement of May 16, 1946. We are not doing anything beyond the limits of the framework of what is stated in the said State Paper.

So far as the other points are concerned, I would like to draw the attention of the House to the fact of the sovereign rights vesting with the people of India. Here seems to be some controversy going on as regards these sovereign rights, particularly in Indian States. They do not contest the fact that in British India sovereignty vests with the people of British India and when that is so, there can be no argument against the sovereignty of the people in the Indian States as well. It is a historical truism, Sir, that there are States with Rulers ruling over people, and also States administering rules without the Rules. But there cannot be Rulers without the people. Therefore, it conclusively proves that the sovereignty of the people is a recognised fact of human activities which is demonstrated not merely by a resolution of this type but from history which has proved all along that it is the people who own the State and who confer the administrative headship on Rulers and Kings.

Much has been said, Sir, about minorities. Instead of claiming that we are a minority of so many millions or that we are a minority of so many crores, I would suggest that we should better consider about the many more millions that are yet to be born. We are not here purely for the purpose of drawing up a constitution for the present generation only. We are here for framing a constitution for the coming generations also. So, the task of framing a free-India constitution for ourselves, as well as for the coming generations, makes our duty all the more onerous. Therefore we will have to be more considerate, more responsible, more specific about our intentions. In doing so, it is within our competence, it is within our province, within our jurisdiction to set before us the objectives which we are working for. Not only to ourselves and to our poor millions, but also to the world, let us better state now, for what we stand and for what, purpose we have assembled here. This Resolution clearly expresses our cherished intentions and, so, Sir, I wholeheartedly support this Resolution.

Shri Vishwambhar Dayal Tripathi (United Provinces: General) : *[Mr. President and friends: When we are going to frame the Constitution for our land, it is but natural that we should think on what basic principles our future constitution—the constitution for a free and independent India—should be framed. Therefore I support the Resolution on the fundamental principles of the Constitution moved by the Hon'ble Pandit Jawaharlal Nehru. I want to draw your attention to some of the important clauses of the Resolution. Besides other things, basic principles are embodied in paras, 4 and 5 of the Resolution. As far as the basic principles embodied in the above-mentioned paragraphs are concerned, I am in complete agreement with them. But I would like to tell you that these principles are enunciated not only in our constitution but they are accepted by almost all the countries in their respective Constitutions. But in spite of the embodiment of these basic principles in the Constitutions of various countries, and despite the declaration by their politicians that their Constitutions would function according to them, we find that these principles are never practised. If you go through the Constitutions of England, France. America and

*[English translation of Hindustani speech begins.

Netherlands or pursue the declarations made by their politicians and administrators, you will find that these principles, in some way or other, are accepted by them also. But in spite of this we find that these empires do not practise them. Throughout Asia, Indo-China, Java, Burma and India, we find that the European Imperialisms do not care to work according to these principles, though they are present in their respective Constitutions. Therefore, it is essential for us to consider in what way we can put them in practice. This is an important desideratum for us.

As I have said before, I want to draw your special attention to three paragraphs. In the 4th paragraph it is stated that we will frame a constitution for a sovereign and independent India, wherein all powers and authority are derived from the people. So far as this principle is concerned, it is very sound and every one will welcome it. But those who are students of politics know how these principles were misused in many countries. One of my friends just referred to the Constitution of England and said how the same had been misused there. Many centuries ago the renowned politician of England, Mr. Hobbes, had established the principle that all powers of State are derived from the people. But the monarchs of England misused this principle. The monarchs indeed accepted that all powers and authorities are derived from the people, but at the same time they told the world that once the people delegated the powers and authorities to the rulers, those powers no more remained with the people. The evil consequence of this we find in the theory of the "Divine Right of Kings" in history. Therefore, it is very essential, that, when we say "all powers and authorities are derived from the people," we must also make it clear that the same shall remain always vested in the people. And for this reason I attempted to put in an amendment to this effect. But for many reasons, the amendment could not be put in. Therefore, when we draft the Constitution later on, we must think over it and embody this in our Constitution.

So far as the 5th and the 6th paragraphs are concerned, the principles embodied in them are very attractive and desirable. In some way or other, they are present in the Constitutions of almost all the countries, but they are never practised. And, therefore, we must consider well as to how we should translate these principles into action, and, when drafting the Constitution, we should pay particular attention to it. It is stated here, that the Constitution which will be drawn up and the State which will be established on the basis of that Constitution, will guarantee social, economic and political justice to all the people. No doubt it sounds very good. But you know that the body, which is vested with power and authority, interprets the term 'justice' in its own way. If, in our country, the power and authority tomorrow passes on to the capitalists, they will interpret the term 'social, economic and political justice' in their own way. But, if, in reality the power and authority are vested in the people, their representatives will interpret it correctly. Therefore, it is necessary that we embody in the Constitution some such safeguards that the body vested with the power and authority may not interpret these principles in their own arbitrary way. To achieve this end there is only one way and it is this. When we frame the Constitution, we should declare it beforehand that our constitution shall not be framed, and the State created under that Constitution shall not be established on a capitalistic basis. If we do not do so now, the rulers may later on interpret these principles in their own arbitrary way and against the best interests of the people.

Much has been said before you about the Muslim League and Mr. Jinnah and most of it is correct. But I would like to tell you that if before

[Shri Vishwambhar Dayal Tripathi]

drawing up the Constitution, you declare that our constitution shall be drawn up on socialistic lines, undoubtedly many of our Muslim brethren will be gladly willing to cooperate with us.

All the minorities, whether Muslims or Harijans, have doubts and fears in their hearts as to how the rulers would interpret these principles after the Constitution is drawn up. Therefore, if we are to remove their doubts and fears, we should declare it now, that our constitution shall be framed, and the government to be created under the Constitution shall be formed, on a socialistic and positively not on a capitalistic basis. We should make this clear. For this reason, I had put in an amendment and had suggested that the word 'socialistic' should be added before 'India' in the Resolution. Again, I would say that if we want the principle embodied in the Resolution to be put into practice, the only way to secure this end is to draw up the Constitution on a socialistic basis. The Hon'ble Pandit Jawaharlal Nehru, in his speech delivered in the beginning, referred to my amendment and said something. He clearly said that he wants to draw up the Constitution on socialistic lines later on and that he did not want any controversy to arise on the Resolution at this stage. But I would submit with respect that there is no question of controversy. If really we mean to do some good to the people, if we want not only to remove the British rule but to build such a social and economic structure, whereby the people may get full opportunity for their advancement, it is very essential that we draw up our Constitution on socialistic lines. I think this will solve all the existing problems of minorities whether they be Muslims, Harijans or others. No doubt there are many among us who do not favour socialistic principles, but so far as the Congress is concerned, it has already accepted them. It declared in its election manifesto that it stands for the abolition of the zamindari system, and the nationalisation of the key industries. Therefore, when the Congress has already accepted these principles, it becomes our duty to frame the Constitution on the basis of these very principles. Some may have objections to it, but I think ninety-nine or ninety-eight per cent. of the people will have no objection at all. The public will be fully benefited when we accept socialistic ideals and draw up the Constitution on that basis.

I want to draw your attention to one more fundamental thing. When we are declaring our solemn resolve to establish an Independent Sovereign Republic State in our land we should also decide whether this Constituent Assembly is a sovereign body or not. If it has no sovereign rights, it cannot frame a constitution embodying sovereign rights. It has been said in the Resolution that this Constituent Assembly resolves to declare India an Independent, Sovereign Republic. Under these circumstances, we should also declare by another resolution, that this Constituent Assembly is a sovereign body. The State Paper of May 16 has placed various limitations and restrictions on our functions. I need not go into details. All of you know it well. But I want to tell you one thing in this connection. We have assembled in this house, not because the Constituent Assembly owes its creation to the State Paper, but because it is the outcome of the sufferings and sacrifices of the country made during the last fifty or sixty years, and particularly during the last five or six years. The sufferings and sacrifices made by the country have compelled the British politicians to form this Assembly and to speak of the transference of power to you. I want to make it perfectly clear to you that we have assembled here, not as a result of the State Paper, but as a result of the great agitation the country made during last five or six years.

This Constituent Assembly is the result of the movement of 1942 when the Congress passed the 'Quit India' Resolution, it is the result of the heroic deeds of the Indian National Army, the exploits of which are before us; it is the result of the heroic deeds of our respected great revolutionary leader, Shri Subhash Chandra Bose, who showed how we can organise and fight the big powers for the liberation of our land. Therefore, it is totally wrong to attribute the existence of this Assembly to the State Paper. This Assembly is the outcome of the work done by our country inside and outside the land within the last five or six years. I want to make it clear that it has derived its power and authority from the people and not from the British Parliament. Therefore, we should now declare that this Constituent Assembly is a Sovereign body. It has derived its power and authority from the people and not from the British Parliament and we are not prepared to accept any limitation that the British Parliament may unconstitutionally impose upon it. I hope, in order to translate the principles embodied in the Resolution into practice, we will adopt all such measures that may enable us to establish an independent State in our land. It is crystal clear that our Independent State shall be established on socialistic lines so that the poor people of our land may be fully benefited.

I do not want to take any more of your time and support the Resolution with these words]*.

Mr. President: We have had discussion for several days on this Resolution. As far as I have been able to judge, members now wish, that this discussion should be brought to an end. So, tomorrow morning I hope we shall complete this discussion and finish this Resolution.

The House will now adjourn till Eleven of the Clock tomorrow.

Tomorrow we shall take up the other Resolution of which notice has been given by Pandit Jawaharlal Nehru and which has not been taken up today.

Sri K. Santhanam (Madras : General): Is the Budget coming tomorrow?

Mr. President: It may come tomorrow. It is in the agenda.

The Assembly then adjourned till Eleven of the Clock, on Wednesday, the 22nd January, 1947.

*[] English translation of Hindustani speech.

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CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 22nd January, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eleven of the Clock, Mr. President (The Hon'ble Dr. Rajendra Prasad) in the Chair.

RESOLUTION RE: AIMS AND OBJECTS—*contd.*

Mr. President: There are three items in the Agenda to-day—

1. Discussion of the Resolution that has been going on for some days.
2. Another Resolution about Bhutan and Sikkim to be moved by Pandit Jawaharlal Nehru, and
3. Budget.

I think we had better complete the discussion on the Objectives Resolution which has been moved by Pandit Jawaharlal Nehru. I noticed yesterday that Members wanted closure on that and if that is the feeling of the House, then I would ask Pandit Jawaharlal Nehru to straightway say what he has to say in reply and complete the discussion.

Mr. H.J. Khandekar (C. P. and Berar : General):*[I want to express my views on the Resolution before the House later on. The Independence Day falls on the 26th of January. This Resolution seeks to make India free and therefore the decision on it should also be taken on 26th January. Though 26th January is a holiday. I would propose, that a resolution of so great importance should be passed on the Independence Day. Therefore I request that the Assembly should meet on that day, may be, for a few minutes only.]*

Rai Bahadur Syamanandan Sahaya (Bihar: General): Sir, I beg the leave of the House to withdraw the two amendments which stand in my name. (*Hear, hear.*).

Mr. President: Rai Bahadur Syamanandan Sahaya had moved two amendments to the Resolution. He wants leave of the House now to withdraw them. Do I take it that the House agrees?

Hon'ble Members: Yes.

Mr. President: Those two amendments are withdrawn. We have now got only the main Resolution. There is no other amendment.

A suggestion has just been put forward by Mr. Khandekar that we should pass this Resolution on the 26th, but unfortunately that happens to be a Sunday.

Mr. H. J. Khandekar: There should be a session of the Assembly for a few minutes because this Resolution is an important resolution and should be passed on the Independence Day. 26th is a Sunday and I therefore request the Chair to have the session for a few minutes to consider this Resolution and pass it.

Mr. President: We shall see about it after Pandit Jawaharlal Nehru has spoken. I shall take the vote of the House whether it should be passed today or not.

Hon'ble Members: Today.

Mr. President: Then 22nd has to become 26th. Pandit Jawaharlal Nehru.

[] English translation of Hindustani speech.

The Hon'ble Pandit Jawahar Lal Nehru (United Provinces: General):
*[Mr. President, six weeks have passed since I moved this Resolution. I had thought then that the Resolution would be discussed and passed within two or three days, but later the House decided to postpone it in order to give time to others to think over it. The decision to postpone an important Resolution like this was probably not to the linking of others like me, but I did not doubt that the decision was sound and proper. The anxiety and impatience in our hearts was not for the passage of the Resolution, which was simply a symbol, but to attain the high aims which were enshrined in it. It is also our intense desire to march on with all others and reach our goal with millions of Indians. Therefore, it was advisable to postpone the Resolution and to afford ample opportunity not only to this House but also to the country in general to think over it. The sense of all amendments and specially the amendment moved by Dr. Jayakar was generally for postponement. I am grateful to Dr. Jayakar for the withdrawal of his amendment and I thank the others also who have withdrawn their amendments. Many Members have spoken on the Resolution. Their number may be thirty or forty or more. Almost all of them have supported it without any criticism. Some of them, of course, have drawn our attention to some particular matters. I am of opinion that if a plebiscite of the crores of people of India is taken, all of them will be found to stand for the Resolution; though there might be some who would lay more or less emphasis on some particular aspect of the Resolution. The Resolution was meant to clothe in words the desire of crores of Indians and it was very carefully worded so as to avoid any strongly controversial issue. There is no need to say a great deal about this but with your permission, I would like to draw your attention to some points. One of the reasons for the postponement of the Resolution was that we wished that our brothers who had not come here, should be in a position to decide to come in. They have had a full month to consider the matter but I regret that they have not yet decided to come. However as I have already said at the outset, we will keep the door open for them and they will be welcomed up to the last moment, and we will give them and others, who have a right to come in, every opportunity for coming in. But it is clear that while the door remains open, our work cannot be held up. It has, therefore, become indispensable for us to proceed further and carry the Resolution to its logical conclusion. I have hopes that even at this stage those, who are absent, would decide to come in.

Some of us, even though they are in agreement with this Resolution, were in favour of postponing some other business too so that the absentees might not find any obstacle in their way to come in. I am in sympathy with this suggestion but in spite of this I am at a loss to understand how this suggestion could be put forward. That is a question of waiting; not that of postponing the Resolution. We have waited for six long weeks. This is no matter of weeks; ages have slipped by while we have been waiting. How long are we to wait now? Many of us who waited have since passed away and many are nearing the end of their lives. We have waited enough and now we cannot wait any longer. We are to further the work of the Assembly, speed up the pace and finish our work soon. You should bear in mind that this Assembly is not only to pass resolutions, I may point out that the Constitution, which we frame, is not an end by itself, but it would be only the basis for further work.

The first task of this Assembly is to free India through a new constitution to feed the starving people and cloth the naked masses and to give every Indian fullest opportunity to develop himself according to his capacity. This is certainly a great task. Look at India today. We are sitting

*[English translation of Hindustani speech begins.

here and there in despair in many places, and unrest in many cities. The atmosphere is surcharged with these quarrels and feuds which are called communal disturbances, and unfortunately we sometimes cannot avoid them. But at present the greatest and most important question in India is how to solve the problem of the poor and the starving. Wherever we turn, we are confronted with this problem. If we cannot solve this problem soon, all our paper constitutions will become useless and purposeless. Keeping this aspect in view, who could suggest to us to postpone and wait?

A point has been raised from one side that some ideas contained in the Resolution do not commend themselves to the Rulers of the States, because they conflict with the powers of the Princes. A suggestion has also been made to postpone the decision about the States in the absence of their representatives. It is a fact they are not present here but if we wait for them it is not possible for us to finish the work even at the end of the Constituent Assembly according to the plan. This is impossible. Our scheme was not that they should come in at the end. We invited them to come in at the beginning. If they come, they are welcome. Nobody is going to place any obstacles. If there is any hesitation, it is on their part only. A month ago you formed a Committee to get into touch with their representatives. We were always anxious to discuss with them although we did not get any opportunity for it. That is no fault of ours. We did not ask for time. We want to finish our work as early as possible. I am informed they complain of the following words contained in the Resolution.

“Sovereignty belong to the people and rests with the people.”

That is to say, the final decision should rest with the people of the States. They object to this. It is certainly a surprising objection. It may not be very surprising if those people who have lived in an atmosphere of medievalism do not give up their cherished illusions, but in the modern age how can a man believe for a moment in the divine and despotic rights of a human being? I fail to understand how any Indian, whether he belongs to a State or to any other part of the country, could dare utter such things. It is scandalous now to put forward an idea which originated in the world hundreds of years ago and was buried deep in the earth long before our present age. However, I would respectfully tell them to desist from saying such things. They are putting a wrong thing before the world and by doing so they are lowering their own status and weakening their own position. At least this Assembly is not prepared to damage its very foundation and, if it does so, it will shake the very basis of our whole constitution.

We claim in this Resolution to frame a free and democratic Indian Republic. A question may be asked what relation will that Republic bear to other countries of the world? What would be its relations with England, the British Commonwealth and other countries? This Resolution means that we are completely free and are not included in any group except the Union of Nations which is now being formed in the world. The truth is that the world has totally changed. The meanings of words too are changing. Today any man who can think a little, will come to the conclusion that the only way to remove the doubts and dangers from the world is to unite all the nations and ask them to work together and help each other. The organisation of the United Nations is not free from big gaps and fissures. Thousands of difficulties lie ahead and a great deal of suspicion exists between countries. I have already said that we are not thinking in terms of isolating ourselves from the world. We will work in complete cooperation with other countries. It is not an easy thing to work in cooperation with England or the British Commonwealth, and yet we are

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prepared to do so. We will forget our old quarrels, strive to achieve our complete independence and stretch our hands of friendship to other countries, but that friendship shall in no case mar or weaken our freedom.

This is not a resolution of war; it is simply to put our legitimate rights before the world; and in doing so if we are challenged, we will not hesitate in accepting that challenge. But after all, this is resolution of goodwill and compromise, among the people of India, whatever their community or religion and with the different countries of the world including England and the British Commonwealth of Nations. The Resolution claims to be on friendly terms with all and it has been put before you with that motive and intention. I hope you will accept it.

A friend has suggested that it would be advisable to move the Resolution just on the eve of the Independence Day which is due to come after four days only. But I will ask him if it is proper to delay a proper thing even for a moment? Not a moment's postponement is advisable and we should finish our work as soon as possible.

This Resolution which has been put before you is in a new form and in a new shape, but I would like to tell you that it has a long trail of resolutions pledges and declarations including the world-famed resolutions of "Independence" and "Quit India" behind it. It is high time to fulfil our pledges which we made from time to time. How are these pledges to be fulfilled? The right answer lies with you and I hope you will not only accept the Resolution but also fulfill it as you fulfil a solemn pledge.

One thing more I would like to tell you. We have been confronted and will again be confronted with various questions. Persons of various groups, communities, and interests would look at it from different points of view, and diverse questions and problems would be raised by them, but we should all bear in mind that we should not, on the eve of Independence, allow ourselves to be carried away by petty matters. If India goes down, all will go down; if India thrives, all will thrive and if India lives, all will live including the parties, communities and groups.

With your permission I would like to say something in English also.]*

Mr. President, it was my proud privilege, Sir, six weeks ago, to move this Resolution before this Hon'ble House I felt the weight and solemnity of that occasion. It was not a mere form of words that I placed before the House, carefully chosen as those words were. But those words and the Resolution represented something far more; they represented the depth of our being; they represented the agony and hopes of the nation coming at last to fruition. As I stood here on that occasion I felt the past crowding round me, and I felt also the future taking shape. We stood on the razor's edge of the present, and as I was speaking, I was addressing not only this Hon'ble House, but the millions of India, who were vastly interested in our work. And because I felt that we were coming to the end of an age, I had a sense of our forbears watching this undertaking of ours and possibly blessing it, if we moved aright, and the future, of which we became trustees, became almost a living thing, taking shape and moving before our eyes. It was a great responsibility to be trustees of the future, and is was some responsibility also to be inheritors of the great past of ours. And between that great past and the great future which we envisage, we stood on the edge of the present and the weight of that occasion, I have no doubt, impressed itself upon this Hon'ble House.

]* English translation of Hindustani speech ends.

So, I placed this Resolution before the House, and I had hoped that it could be passed in a day or two and we could start our other work immediately. But after a long debate this House decided to postpone further consideration of this Resolution. May I confess that I was a little disappointed because I was impatient that we should go forward? I felt that we were not true to the pledges that we had taken by lingering on the road. It was a bad beginning that we should postpone even such an important Resolution about objectives. Would that imply that our future work would go along slowly and be postponed from time to time? Nevertheless, I have no doubt, that the decision this House took in its wisdom in postponing this Resolution, was a right decision, because we have always balanced two factors, one the urgent necessity in reaching our goal, and the other, that we should reach it in proper time and with as great a unanimity as possible. It was right, therefore, if I may say with all respect, that this House decided to adjourn consideration of this motion and thus not only demonstrated before the world our earnest desire to have all those people here who have not so far come in here, but also to assure the country and every one else, how anxious we were to have the cooperation of all. Since then six weeks have passed, and during these weeks there has been plenty of opportunity for those, who wanted to come. Unfortunately, they have not yet decided to come and they still hover in this state of indecision. I regret that, and all I can say in this, that we shall welcome them at any future time when they may wish to come. But it should be made clear without any possibility of misunderstanding that no work will be held up in future, whether any one comes or not. (*Cheers.*) There has been waiting enough. Not only waiting six weeks, but many in this country have waited for years and years, and the country has waited for some generations now. How long are we to wait? And if we, some of us, who are more prosperous can afford to wait, what about the waiting of the hungry and the starving? This Resolution will not feed the hungry or the starving, but it brings a promise of many things—it brings the promise of freedom, it brings the promise of food and opportunity for all. Therefore, the sooner we set about it the better. So we waited for six weeks, and during these six weeks the country thought about it, pondered over it, and other countries also, and other people who are interested have thought about it. Now we have come back here to take up the further consideration of this Resolution. We have had a long debate and we stand on the verge of passing it. I am grateful to Dr. Jayakar and Mr. Sahaya for having withdrawn their amendments. Dr. Jayakar's purpose was served by the postponing of this Resolution, and it appears now that there is no one in this House who does not accept fully this Resolution as it is. It may be, some would like it to be slightly differently worded or the emphasis placed more on this part or on that part. But taking it as a whole, it is a resolution which has already received the full assent of this House, and there is little doubt that it has received the full assent of the country. (*Cheers.*)

There have been some criticisms of it, notably, from some of the Princes. Their first criticism has been that such a Resolution should not be passed in the absence of the representatives of the States. In part I agree with that criticism, that is to say, I should have liked all the States being properly represented here, the whole of India—every part of India being properly represented here—when we pass this Resolution. But if they are not here it is not our fault. It is largely the fault of the Scheme under which we are functioning, and we have this choice before us. Are we to postpone our functioning because some people cannot be here?

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That would be a dreadful thing if we stopped not only this Resolution, but possibly so much else, because representatives of the States are not here. So far as we are concerned, they can come in at the earliest possible moment, we will welcome them if they send proper representatives of the States. So far as we are concerned, even during the last six weeks or a month, we have made some effort to get into touch with the committee representing the States' Rulers to find a way for their proper representation here. It is not our fault that there has been any delay. We are anxious to get every one in, whether it is the representatives of the Muslim League or the States or any one else. We shall continue to persevere in this endeavour so that this House may be as fully representative of the country as it is possible to be. So, we cannot postpone this Resolution or anything else because some people are not here.

Another point has been raised: the idea of the sovereignty of the people, which is enshrined in this Resolution, does not commend itself to certain rulers of Indian States. That is a surprising objection and, if I may say so, if that objection is raised in all seriousness by anybody, be he a Ruler or a Minister, it is enough to condemn the Indian States system of every Ruler or Minister that exists in India. It is a scandalous thing for any man to say, however highly placed he may be, that he is here by special divine dispensation to rule over human beings today. That is a thing which is an intolerable presumption on any man's part, and it is a thing which this House will never allow and will repudiate if it is put before it. We have heard a lot about this Divine Right of Kings, we had read a lot about of it in past histories and we had thought that we had heard the last of it and that it had been put an end to and buried deep down into the earth long ages ago. If any individual in India or elsewhere raises it today, he would be doing so without any relation to the present in India. So, I would suggest to such persons in all seriousness that, if they want to be respected or considered with any measure of friendliness, no such idea should be even hinted at, much less said. On this there is going to be no compromise. (*Hear, hear*).

But, as I made plain on the previous occasion when I spoke, this Resolution makes it clear that we are not interfering in the internal affairs of the States. I even said that we are not interfering with the system of monarchy in the States, if the people of the States so want it. I gave the example of the Irish Republic in the British Commonwealth and it is conceivable to me that within the Indian Republic, there might be monarchies if the people so desire. That is entirely for them to determine. This Resolution and, presumably, the Constitution that we make, will not interfere with that matter. Inevitably it will be necessary to bring about uniformity in the freedom of the various parts of India, because it is inconceivable to me that certain parts of India should have democratic freedom and certain others should be denied it. That cannot be. That will give rise to trouble, just as in the wide world today there is trouble because some countries are free and some are not. Much more trouble will there be if there is freedom in parts of India and lack of freedom in other parts of India.

But we are not laying down in this Resolution any strict system in regard to the governance of the Indian States. All that we say is this that they, or such of them, as are big enough to form unions or group themselves into small unions, will be autonomous units with a very large measure of freedom to do as they choose, subject no doubt to certain central functions in which they will co-operate with the Centre, in which they will be represented in the Centre and in which the Centre will have control. So that, in a sense, this Resolution does not interfere with the

inner working of those Units. They will be autonomous and, as I have said, if those Units choose to have some kind of constitutional monarchy at their head, they would be welcome to do so. For my part, I am for a Republic in India as anywhere else. But whatever my views may be on that subject, it is not my desire to impose my will on others; whatever the views of this House may be on this subject, I imagine that it is not the desire of this House to impose its will in these matters.

So, the object of the Ruler of an Indian State to this Resolution becomes an objection, in theory, to the theoretical implications and the practical implications of the doctrine of sovereignty of the people. To nothing else does any one object. That is an objection which cannot stand for an instant. We claim in this Resolution to frame a constitution for a Sovereign, Independent, Indian Republic—necessarily Republic. What else can we have in India? Whatever the States may have or may not have, it is impossible and inconceivable and undesirable to think in any other terms but in terms of the Republic in India.

Now, what relation will that Republic bear to the other countries of the world, to England and to the British Commonwealth and the rest? For a long time past we have taken a pledge on Independence Day that India must sever her connection with great Britain, because that connection had become an emblem of British domination. At no time have we thought in terms of isolating ourselves in this part of the world from other countries or of being hostile to countries which have dominated over us. On the eve of this great occasion, when we stand on the threshold of freedom we do not wish to carry a trial of hostility with us against any other country. We want to be friendly to all. We want to be friendly with the British people and the British Commonwealth of Nations.

But what I would like this House to consider is this: When these words and these labels are fast changing their meaning and in the world today there is no isolation, you cannot live apart from the others. You must co-operate or you must fight. There is no middle way. We wish for peace. We do not want to fight any nation if we can help it. The only possible real objective that we, in common with other nations, can have is the objective of co-operating in building up some kind of world structure, call it 'One World', call it what you like. The beginnings of this world structure have been laid down in the United Nations Organisation. It is feeble yet; it has many defects; nevertheless, it is the beginning of the world structure. And India has pledged herself to cooperate in that work.

Now, if we think of that structure and our co-operation with other countries in achieving it, where does the question come of our being tied up with this Group of Nations or that Group? Indeed, the more groups and blocks are formed, the weaker will that great structure become.

Therefore, in order to strengthen that big structure, it is desirable for all countries not to insist, not to lay stress on separate groups and separate blocks. I know that there are such separate groups and blocks today and because they exist today, there is hostility between them, and there is even talk of war among them. I do not know what the future will bring to us, whether peace or war. We stand on the edge of a precipice and there are various forces which pull us on one side in favour of co-operation and peace, and on the other, push us towards the precipice

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of war and disintegration. I am not prophet enough to know what will happen, but I do know that those who desire peace must deprecate separate blocks which necessarily become hostile to other blocks. Therefore India, in so far as it has a foreign policy, has declared that it wants to remain independent and free of all these blocks and that it wants to cooperate on equal terms with all countries. It is a difficult position because, when people are full of fear of each other, any person who tries to be neutral is suspected of sympathy with the other party. We can see that in India and we can see that in the wider sphere of world politics. Recently an American statesman criticised India in words which show how lacking in knowledge and understanding even the statesmen of America are. Because we follow our own policy, this group of nations thinks that we are siding with the other and that group of nations thinks that we are siding with this. That is bound to happen. If we seek to be a free, independent, democratic republic, it is not to dissociate ourselves from other countries, but rather as a free nation to co-operate in the fullest measure with other countries for peace and freedom, to cooperate with Britain, with the British Commonwealth of Nations, with the United States of America, with the Soviet Union, and with all other countries, big and small. But real co-operation would only come between us and these other nations when we know that we are free to cooperate and are not imposed upon and forced to co-operate. So long as there is the slightest trace of compulsion, there can be no co-operation.

Therefore, I commend this Resolution to the House and I commend this Resolution, if I may say so, not only to this House but to the world at large so that it can be perfectly clear that it is a gesture of friendship to all, and, that behind it there lies no hostility. We have suffered enough in the past. We have struggled sufficiently, we may have to struggle again, but under the leadership of a very great personality we have sought always to think in terms of friendship and goodwill towards others, even those who opposed us. How far we have succeeded, we do not know, because we are weak human beings. Nevertheless, the impress of that message has found a place in the hearts of millions of people of this country, and even when we err and go astray, we cannot forget it. Some of us may be little men, some may be big, but whether we are small men or big, for the moment we represent a great cause and therefore something of the shadow of greatness falls upon us. Today in this Assembly we represent a mighty cause and this Resolution that I have placed before you gives some semblance of that cause. We shall pass this Resolution, and I hope that this Resolution will lead us to a constitution on the lines suggested by this Resolution. I trust that the constitution itself will lead us to the real freedom that we have clamored for and that real freedom in turn will bring food to our starving peoples, clothing for them, housing for them and all manner of opportunities of progress, that it will lead also to the freedom of the other countries of Asia, because in a sense, however unworthy we have become—let us recognise it—the leaders of the freedom movement of Asia, and whatever we do, we should think of ourselves in these larger terms. When some petty matter divides us and we have difficulties and frictions amongst ourselves over these small matters, let us remember not only this Resolution but this great responsibility that we shoulder, the responsibility of the freedom of 400 million people of India, the responsibility of the leadership of a large part of Asia, the responsibility of being some kind of guide to vast numbers of people all over the world. It is a tremendous responsibility. If we remember it, perhaps we may not

bicker so much over this seat or that post, over some small gain for this group or that. The one thing that should be obvious to all of us is this that there is no group in India, no party, no religious community, which can prosper if India does not prosper. If India goes down, we go down, all of us, whether we have a few seats more or less, whether we get a slight advantage or we do not. But if it is well with India, if India lives as a vital free country, then it is well with all of us to whatever community or religion we might belong.

We shall frame the Constitution, and I hope it will be a good constitution, but does anyone in this House imagine that, when a free India emerges, it will be bound down by anything that even this House might lay down for it? A free India will see the bursting forth of the energy of a mighty nation. What it will do and what it will not, I do not know, that it will not consent to be bound down by anything. Some people imagine, that what we do now, may not be touched for 10 years or 20 years, if we do not do it today, we will not be able to do it later. That seems to me a complete misapprehension. I am not placing before the House what I want done and what I do not want done, but I should like the House to consider that we are on the eve of revolutionary changes, revolutionary in every sense of the word, because when the spirit of a nation breaks its bonds, it functions in peculiar ways and it should function in strange ways. It may be that the Constitution, this House may frame, may not satisfy that free India. This House cannot bind down the next generation, or the people who will duly succeed us in this task. Therefore, let us not trouble ourselves too much about the petty details of what we do, those details will not survive for long, if they are achieved in conflict. What we achieve in unanimity, what we achieve by co-operation is likely to survive. What we gain here and there by conflict and by overbearing manners and by threats will not survive long. It will only leave a trail of bad blood. And so now I commend this Resolution to the House and may I read the last para of this Resolution? But one or more, Sir, before I read it. India is a great country, great in her resources, great in her manpower, great in her potential, in every way. I have little doubt that a Free India on every plane will play a big part on the world stage, even on the narrowest plane of material power, and I should like India to play that great part in that plane. Nevertheless today there is a conflict in the world between forces in different planes. We hear a lot about the atom bomb and the various kinds of energy that it represents and in essence today there is a conflict in the world between two things, that atom bomb and what it represents and the spirit of humanity. I hope that while India will no doubt play a great part in all the material spheres, she will always lay stress on that spirit of humanity, and I have no doubt in my mind, that ultimately in this conflict, that is confronting the world, the human spirit will prevail over the atom bomb. May this Resolution bear fruit and may the time come when in the words of this Resolution, this ancient land attains its rightful and honoured place in the world and makes its full and willing contribution to the promotion of world peace and the welfare of mankind.

Mr. President: The time has now arrived when you should give your solemn votes on this Resolution. Remembering the solemnity of the occasion and the greatness of the pledge and the promise which this Resolution contains, I hope every Member will stand up in his place when giving his vote in favour of it.

I will read the Resolution:

This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution:

(2) WHEREIN the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India shall be a Union of them all; and

(3) WHEREIN the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the Constitution, shall possess and retain the status of autonomous units, together with residuary powers, and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom; and

(4) WHEREIN all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people; and

(5) WHEREIN shall be guaranteed and secured to all the people of India justice, social, economic, and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and

(6) WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and

(7) WHEREBY shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea and air according to justice and the law of civilised nations; and

(8) this ancient land attain its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind.

(The Hon'ble the President then read a Hindi translation of the Resolution.)

I have got the Urdu translation also. Unfortunately I am not able to read it. I shall be glad if some other Member could read it for me.

(Shri Mohanlal Saksena then read the Urdu translation of the Resolution.)

Mr. President: I will request Members now to stand in their places and vote in favour of this Resolution.

The Resolution was adopted, all members standing.

RESOLUTION TO INCLUDE BHUTAN AND SIKKIM WITHIN THE SCOPE OF THE NEGOTIATING COMMITTEE

Mr. President: We have got the next resolution relating to Sikkim and Bhutan. Pandit Jawaharlal Nehru will move this.

The Hon'ble Pandit Jawaharlal Nehru: Mr. President, Sir, I beg to move the following Resolution:

"This Assembly resolve that the Committee constituted by its Resolution of December 21, 1946 (to confer with the Negotiating Committee set up by the Chamber of Princes and with other representatives of Indian States for certain specified purposes) shall in addition have power to confer with such persons as the Committee thinks fit for the purpose of examining the special problems of Bhutan and Sikkim and to report to the Assembly the result of such examination."

May I point out, Sir, that the copy of this Resolution that has been circulated should be varied slightly in the penultimate line, to read, "for the purpose of examining the special problems of Bhutan and Sikkim and to report to the Assembly".....

The House will remember that we passed a resolution in December last appointing a Committee consisting of Maulana Abul Kalam Azad, Sardar Vallabhbhai Patel, Dr. Pattabhi Sitaramayya, Mr. Shankarrao

Deo, Sir N. Gopaldaswami Ayyangar and myself to confer with the Negotiating Committee set up by the Chamber of Princes and with other representatives of Indian States for the purpose of—

- (a) fixing the distribution of the seats in the Assembly not exceeding 93 in number which, in the Cabinet Mission's Statement of 16th May, 1946, are reserved for Indian States, and
- (b) fixing the method by which the representatives of the States should be returned to this Assembly, and thereafter to report to the Constituent Assembly the result of such negotiations. Further it was resolved that not more than three other Members may be added to this Committee later. This Committee was to consider two matters, fixing and distribution of seats for States and fixing the method by which the representatives of the States should be returned to the Assembly. The question has arisen as to how we have to deal with certain areas which are not Indian States. In this Resolution before us, Bhutan and Sikkim are mentioned.

Bhutan is in a sense an Independent State under the protection of India. Sikkim is in a sense an Indian State but different from the other. It is not proper to think of Bhutan therefore in the same category as an Indian State. I do not know what the future position of Bhutan might be in relation to India. That is a matter to be determined in consultation and in co-operation with the representatives of Bhutan. There is no question of compulsion in the matter. Now the terms of reference of the Committee you have appointed on the last occasion will not entitle it to tackle any such problem. Those terms are limited to the method of representation in this Assembly and the distribution of seats. I would like to say that there is some objection raised on the part of the Indian Princes to Negotiating Committee as to why the terms of reference have been so limited by us. They have been limited for obvious reasons—that all the later problems of the Indian States are going to be dealt with by those representatives of Indian States when they come and it would be absurd for us to come to final decisions with regard to the main problems before the representatives are here. Therefore deliberately we limited the functions of our Negotiating Committee. But in limiting them we prevented them from dealing with other problems which may arise in regard to territories which are not Indian States, specially Bhutan and Sikkim, and this Resolution gives them authority to meet representatives of Bhutan and Sikkim and discuss any special problems that may arise. I want to make it clear, on the one hand, that this Constituent Assembly has every right to discuss problems with even Independent States, if necessary. There is nothing to limit our right to discuss our future relations with the Independent States but for the moment. I am not dealing with that problem. Whatever the position of Bhutan might be, there is no question that we have the power and authority to deal with their representatives. This is in no way trying to lessen the status of Bhutan's present position. Whatever this may be it will be recognized to be something entirely different to that of Indian States. We are simply empowering our Committee to deal with the representatives and then to report to this Constituent Assembly the result of those negotiations.

I beg to move this Resolution, Sir.

The Hon'ble Pandit Govind Ballabh Pant (United Provinces: General):
I second the Resolution.

Mr. President: The Resolution has been moved and seconded. If anyone wants to speak, he can do so.....(After a pause).....May I take it that no one wishes to speak about this Resolution? I will put the Resolution to vote.....

The Resolution was adopted.

Mr. President: There are two motions regarding the Budget of the Assembly.

Mr. H.V. Kamath (C.P. & Berar : General): May I invite your attention, Sir, to the request made by a large section of this House that as a mark of tribute to Netaji Subash Chandra Bose, whose golden jubilee falls tomorrow, this House shall not meet tomorrow for the transaction of any business?

Mr. President: Mr. Kamath, as I understand, we have not got anything ready for tomorrow; so, in any case we are going to have a holiday tomorrow. (*Cheers*).....Mr. Gadgil.

BUDGET ESTIMATES OF THE CONSTITUENT ASSEMBLY

Mr. N.V. Gadgil (Bombay : General): I beg to move—

“Resolved that the Assembly do accord sanction to the estimated expenditure of the Assembly for the years 1946-47 and 1947-48 as shown in the attached statements prepared by the Staff and Finance Committee in pursuance of rule 50 (1) of the Constitution Assembly Rules.”

Sir, as laid down in the Rules.....

Sri K. Santhanam (Madras : General): I move that this thing may be taken up in Committee. It is not desirable that we should discuss the Budget in the presence of visitors. So I move that we go into Committee.

Prof. N.G. Ranga (Madras : General): I second it.

Sri Biswanath Das (Orissa : General): I also support it.

Mr. Somnath Lahiri (Bengal: General): It deals with public money. I do not see any reason why we should be afraid of discussing in public.

Mr. President: Let the motion be moved and then we shall consider whether the consideration will be in Committee.

Sri K. Santhanam: The Motion has been moved. He is going to make a speech. Therefore we want it in *camera*. There is nothing to be hidden or to be afraid of but we want to have the freedom to speak freely.

Mr. President: I had better then take the sense of the House. Those who want it in Committee form later on will please say ‘Aye’.

The Hon’ble Mr. B.G. Kher (Bombay : General): The whole House may be turned into Committee.

Mr. President: Those who are in favour of Committee may say ‘Aye’.....

The motion was adopted.

Mr. President: We shall then go into Committee and as the Committee meetings are private, I would request the visitors to withdraw.

(The galleries were then cleared)

(The proceedings were then conducted in *camera*).

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 24th January, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eleven of the Clock, Mr. President (The Hon'ble Dr. Rajendra Prasad) in the Chair.

Mr. President: We shall commence the proceedings now. When we rose day before yesterday, we were sitting in Committee to discuss the Budget. There are certain Resolutions which have to be placed before the House. I would suggest that we first take those Resolutions and dispose of them and then, later on, if we have time, shall go into Committee again and discuss the Budget.

I hope Members approve of this.

Mr. Satyanarayan Sinha (Bihar : General): Mr. President, Sir, When we adjourned last time, we had gone into Committee, it is therefore necessary formally to move that the House do now come into open plenary session of the Assembly.

Mr. President: I hope the House accepts the suggestion.

The motion was adopted.

Mr. President: As the House has accepted the suggestion, we will go into open session and take up the Resolutions.

I now call upon Mr. Satyanarayan Sinha to move the motion standing in his name.

ELECTION OF VICE-PRESIDENT

Mr. Satyanarayan Sinha: Mr. President, Sir, I beg to move the following motion which stands in my name:—

Resolved that this Assembly do proceed to elect a Vice-President in accordance with sub-rule (1) of Rule 12 of the Constituent Assembly Rules.

Sir, with your permission, I would read to the House the Rules of Procedure regarding the Vice-Presidents which we passed in the last session.

“The Assembly shall have five Vice-Presidents. Out of the five Vice-Presidents, two shall be elected by the Assembly as a whole from among its members in such manner as the President may prescribe.

Chairmen elected by the Sections shall be ex-officio Vice-Presidents of the Assembly.”

Now, Sir, according to Rule 16, if there is no Vice-President to preside over the Assembly, the Assembly may choose any member to perform the duties of the Chairman. So, even if you are absent for a short time, on such occasions the Assembly will have to elect one of its members to preside over the deliberations. It is therefore expedient that we should have atleast one Vice-President elected during this session. Therefore I move this motion and hope that the House will accept it.

The Hon'ble Pandit Govind Ballabh Pant (United Provinces : General): I second the motion.

Mr. President: The motion has been moved and seconded. I do not think any debate is required.

The motion was adopted.

Mr. President: Nominations will be received by the Secretary upto 5 p.m. today. If an election becomes necessary, it will be held between 11 am. and 12 noon tomorrow morning in the Under Secretary's room, Room No. 24, on the Ground Floor.

ELECTION OF THE ADVISORY COMMITTEE

The Hon'ble Pandit Govind Ballabh Pant: Sir, I beg leave to make the motion standing in my name which runs thus:

“This Assembly resolves that in pursuance of paragraph 20 of the Cabinet Mission's Statement of May 16, 1946, an Advisory Committee be constituted as hereinafter set out:—

1. (a) The Advisory Committee shall consist of not more than 68 members who may include persons who are not members of the Assembly.

(b) (i) It shall consist initially of 52 members who shall be elected by the Assembly in accordance with the principle of proportional representation by means of the single transferable vote.

(ii) The Assembly may elect in such manner as the President may deem appropriate up to 7 members.

(c) The President may at any one time or at different times nominate members to the Committee not exceeding 9.

2. The Advisory Committee shall appoint Sub-Committees to prepare schemes for the Administration of the North-Western Tribal Areas, the North-Eastern Tribal Areas and the Excluded and Partially Excluded Areas. Each of such Sub-Committees may co-opt not more than 2 members from the particular tribal territory under its consideration for the time being, to assist it in its work in relation to that territory.

3. The Advisory Committee may appoint other Sub-Committees from time to time as it may deem necessary.

4. The Advisory Committee shall submit the final report to the Union Constituent Assembly within three months and may submit interim reports from time to time.

5. Casual vacancies in the Advisory Committee shall be filled as soon as possible after they occur in the manner in which the seat in respect of which the vacancy had arisen was originally filled.

6. The President may make standing orders for the conduct of the proceedings of the Committee.”

Sir, this Resolution not only follows the scheme outlined in the Statement of May 16th but it also adopts the phraseology of that Scheme. The Scheme provides for one single Committee to deal with the rights of minorities, with the rights of citizens and with questions relating to the administration of the Tribal and Excluded and Partially Excluded Areas. Left to ourselves, we would have preferred a Committee for each of these subjects and perhaps two Committees for dealing with the problems relating to the North-West Frontier and the North-Eastern Frontier, but as the Scheme envisaged one Committee, we thought it better not to depart from that direction or proposal. The Committee has consequently become bigger than it would have been, had there been a separate Committee to deal with each of the subjects. This Committee, Advisory Committee as it is called is being appointed under paragraph 19, clause (iv). It runs thus:—

“A preliminary meeting will be held at which the general order of business will be decided, a chairman and other officers, elected and an Advisory Committee on rights of citizens, minorities and tribal and excluded areas set up.”

Thus according to the procedure prescribed here, in the Ordinary course, we were expected to take up this item immediately after the election of the President. We refrained from doing so out of regard for the absentee members. We wanted to facilitate the entry of the members of the Muslim League and to secure their co-operation in the deliberations of this Assembly. It is a matter for regret that our efforts in that direction have not succeeded so far. Not only did we postpone the consideration of this item which was necessary in order to proceed further with the course chalked out for us by this Statement, but the Congress went further and accepted the interpretation put by His Majesty's Government

and the Muslim League on some of the contentious clauses of that Statement, and also accepted a large part of the declaration made by the British Cabinet on the 6th December. The Congress on the 5th of January unequivocally declared its acceptance of the interpretation put on the grouping clauses by the League. This Assembly met on the 20th. There were fifteen days in between. We had postponed the consideration of this item. Not only has the Muslim League not passed any formal resolution in favour of their entry into this House, but the statements made by persons who claim to be in a position to know the mind of the League, still point the other way. No suggestion has been made to the office bearers of this Assembly to the Secretary or anybody else, by any responsible representative of the Muslim League for the postponement of this Assembly or of any item of business included in the Order Paper. Under the circumstances, we cannot but proceed with the business that has been already prescribed, determined and formulated for us. The responsibility for the course that is being adopted, if it embarrasses or inconveniences anybody, rests on those who have chosen to keep aloof. I think every responsible and dispassionate person will accept that the Congress and the Hon'ble Members of this House have done more than what could be expected of them in order to facilitate the participation of the Muslim League in the deliberations of this Assembly. But they have all the same stuck to their original attitude of negation and have not cared to join this Assembly in the great and sacred task that lies ahead.

I consider it necessary to make these remarks, especially in view of some articles that have appeared in the press and in one of the local papers. It is unreasonable on the part of any person—I am using a mild expression—to suggest further postponement of this item, which ought to have been taken up at the very outset. The tender solicitude shown by the Hon'ble Members of this House for the absentee Members has not only not been appreciated, but it has been misunderstood. There is another aspect of this question. The people of this country, millions are scanning the proceedings of this Assembly in order to see what progress we are making and how near we are to the goal which we have before us. Every day's delay is causing them disappointment; and on the other side, there is vigorous propaganda, suggesting that this Assembly will end in smoke, that all its efforts, deliberations and endeavours will prove futile, and nothing will come out of them. In the circumstances, any one interested in the success of this Assembly must realize the responsibility that rests on the shoulders of the Hon'ble Members of this House. They cannot afford to put off indefinitely the business of this House, and they cannot allow that hope be deferred till hope is stilled altogether. So, I trust Hon'ble Members will unanimously accept the Motion that I have placed before them.

As they know, provision has to be made for the determination of fundamental rights, the rights of minorities and for the administration of Tribal and Backward Areas. The number of representatives has been fixed with due regard to the tasks that lie in front of this Committee. Ours is a vast country and the numbers living here now exceed 400 millions. In the circumstances, howsoever one may try to reduce the strength of a Committee of this character, one cannot go below a certain minimum, and we have tried to do justice to all interests and to all elements and at the same time to limit the figure to a reasonable and workable limit. There is provision for 72 members, but originally it was 68. Hon'ble Members know that there is provision to be made for citizens' rights. For that purpose, we want representatives of the General Body. Fundamental rights are the

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concern of all, and no question of minority or majority can arise in connection with those rights. In fact the Secretary of State in his speech in the House of Lords last month definitely stated that such members, to look after the question of the citizens' rights, would be there. Then you have to elect members for looking after the minority rights. Hon'ble Members are aware we have got a number of minorities. Ours is a rich variety of cultures and luckily we have got a number of groups who supplement and complement each other in order to build the complete whole known as the Indian nation. So we have provided in this Resolution for an initial Committee of 52 members, but according to the amendment which will be moved by Mr. Munshi, the number is to be 50 and not 52. Out of these 50 only 12 will be representatives of the general sections. Others will represent the minorities and the Tribal and Excluded Areas. The minorities will be represented in the following manner:

The Hindus of Bengal, Punjab, N.W.F.P., Baluchistan and Sind will have	7 representatives
The Muslims of the 7 Provinces of U.P., Bihar, C.P., Madras, Bombay, Assam and Orissa will have similarly	7 representatives
The Depressed Classes or the Scheduled Castes will have	7 representatives
The Sikhs will have	6
The Indian Christians will have	4
Parsis will have	3
Anglo-Indians will have	3
and the Tribal areas and Excluded Areas will have	13

In addition there will be 10 nominations by the President. In the Resolution the number is higher. Out of the persons now to be nominated according to the amendment, that will be moved by Mr. Munshi, 5 will be set apart for the Tribal Areas, 7 for the Muslim minority Provinces and the rest 10 in number will be at the disposal of President, so that he may nominate such persons as may conduce to the successful working of this Committee, and whose contribution may be helpful in reaching sound and satisfactory decisions. In this way this Committee will be formed. In any case, whatever be the number, the voice of the minorities and the representatives of the Excluded and Tribal Areas will preponderate in this Committee. They will be in a position to record their decisions and no section will be in a majority. So this Committee will fully reflect the opinion of the minorities and the Backward Tracts and will I hope be able to reach decisions which will fully secure their position and ensure the protection of their rights. Paragraph 2 of this resolution proposes that Sub-Committees should be appointed for the administration of the North-Western Tribal Areas, the North-Eastern Tribal Areas and the Excluded and Partially Excluded Areas. It will be necessary to appoint small Sub-Committees for this purpose as they call for close study on the spot, and, unless the questions are examined very closely by qualified persons and local opinion is fully consulted, it will not be easy to reach conclusions that may suit the requirements of the particular areas. Besides the appointment of some Sub-Committees, the Resolution also empowers these Sub-Committees to co-opt two members from the specific territory whose questions may be under consideration for the time and to the extent such co-option, is considered necessary for the consideration of the problems relating to such territory.

Clause 4 prescribes the time-limit within which the final report should be submitted by this Advisory Committee. This should be done within three months. If Hon'ble Members will refer to paragraph 20 of the Statement, they will find there these words:

"The Advisory Committee on the rights of citizens, minorities and Tribal and Excluded Areas will contain due representation of the interests affected and their

function will be to report to the Union Constituent Assembly upon the list of fundamental rights, clauses for protecting minorities, and a scheme for the administration of Tribal and Excluded Areas, and to advise whether these rights should be incorporated in the Provincial, the Group of the Union Constitutions."

It is necessary to conduct the business of this Advisory Committee speedily so that its recommendation may reach this House with the least possible delay or loss of time. Neither any Section nor any Group nor the Central Union Assembly can frame any constitution until and unless it has before it the proposals that may emerge as a result of the deliberations of the Advisory Committee. The Central Union Assembly should consider this report so that the task of framing Provincial and Group Constitutions, if any, and the Central Constitution may start in right earnest. So it is desirable that the report of this Committee should reach at an early date and that is why this provision has been made.

I have tried to give a factual narrative and analysis and a certain degree of elucidation of the Resolution that is under consideration. With the permission of Hon'ble Members and the President, I should like to make a few remarks of a general character. The question of minorities everywhere looms large in constitutional discussions. Many a constitution has foundered on this rock. A satisfactory solution of questions pertaining to minorities will ensure the health, vitality and strength of the free State of India that will come into existence as a result of our discussions here. The question of minorities cannot possibly be overrated. It has been used so far for creating strife, distrust and cleavage between the different sections of the Indian nation. Imperialism thrives on such strife. It is interested in fomenting such tendencies. So far, the minorities have been incited and have been influenced in a manner which has hampered the growth of cohesion and unity. But now it is necessary that a new chapter should start and we should all realise our responsibility. Unless the minorities are fully satisfied, we cannot make any progress; we cannot even maintain peace in an undisturbed manner. So, all that can possibly be done should be done. We should have, in fact, proposed a Committee of this type, even if there had been no mention of it in the Statement of May 16th. If Hon'ble Members will refer to the Objectives Resolution which was passed unanimously by this House, they will find these words in clauses (5) and (6):

"Wherein shall be guaranteed and secured to all the people of India justice, social, economic, and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and wherein adequate safeguards shall be provided for minorities Backward and Tribal Areas, and Depressed and other Backward Classes."

So, the House has already accepted the fundamentals of this Resolution and it has done so unanimously. It is a matter which should hearten the minorities. The essence of these rights has already been conceded and conceded voluntarily and unanimously by all the Members of this House. I hope every effort will be made in this Advisory Committee to reach decisions that will fully satisfy the minorities. Hon'ble Members may be aware, and if they are not, I believe I will not be disclosing a secret when I tell them, that the entire strength of this Committee has been fixed in accordance with the wishes of one and each of every one of all the minorities in this House. It represents their complete agreement. We have subordinated every other consideration in order to secure contentment and satisfaction. The task of constitution making is a practical one and we should not be lost in the doctrinaire maze; we should look at problems from a realistic point of view and see that the decisions that we take are not only just, but are also regarded as just by those affected thereby. We trust that in this Committee every regard will be paid to the

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wishes of the different minorities and the decisions taken will be fully satisfactory to them.

In this connection, I should also like to remind the minorities of some of the historical developments of recent years. As Hon'ble Members may be aware, after the termination of the first World War, a number of States were set up, especially in Eastern Europe and provisions for the protection of minorities were incorporated in the Constitutions of these States such as Czechoslovakia, Austria, Bulgaria, Poland and others. Not only were such provisions incorporated in the Constitutions, but they formed part of solemn stipulations in the treaties entered into between the Associated and Allied powers, as they were called, and these new States that were then brought into existence. Guarantees were given by the Allied and Associated Powers to the minorities in these various States. Declarations were also made at International Conferences and by the League of Nations. They were assured by outside authorities and guarantees were given by treaties entered into by them with these Associated Powers. But, what was the result. No minority had been the victim of greater and more ruthless tyranny and oppression, atrocities and brutalities than the minorities that lived in these States and some of them have perhaps completely faded away and disappeared since. Let not the minorities look to any outside power for the protection of their rights. This will never help them. Let not the lesson of history be lost. It is a lesson which should be burnt deep in the hearts and minds of all minorities that they can find their protection only from the people in whose midst they live and it is on the establishment of mutual goodwill, mutual trust, cordiality and amity that the rights and interests not only of the majorities but also of the minorities depend. This lesson of history, I hope, will not be forgotten.

It is not for me to attempt any dissertation on the various aspects of minorities or fundamental rights. I cannot however refrain from referring to a morbid tendency which has ripped this country for the last many years. The individual citizen who is really the backbone of the State, the pivot, the cardinal centre of all social activity, and whose happiness and satisfaction should be the goal of every social mechanism, has been lost here in that indiscriminate body known as the community. We have even forgotten that a citizen exists as such. There is the unwholesome, and to some extent a degrading habit of thinking always in terms of communities and never in terms of citizens. (*Cheers.*) But it is after all citizens that form communities and the individual as such is essentially the core of all mechanisms and means and devices that are adopted for securing progress, and advancement. It is the welfare and happiness of the individual citizen which is the object of every sound administrator and statesman. So let us remember that it is the citizen that must count. It is the citizen that forms the base as well as the summit of the social pyramid and his importance, his dignity and his sanctity, should always be remembered. If you bear this in mind, I think we shall understand and appreciate the importance of the fundamental rights. Because, on the proper appreciation of these rights has depended the progress of humanity. The Atlantic Charter with its Four Freedoms, the Charter of rights of men from the time of Pains and Wells to that of the Declaration made last year represent the noble advance in the history of human race. After all we must remember the goal and objective of all human activity is a World State in which all citizens would possess the cosmopolitan outlook, would be equal in the eye of the law and would have full and ample opportunity for economic, social and political self-fulfilment. We find that in our own country we have to take particular care of the Depressed Classes, the

Scheduled Castes and the Backward classes. We have to atone for our omissions—I won't use the word commissions. We must do all we can to bring them up to the general level and it is a real necessity as much in our interest as in theirs that the gap should be bridged. The strength of the chain if, measured by the weakest link of it and so until every link is fully revitalised, we will not have a healthy body politic. I hope this Advisory Committee will place before itself the ideals for which humanity has worked. It will try to forge such sanctions and such rights as will enable this Assembly not only to frame a constitution but to achieve the independence of India. We are here not only for a formal task but for a real one and that has to be fulfilled. Let us hope that this Advisory Committee will bring concord and amity, goodwill and trust, in place of mutual strife, that occupies the political stage today and that as a result of the deliberations of this Committee we will have prepared the ground for Independent India for which we live, for which many have died and, for which alone life is worth living. (*Loud Cheers.*)

Mr. President: Sardar Harnam Singh is going to second this.

Sardar Harnam Singh (Punjab: Sikh) : Mr. President the Advisory Committee which has to be formed under the provisions of the Statement of May 16 is a very important Committee from many points of view. All of us know that it is the minorities problem, in India that has held up the progress of this country for a number of years and a satisfactory solution of this problem, I believe, will lead to the prosperity of the country. We have laid down, in the Objectives Resolution that in the future Constitution of India, an adequate provision for the protection of all minorities has to be provided for. As far as the Congress is concerned, beginning with 1922 when the demand was made for a Constituent Assembly of India, several resolutions have been passed in which it has been laid down by the Congress that provisions for the protection of minorities have to be made to the satisfaction of the minorities concerned. Therefore I am glad that the Congress Party in this House has agreed to the constitution of this body which has commended itself to all members in the Constituent Assembly of India. As to what the ultimate solution of the communal problem proposed by this Advisory Committee may be nobody can say at this stage. But we all know that the whole of the communal problem is before this Minority Committee. The clauses for the protection of minorities which have to be framed by this Advisory Committee, have some relation to existing facts. The clauses for the protection of minorities pertain to the religious, cultural, economic, administrative and political spheres. Communities in India have heretofore laid stress on certain provisions in the Government of India Act, as provisions which may be retained for the proper protection of minorities. Whether the Advisory Committee would make its report on those lines it is not for me to say at this stage. Those provisions all of us know. We know that Anglo-Indians have got section 242 of the Government of India Act. Certain other communities have laid stress on the weightage provided to them. Other communities have insisted on the retention of separate electorates. Some of these provisions may have done mischief in years past, but I do believe that this Advisory Committee will consider the question of the protection of minorities from all these various points of view and, whatever is good in the larger interests of the country and also in the interests of the minorities, that will find a place in the report of this Advisory Committee.

Sir, for a proper understanding of this Advisory Committee and its functions, we have to go into all that lengthy correspondence which passed between Maulana Abul Kalam Azad, Mr. M.A. Jinnah and Lord Pethick Lawrence. In one of the letters that Maulana Abul Kalam Azad wrote to

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Lord Pethick Lawrence he insisted that for a proper solution of the communal problem there must be consent of all the parties affected, and in fact, on the 12th May 1946 when the Congress formulated eight points as a basis for agreement, point No. 6 was that as far as the minority problem was concerned, the Congress stood for the consent of communities concerned for a satisfactory solution of the problem. Therefore I hope that when this Advisory Committee sits to initiate and formulate proposals for the protection of minorities and fundamental rights, the whole field would have been covered and it would be covered in such a way that it would be fair to the larger as well as the smaller interests so that all communities—big or small—would feel satisfied with the recommendations of this Advisory Committee. With these few words, Sir, I second the Resolution moved by Pandit Govind Ballabh Pant.

Mr. President: I find that in the Order Paper, notice has been given of several amendments. I think the most convenient course would be to ask the amendments to be moved on each particular clause. Therefore, all those members who have got any amendment on any particular clause will move the amendment when I name the particular clause.

The first is clause I (a). Mr. Munshi has given notice of an amendment.

Mr. Damber Singh Gurung (Bengal: General): On a point of information, Sir, before any amendments are moved, may I know whether any time has been given for giving notice of amendments? This Resolution has been circulated only just now. Members have to be given some time.

Mr. President : I understand this Resolution was circulated several days ago.

Mr. Damber Singh Gurung : But this has been circulated here to the members just now. It may have been circulated several days ago in the party meeting.

Mr. President: No, no. The Resolution which has been moved by Pandit Pant was circulated to Members several days ago.

Mr. Damber Singh Gurung: My point is: now there is no Muslim League here. This thing was circulated in the party meeting.

Mr. President: No. I think you are under a misunderstanding. I am referring to the Resolution which was moved by Pandit Govind Ballabh Pant. Notice of that Resolution was given to members several days ago. No other amendment has yet been moved.

Mr. Damber Singh Gurung: But this Resolution was just given to the members.

Mr. President: Here in the House? I am afraid you are referring to some other Resolution. This one was circulated several days ago. Yes, Mr. Munshi.

Mr. K. M. Munshi (Bombay: General): Sir, I beg to move that in subparagraph (a) of paragraph 1 of the Resolution, substitute the number "72" for the number "68". As already explained by Mr. Govind Ballabh Pant, it is necessary to increase the number in order to accommodate the seats which are duly provided for in the other part of the Resolution. I therefore move this amendment.

Mr. President: Is there any other amendment to clause 1? Nothing else. I put Mr. Munshi's amendment to vote.

The amendment was adopted.

Mr. President: Now, we go to the next one. I find Rev. Nichols-Roy, has given notice of an amendment.

The Hon'ble Rev. J. J. M. Nichols-Roy (Assam : General): I shall not move it.

Mr. President: Then we will go to (b) (i). Mr. Santhanam has given notice of a amendment.

Sri K. Santhanam (Madras: General): I do not want to move it.

Mr. President: Then Mr. Munshi.

Mr. K. M. Munshi: Mr. President. Sir, I beg to move the following amendment to clause (b) (i). My amendment reads thus:

“That in sub-paragraph (b) (i). of paragraph 1 of the motion for the words beginning with 52 members—the words are these:

‘52 members who shall be elected by the Assembly in accordance with the principle of proportional representation by means of a single transferable vote substitute:

“The following members”

The names are given in the amendment. The clause will read like this:

“It shall consist initially of the following members.”

and then the names will follow. I will read the names. The different categories have already been placed before the House by the mover of the Resolution and I will read the names, indicating the nature of the seats.

Mr. Jairamdas Daulatram from Sind,
The Hon'ble Mr. Mehr Chand Khanna, N.W.F.P.,
Dr. Gopi Chand Bhargava from the Punjab,
Bakshi Sir Tek Chand also from the Punjab,
Dr. Profulla Chandra Ghosh from Bengal,
Mr. Surendra Mohan Ghose from, Bengal,
Dr. Syama Prasad Mookherjee from Bengal.

Then comes a group representing the Scheduled castes:

Sardar Prithvi Singh Azad,
Shri Dharam Prakash,
Mr. H. J. Khandekar,
The Hon'ble Mr. Jagjivan Ram
Mr. P. R. Thakur,
Dr. B. R. Ambedkar,
Shri V. I. Muniswami Pillai.

The next group of six names are those of Sikhs:

Sardar Jogendra Singh,
The Hon'ble Sardar Baldev Singh,
Sardar Pratap Singh,
Sardar Harnam Singh,
Sardar Ujjal Singh.
Sardar Kartar Singh.

The next four names are those of Indian Christians:

Dr. H.C. Mookherjee,
Dr. Alban D'Souza,
Shri Salve,
Shri Roche-Victoria.

The next three names are of Anglo-Indians:

Mr. S. H. Prater,
Mr. Frank Reginald Anthony,
Mr. M. V. N. Collins.

The next three names are of Parsis:

Sir Homi Mody,
Mr. M.R. Mazni
Mr. R.K. Sidhwa

[Mr. K. M. Munshi]

Number 31, Shri Rup Nath Brahma represents the plains tribes of Assam.

Number 32, Khan Abdul Ghaffar Khan represents the North-Western tribal area. Two other members to represent that area have to be nominated by the President.

Khan Abdul Samad Khan represents Baluchistan.

The Hon'ble Rev. J. J. M. Nichols-Roy.

In Number 35, the name is wrongly spelt, it should be Shri Mayang Nokcha.

I do not know how to pronounce it. He represents the North-Eastern tribal areas. Then follow three names of persons who represent the Excluded and Partially Excluded areas:

Shri Phool Bhan Shaha.

Mr. Davendra Nath Samanta,

Mr. Jaipal Singh, representing the excluded areas in Bihar, and three others have to be nominated by the President.

Then come twelve general names:

Acharya J. B. Kripalani.

The Hon'ble Maulana Abul Kalam Azad,

The Hon'ble Sardar Vallabhbhai Patel,

The Hon'ble Shri C. Rajagopalachariar,

Rajkumari Amrit Kaur,

Shrimati Hansa Mehta.

The Hon'ble Pandit Govind Ballabh Pant,

The Hon'ble Srijut Gopinath Bardoloi,

The Hon'ble Shri Parushottamdas Tandon,

Sir Alladi Krishnaswami Ayyar,

Shri K. T. Shah and

Mr. K. M. Munshi.

I move this amendment, Sir.

Acharya J. B. Kripalani (United Provinces: General): Sir, I second it.

Mr. President: Is there no other amendment? Mr. Munshi, there is one other amendment in your name?

Mr. K. M. Munshi: That does not arise now, Sir.

Mr. President: There are several others; you don't move them also?

Mr. K. M. Munshi: No, Sir.

Mr. President: There is another amendment, notice of which has been given by the Rev. Nichols-Roy.

The Hon'ble Rev. J. J. M. Nichols-Roy: Sir, I wanted to add one or two more names, but I find that that will disturb the number which has already been passed in this House. So I shall not move my amendment.

Mr. President: The Resolution has been moved, as also the amendments. The matter is now for discussion.

Rai Bahadur Syamanandan Sahaya (Bihar: General): Sir, I would like to make a submission with regard to the amendment. In the Rules that we have adopted, it is clearly laid down in Rule 46, (2)—that:

“The members of every such committee shall, unless the motion by which the committee is set up otherwise provides, be elected according to the principle of proportional representation by means of the single transferable vote.”

I submit, Sir, that this is a very-salutary provision which aims to give general satisfaction to all sections of this House. In a House constituted as

his one is, I think; it will be desirable if this correct method of selecting members for committees is followed. I find that the amendment of Mr. Munshi, however, gives definite names, and naturally, the names will have to be voted upon if other names are proposed. What would be the procedure for election, I ask? This is a matter, Sir, to which I win draw your special attention because it lays down for the future a precedent which might not be very helpful when we come to decide more delicate matters. As such I would appeal to you, and also I appeal to Mr. Munshi to allow the original motion to be adopted and then to propose names and the names could be voted upon by the procedure laid down, namely, proportional representation by means of the single transferable vote. This is an important matter and I will not only draw your personal attention to the matter but also draw the attention of the whole House and every section of the House to it. It is a departure which, I think, is not a healthy departure and must not be acted upon by this House.

Mr. Jaipal Singh (Bihar: General): Mr. President, now that the names have been combined in the Resolution of Pandit Govind Ballabh Pant, I feel I must say a few words from the tribal point of view. I strongly resent the insinuation by Pandit Pant. He said that the Tribal Areas and minorities look to a foreign country.

The Hon'ble Pandit Govind Ballabh Pant: I never said so. Please do not put in my mouth words I never said.

Mr. Jaipal Singh: We look to our own countrymen. We look to our own leaders to give us a fair and square deal. We have not gone abroad. We did not go to London for negotiations. We did not go to meet the Cabinet mission for provisions for our rights. We look only to our own countrymen to give us a fair and equitable deal. For the last six thousand years we have been shabbily treated.

Mr Kiran Sankar Roy (Bengal: General): How many years?

Mr. Jaipal Singh: Six thousand years, Mr. Kiran Sankar Roy, that is the time you, Non-Adibasis, have been in this country.

Sir, the mover and the seconder have indicated how the disposition, the distribution has been made in this Advisory Committee. This is a matter of life and death for the tribal people in particular. I congratulate the Indian National Congress leaders; I congratulate also those minority communities who have been able to get more seats than are due to them numerically. That cannot be denied. Number for number, the Sikhs, the Christians, the Anglo-Indians and the Parsis have been given more than is their due. I do not grudge them all this; but, the fact remains that they have been given many more seats than is their due, whereas when we come to my people, the real and most ancient people of this country, the position is different. But I do not grumble. For my purpose, it would be quite enough to have Panditji only; but he is not a member. I would entrust the future of every tribal people in this country, in the hands of Pandit Jawaharlal Nehru, and rather be not there myself. Let me assure you, that we are not dependent on numbers—the number of votes that will be given in the Advisory Committee. We have been inarticulate. I led no deputation to Sardar Patel, or to you, Mr. President, about our rights, about our claims and about our dues. I leave it to the good sense of the House and of the Advisory Committee, that, a long, last, they will right the injuries of six thousand years. In another place, once when I said that a particular group of our Indian nation had been heavily weighted, my remarks were resented by that particular group, I tell you that it does not worry us at all if the Sikhs get 60 seats in this Particular Advisory Committee, or anywhere else. I congratulate them. We thank the Indian National Congress for saying that the minority,

[Mr. Jaipal Singh]

question cannot be over-rated, as Pandit Govind Ballabh Pant said. But has it been over-rated as far as the tribals are concerned? Can it be honestly said that you have in any way over-rated their position? I am not pleading for anymore seats; I have not submitted any amendment, I am not moving any amendment, but I must draw the attention of this House and of this country, if I may say so, that here we are all on trial. Hitherto it has been very easy for us to say it is the British—it is the British who have kept you in a zoo by making for you Partially Excluded Areas and Excluded Areas. Are you behaving any differently? I ask this question. I ask the Advisory Committee. I find my own name in it. While I find my own name in it, I am bound to point out that there is no name of any tribal woman in the Advisory Committee. How has that been left out? There is no tribal woman member in the Advisory Committee. That never occurred to the people who were responsible for the selection of members of the Committee. I am not saying that she should be included, but it is significant that the thing has not been seriously considered. Similarly, as I repeat thirteen or whatever the figure is that has been fixed—I accept that, I do not say any more, but I do want to expose the ignorance that is exposed in the suggestion of this figure, or for that matter, in the nomination of the Tribal Areas members. Look at the disposition of the tribal population throughout India. I have no quarrel with the muddling that has been made in the census enumeration at every decennial reckoning. The latest figure is 254 lakhs, I accept that. Now in that we find that the largest tribal group in India are the Munda—speaking tribe. If you add up their 1941 figures, you will find that they are something like 43 lakhs. The next in magnitude are the Gonds. Now we have been given a Gond representative; I am glad there is one. The next come Bhils, 23 lakhs. No Bhil is on this Committee. Like that, we go on to Oraons, with 11 lakhs, there is no Oraon on this Committee. Mr. President, time is valuable. Pandit Jawaharlal Nehru elsewhere said that every day we take it costs something like Rs. 10,000. I think the life of 25 million tribals is worth more than Rs. 10,000 a day. This is an opportunity where I must have say, if you will permit me. I note also that, for some reason or other, there is no tribal member at all in the Fundamental Rights Committee.

The Hon'ble Pandit Govind Ballabh Pant: There is no separate Committee. There is only one Committee.

Mr. Jaipal Singh: In the speech you have envisaged that some were going to be put in the committee to deal with the fundamental rights of citizens.

The Hon'ble Pandit Govind Ballabh Pant: No. That depends on the Advisory Committee. It may form such Sub-Committees as it likes.

Mr. Jaipal Singh: Very well. I accept that. As I say, there is no way to include every tribal group. There are altogether listed in India in the 1941 census 177 tribes. Obviously, it would be impossible to have 177 members. But whatever the number that has been allotted—I say I accept that, Mr. President, but I am, in duty bound to my people, to point out to the House that we would have to deal with this tribal question, as Pandit Jawaharlal Nehru told us when speaking on the Independent Sovereign Republic Resolution,—that this problem would have to be dealt with imaginatively and emotionally. This House is on trial; let us see what happens.

The Hon'ble Pandit Govind Ballabh Pant: All will do well.

Mr. President: There was some misunderstanding with regard to the other amendments on the Order Paper. I was under the impression that there was no other amendment. I find that there are some more amendments. All the other amendments may be moved.

Mr. K. M. Munshi: To (b) or (c)?

Mr. President: All the amendments to the whole motion.

Mr. K. M. Munshi: The next amendment that stands in my name is this:

“That sub-paragraph (b) (ii) of paragraph I of the motion be deleted.”

That sub-paragraph runs as follows:

“The Assembly may elect in such manner as the President may deem appropriate up to 7 members.”

As the House will see, provision has been made later for increasing the number of nominations by the President by 7, that is, to raise the number from 9 to 22. So I shall also move at the same time the amendment which stands in my name with reference to sub-paragraph (c) of paragraph I of the motion.

“That in sub-paragraph (c) of paragraph I of the motion, the number ‘22’ be substituted for the number 9 and the words 7 of whom shall be Muslims representing the Provinces of Madras, Bombay, the United Provinces, Bihar, the Central Provinces, Orissa and Assam be added.”

The object is that there are what are called Hindu majority Provinces and Muslim minorities in, these Provinces have to be elected on this Committee. That was the original idea, but as this preliminary sitting is going to be adjourned for the time being, if the Muslim League comes in, it may be difficult to convene a preliminary sitting again only for the purpose of electing seven members. Therefore, it is that I move this amendment. If the preliminary sitting is adjourned to April or any other date, and the Muslim League comes in, seven Muslim members representing the seven Hindu majority Provinces may be nominated by the President and may join this Committee. I submit that they could all be accepted by the House. So I move all the amendments at the same time.

Mr. President: Is there any other amendment ? Paragraph 2 ? None. Paragraph 3? None.

I understand that Sir N. Gopalaswami Ayyangar has got an amendment.

The Hon’ble Sir N. Gopalaswami Ayyangar (Madras: General): Mr. President, under Rule 48 of the Rules of Procedure, every motion by which a Committee is to be set up shall state the quorum necessary to constitute a meeting of the Committee. This has not been done in the motion that has been moved. It is a mandatory provision and in order to supply the omission I request your permission under Rule 26 that I may be permitted to move this new amendment of which I have no given notice. The amendment is this:

After para 3 of the Resolution, the following shall be inserted as para 3(a), namely, “the quorum for the Committee and its sub-committees shall be one-third of the total number of members for the time being of the Committee or of the subcommittee concerned.”

Mr. K. M. Munshi: I have to move an amendment to paragraph 4. Para 4 as it stands reads thus:

“The advisory Committee shall submit the final report to the Union Constituent Assembly within three months and may submit interim reports from time to time”

The change my amendment seeks to, effect is this:

In paragraph 4, between the words “three months” and the word “and” add the words “from the date of this Resolution”. Then again, after the word ‘time’ substitute a comma for the full stop and add the words “but shall submit an interim report on Fundamental Rights within six weeks and an interim report on minority rights within ten weeks of such date.”

[Mr. K.M. Munshi]

Sir, Clause 4 as amended will run thus:

The Advisory Committee shall submit the final report to the Union Constituent Assembly within three months from the date of this Resolution and may submit interim reports from time to time, but shall submit an interim report on Fundamental Rights within six weeks and an interim report on minority rights within ten weeks of such date.

My next amendment, Sir, is to paragraph 5. It is this:

“In paragraph 5 of the motion, for the words beginning with ‘in the manner’ up to the end of the paragraph, the words ‘by nomination by the President’ be substituted.”

Paragraph 5 as originally drafted reads:

Casual vacancies in the Advisory Committee shall be filled as soon as possible after they occur in the manner in which the seat in respect of which the vacancy had arisen was originally filled.

The object of this amendment is to provide for a certain contingency. When this preliminary sitting of the Assembly is adjourned, the Committee is going to function. If, in the meantime, there is any vacancy, it will be impossible to fill it up till the next meeting of the Constituent Assembly. Therefore it is better to give this power to the President so that in the case of a vacancy arising, he can appoint a member to fill up that vacancy.

Sir, these are the amendments that I have to move.

Mr. F. R. Anthony (Bengal: General): Mr. President, Sir, I had absolutely no intention of entering this discussion, but unfortunately, a remark of a previous speaker, which included the Anglo-Indians among those to whom, he alleged, over-representation had been given, has brought me to my feet. I have always been reluctant, although a communal leader, to pursue communal hares and I am even more reluctant to enter into any unseemly communal dog-fights. But I think there is some misunderstanding on the part of some members of the House about the State Paper and about the real intention of the authors of that Paper. Sir, if it was felt that there was no need for an Advisory Committee on Minorities I would subscribe to it. But so long as you have a committee on minorities, so long as other minorities are insisting on their rights, alleged or real, then, certain minorities, particularly the smaller minorities have, in self defence to ask for certain representation. I agree with what Mr. Jaipal Singh said, *viz.*, that most of the minorities would gladly allow their interests to be taken care of by a leader of the stature of Pandit Nehru. I would be the first to say: ‘Leave it in his hands’. But, unfortunately, these matters are not being decided at such a high level. All persons in this country are not of that stature. Unfortunately there is a tendency today for communalism to become even more intransigent and clamant than it has been in the past and I wish this obsession on numerical proportions to be slightly effaced.

Sir, we are dealing with a specific State Paper. We are dealing with paragraph 20 of the Cabinet Mission’s Statement. The intention in paragraph 20 was set out in detail in Sir Stafford Cripps’ official explanation. He was not concerned, the Cabinet Mission was not concerned with numerical proportions. This question of numerical proportion has become rather a favourite slogan in this country. Sir Stafford specifically mentioned that this Advisory Committee had been set up in order to give an opportunity not to the minorities but to the smaller minorities of influencing the provisions concerning the minorities. He specifically mentioned that it was their (the Cabinet Mission’s) intention that, representation

should be given particularly to the Indian Christians, to the Anglo-Indians and to the Tribal Areas; and although we have, for the sake of amity and a friendly atmosphere, accepted the representation that was granted to the minorities, it was made clear that perhaps the real intention of the Cabinet Mission had not been implemented in the allotment of seats that was made, at any rate, to my community. I want to disabuse the House of any feeling that my minority has been over-represented. It was the obvious intention of the Cabinet Mission to give the smaller minorities that have been specified—the Indian Christians, the Anglo Indians and the Tribal Areas—an opportunity of influencing minority decisions through this Advisory Committee. No other smaller minorities have been mentioned. The point whether the intention was implemented in introducing other minorities, I am not going to labour at this stage. But the Cabinet Mission obviously had something at the back of their minds when they made this provision. They had the cases of the different minorities before them. They realised that certain minorities, although numerically small, had vital interests to be protected in the general political structure and their sole purpose in setting up this Advisory Committee was to give the minorities particularly these three minorities, that they have specified, an opportunity of influencing minority decisions.

Mr. Damber Singh Gurung: Mr. Chairman, Sir, in the list of names of the Advisory Committee proposed by Mr. K. M. Munshi, I do not find any name of a Gorkha representative here. I do not want to refer to the terms of clause 20 of the Cabinet Mission's Statement of May 16, but I must pointedly draw the attention of the House to the Resolution on Objectives moved by Pandit Jawaharlal Nehru and passed by this House a few days ago. Paragraph 6 of that Resolution says,—

“WHEREIN adequate safeguards shall be provided for minorities, Backward and Tribal Areas, and Depressed and other Backward Classes.”

It is the function of the Advisory Committee to give advice to the Constituent Assembly as to the manner in which the safeguards for the minorities, backward and tribal peoples are to be provided. Presumably, in the Advisory Committee there must be representatives of all these classes of people. Now, Sir, if there is no Gorkha on the Advisory Committee, who will speak for them and how will their interests and rights be safeguarded? It is a fact that the Gorkhas form a distinct minority group and no one can deny the fact that they are the most backward people in India. If Gorkhas, as such, are not represented they have a right to be represented here as people living in the Excluded Areas and Partially Excluded Areas, because Darjeeling District, where there are more than 3 lakhs of Gorkhas, is a partially Excluded Area, and even as tribals because the Gorkhas have been classed as tribals in the Census Report of 1941 in Bengal. If the Gorkhas are not represented in the only body that has been provided for devising means to safeguard in the interests of oppressed and backward peoples, I, as a Gorkha, do not see any advantage in my being a member of the Constituent Assembly. The other day President Kripalani told me that the Gorkhas would fight with their swords. I quite agree. The Gorkhas fought with their swords for the rulers of India, but now the Gorkhas have decided to fight for the freedom of India and will fight for free India, but at the same time I must appeal to the House that their case also must be considered, as they are very backward educationally and economically and as the Advisory Committee is the only Committee where all these things can be brought up and discussed. I appeal to the House to consider this point.

Mr. K. M. Munshi: Sir, may I reply as the mover of the amendment?

Mr. President: (To Sri K. Santhanam) Do you want to speak?

Sri K. Santhanam: Sir, I wish to make two points with reference to this Resolution. I am anxious that this Advisory Committee should not expand its scope of work to an undue extent. It should not try to encroach upon the functions of the whole Assembly or the Sections. For instance, if it goes into such matters as joint *versus* separate electorates or the quantum of representation, I think it will make the work of this Assembly very difficult. I do not want to expatiate on the point and make the Committee's work difficult but I simply leave it for their consideration.

The second point I wish to mention is about the way in which we have to deal with the report. Ordinarily the report is to be presented to the House, but if we wait for the presentation of the report till this Assembly meets, then we shall have to wait 10 or 15 days for its consideration. It will mean a waste of time of the House. So I suggest that you take the permission of the House to circulate the report as soon as it is received from the Committee so that, when we assemble, all of us may come ready prepared and the time of the House may not be wasted. Otherwise, there may be legitimate ground for complaint, as it is not sufficient to give one day's, two days' or three days' notice. We must have at least a fortnight's notice. If you wait for the report to be presented to the House and then wait for fifteen days you know the expense, the confusion and the difficulty.

So I make these two suggestions for your consideration.

Rai Bahadur Syamanandan Sahaya: I want to raise a point of order. The motion as amended by Mr. Munshi does not lay down any method by which subsequent elections to this Committee will be made because the original provision that elections will be conducted in accordance with the principle of proportional representation by means of the single transferable vote has been dropped by the amendment of Mr. Munshi. That being so, if one or two names are suggested in addition to the names already suggested by Mr. Munshi, what will be the method adopted for election? This amendment of Mr. Munshi might circumvent the procedure laid down under the Rules of Procedure. I hope you will not permit it to happen. I would therefore like to have your decision as to what will be the method by which election will be made in case one or two names are also suggested apart from the names already suggested in the amended resolution.

Mr. K. M. Munshi: With regard to the point of order, Rule 46 makes it perfectly clear that it would be competent for this House to alter the method of election. This is how the Rule runs:

"The members of every such committee shall, unless the motion by which the committee is set up otherwise provides, be elected according to the principle of proportional representation by means of the single transferable vote."

Therefore, Sir, it will be seen there is no point of order.

Rai Bahadur Syamanandan Sahaya: I only want to say that the procedure outlined in Rule 46(2) could have been met if Mr. Santhanam had moved his amendment by which he wanted to substitute the words "by ordinary distributive vote" in place of the words in the original motion. Mr. Santhanam, not having moved that amendment, there is no procedure laid down. Therefore, Rule 46(2) does not apply.

Mr. President: In my opinion, clause (2) of Rule 46 makes it quite clear that the amendment which has been moved by Mr. Munshi is in order.

Srimati Dakshayani Velayudan (Madras: General): Mr. President, I wish to bring to the notice of this House that there is provision for 7 members to represent the Hindus in the Muslim provinces. Sir, I find that no

Harijan's name is included among the Hindus. We, Harijans, consider ourselves one with the Hindu community and we have every right to represent the Hindus in the Muslim Provinces. We have every right to represent the Hindus in Bengal or the Hindus in Sind or in the Punjab. Somebody remarked now that there are already 7 members of the Harijans in the list. That does not mean that the Harijans have no right to represent the Hindus in the Muslim majority provinces. So I simply wanted to bring to the notice of this House that they should not go with the impression that the Harijans here have come only to represent the Harijans of India. We claim that we belong to the Hindu fold. It is the duty of the Caste Hindus to see that the promises that they made should be put into practice by including a Harijan in the list, to represent the Hindus in the Muslim majority provinces. But nobody should be under the impression that I came to speak in this manner here in order that my name may go into the list. I have no desire of that sort, because I do not want to represent those provinces, but there are Harijans, who have come from the Muslim majority Provinces, who have every right to represent the Hindus in their Provinces. So I hope that this House will take into consideration that my opinion is not against the fundamental principle that we are expected to follow.

Sri Lakshminarayan Sahu (Orissa: General): Mr. President, Sir, I stand here to inform the House that Orissa has been neglected in this suggestion of Mr. K. M. Munshi. We always feel that because we are a docile people, we are always neglected. Now the claim for inclusion of names from Orissa is so great that I hope that this House will accept it. In the first place about two-thirds of Orissa are Partially Excluded and Excluded Areas, and yet though there are 13 names given by Mr. K. M. Munshi, there is no name from Orissa. Again there is another point for consideration by the House. According to Mr. Munshi's list, there is no Hindu from Orissa and yet one representation will be given to a Muslim. That is really unfair. The majority party there goes unrepresented, whereas we give representation to a minority. I hope that this House will pay its best consideration to this question. I should go in for the Hon'ble Pandit Govind Ballabh Pant's Resolution but as you said that Mr. Munshi's motion was in order, I do not want to refute it, but I still feel, as Rai Bahadur Syamanandan Sahaya has pointed out, that in such a matter, which is very important, we should adopt the Procedure of single transferable vote. That will solve the question to the satisfaction of all.

Mr. Jairam Das Daulatram (Sind: General): I want to say as briefly as I can that, looking to the importance of this Committee and the delicate issues with which it will have to deal, it would not be proper by any discussion here to attempt to restrict the scope of its work. There are members on it representing minorities and majorities, from practically every part of the country, and they should, I think, in terms of all that has been said both in the Statement of May the 16th and elsewhere, be left free to discuss and to decide as to what are adequate provisions or clauses for the protection of minorities. Since the matter is such that a fuller discussion on the point here would raise more and more controversy, I shall confine myself to these remarks only for I expect that the Advisory Committee will look at the matter both from the minority point of view, and the general point of view and try to reconcile the requirements of the minorities with the needs of the national sentiment of the country, as a whole.

Sri S. Nagappa (Madras: General): Mr. President, Sir, now, I just want to bring to the notice of this House that out of these 50 members some

[Shri S. Nagappa]

communities particularly have been given over-representation. If it is equal to all communities as it is said, seven for Hindus, seven for Muslims and seven for Scheduled Classes, I do not know on what basis these figures were drawn up. For instance, if you say there are seven Muslim Provinces that are in a majority, so the Hindus of that province ought to be safeguarded and again because there are seven Hindu Provinces where they are in a majority, the seven Muslims must be there in the Committee to safeguard their interests, it is a good thing. But what about the Harijans. They are in a minority in almost every province. Moreover, if you take the population of these Provinces, then all the Hindus put together in the Muslim majority Provinces, they are not as many as Harijans, and the same thing with the Hindus. And now, Sir, the Parsis is a new minority community that has been brought. That community was not seeking to be a minority community all these days. All of a sudden in this Minority Advisory Committee this particular community has been classified as a minority community, I do not know, Sir, what protection this Parsi community especially seeks? It is well placed in society, economically and educationally. What are the particular safeguards this particular community wants? So also the Anglo-Indian community. Their numbers are very few, but their representation on the Committee is too great. I would suggest it would have been fair if the representation for the Depressed Classes had been 11 instead of 7. Now, if anything cannot be done at this stage, I would request all the Members that are now elected to see that they should not go there in order to champion the cause of a particular community. They must feel one and see that they work for the benefit of all the communities, for the homogeneity of all communities and for the prosperity of all the communities. With this motive, they must see that particularly such communities which are not represented properly according to their numbers must be safeguarded. Now only a few days ago we have passed a Resolution declaring our objects and our motives in framing this Constitution. We must stick to the spirit and see that every community got its proper place, though for instance out of 50 only 7 Harijans are there. They are only about one-seventh of the present members. They might fight for their community interests and yet they are in a minority. Their voice may not be heard. So I appeal to all Members who are elected in spite of their majority, to understand the Harijans properly, and if what they want is reasonable, to satisfy if not their complete demand, at least the minimum of the demands put forward by them. With this hope I congratulate the Members that have been elected, and hope they will see that they do full justice especially to such communities as have been suffering for ages, and that what they deserve is given.

The Hon'ble Rev. J. J. M. Nichols-Roy: Sir, the number of members that have been listed here are 50. I wanted to add two more to this number. But after a discussion with Mr. Munshi, I decided not to disturb the number that has already been listed here. But, Sir, I want to say this: the minorities in Assam are many. The Tribal Areas there also are very different from the tribal Areas in other parts of India. Each Tribal area has its own ways and methods of living and culture which would need to be represented in a Committee like this. But I find in paragraph 2 that the Sub-Committees which will be appointed by the Advisory Committee can co-opt some members. This probably will solve the difficulty. I read here:

“The Advisory Committee shall appoint sub-committees to prepare schemes for the administration. of the North-Western Tribal Areas, the North-Eastern Tribal

Areas and the Excluded and partially Excluded Area. Each of such sub-committees may co-opt not more than 2 members from the particular tribal territory under its consideration for the time being, to assist in its work in relation to that territory."

This no doubt, will help the Tribal Areas to get representation and to tell the Advisory Committee what their desire is. In view of this, Sir, I think that the Resolution as presented before the House is quite satisfactory.

I should like to add one more point. I would have liked very much if another Indian Christian had been added to this list. I find that Orissa has not been represented at all.

An Hon'ble Member: What about Andhra?

The Hon'ble Rev. J. J. M. Nichols-Roy: I would like very much one Christian from Orissa be represented. The President may consider the question of Orissa in regard to representation from the Christian community there. That would add only one more member to the four Indian Christian Members who have been listed here. With this request, Sir, I believe that this Resolution is acceptable to the House and it is quite satisfactory as far as it goes. Some of the minorities which have not been represented at all may be given representation by nomination by the President and by co-option by the Sub-Committees.

Mr. B. Das (Orissa: General): Sir, the atmosphere this morning in this House and the atmosphere in New Delhi these three or four days reminds me of the atmosphere in 1930-31. In the light of my past experiences I think that the minorities have been given more weightage than before. Murmurings will always be there. It is very very unfortunate that the minority communities do not demand mere justice, equity and fairplay but claim safeguards and weightages under the third party domination. The minority problems should not and must not overshadow the main issue—that of Independence of India.

One thing was stressed by previous speakers—namely, that the majority Hindu provinces have not found representation for their majority community in the Advisory Committee. I am one with them and I demand such representation for the majority Hindu population of Orissa. Orissa must participate in the discussions to enable her to assess those undue burdens that she may have to shoulder for her minority communities.

The Advisory Committee will very likely come to a dead-lock later. I do not anticipate its decisions and I am not a member of that Advisory Committee. But the minorities will still demand safeguards, economic advantages and reservations and weightages to an All-India pattern. All India patterns and decisions may work disaster to a poor province like Orissa, if minimum obligatory expenditure on minority communities be laid down. And yet, a minimum amount of money must have to be spent for the Scheduled Castes and for the Tribal people. The minimum standard in Bihar before separation from Orissa is the maximum standard of Orissa today. Rupees two and annas eight or something like that is the *per capita* income in Orissa; in other provinces the *per capita* income goes up to Rs. 20 or more. I am not merely pleading here that a Hindu representative from Orissa should be there in the Advisory Committee.

I visualise that the provinces will have residuary powers in an Independent India. Do my colleagues here appreciate that handicaps may be fashioned on minor provinces and stupendous difficulties—administrative and financial—may be imposed on poorer provinces under the cry of safeguards and weightages? It may even break the administrations.

The Advisory Committee should be wide enough to have representatives of Hindus from the Hindu majority provinces, so that it can know

[Mr. B. Das]

the financial and economic position of those provinces. We will have to stoutly oppose any decision of people in the Advisory Committee who do not understand our economic and financial situation in Orissa and we will not accept any safeguards, economic or otherwise, and any undue burdens and handicaps.

Mr. Satyanarayan Sinha: I move that the question be now put.

Mr. R. K. Sidhwa (C.P. & Berar : General): May I say a few words, Sir?

Mr. President: Closure has been moved. The motion is: that closure be applied.

The motion was adopted.

Mr. President: Mr. Pant, it was your Resolution. Do you accept the amendments?

The Hon'ble Pandit Govind Ballabh Pant: Sir, I accept the amendments moved by Mr. Munshi. On the whole the reception that has been accorded to my Resolution has exceeded my expectations. It is a delicate matter, especially where the question of nomination of individuals comes in. There are many embarrassing aspects of such problems which cannot be easily got over, and which cannot be tackled at any rate in an altogether impersonal manner. So, I would not have been surprised if there had been more vigorous criticism than that displayed by Mr. Jaipal Singh when he spoke. I saw that he was chafing and the vehemence of his utterances seemed to me to compensate for the poverty of his ideas. I did not make any suggestion whatsoever against the tribal people. I believe that they have not received that attention and active service at our hands to which they were entitled. I think we owe them a duty and we should do all we can to raise their general level. There is absolutely no issue between him and me. When I suggested that it is unwise to look to any external authority for the protection of the rights of the minorities, I had no particular individual, group or section in mind.

I wanted to utter a word of warning on a subject which is of considerable importance and which often arouses consuming passion. That was my only apology for referring to the developments that had taken place in recent years and I believe that those experiences of Poland, Bulgaria, Czechoslovakia, Austria and other Eastern European States are worthy of being borne in mind in these times when we are going to frame our own Constitution. It was suggested that the election should have been held according to the principle of proportional representation. It had in fact been held according to that principle. As I indicated at the outset in the course of my opening speech, the members of every group had been virtually elected by their own communities and comrades within each and belonging to each Group. We wanted to have the seal of approval of this entire Assembly as the Advisory Committee will be dealing with very great problems and we wanted to give every member of the Committee that sense of confidence which the approval of the membership of the Committee by the entire House is bound to create and convey. So it was to create a sound moral foundation for this Committee that this method was devised but as I said, the elections were unanimous. All members of this House also, barring very few who were not there, agreed to these names but before the names were put before the general body individually, the members of each group had by themselves selected their representatives. I do not see how any method more satisfactory could possibly have been devised. It augurs well for the deliberations of this Advisory Committee that its personnel should have been selected not only by the different groups that it was intended to represent but also by every member and by all the members of this House. That given them a position which I think they would covet and they would

appreciate. Sir, some omissions from certain Provinces have been mentioned. Well, I readily admit that many more members could have been profitably added to this Committee. We have here talent and public spirit represented in abundance, and everyone who could be added, would have made very useful contribution. But there are practical limitations in matters of this type and you have to see that the structure does not break down by virtue of its weight, even of too many good people. There should be some limitations even as regards excellence in order that men may move, in order that even defects may be tolerated; otherwise if you were to look for a Utopia or for the establishment of Plato's Republic, you will never be able to do anything practical. So it is only the hard realities of the situation which have constrained us to limit this figure to something about 70 and even that is apparently a number big enough for serious deliberation. So it is not because we do not appreciate all that has been said, not because we would not like to have the assistance of the other Hon'ble Members in this House but because this Committee would not stand the strain of heavier weight that we had to restrict the number, there need not be any misgiving in any quarter on that account. After all the decisions in such Committees are not ordinarily taken by vote. Everyone is expected to appreciate the point of view of other colleagues of his. There should be a spirit of accommodation and give and take. So we look forward to unanimity in the decisions and not to majority voting in a Committee of this type. I admit that it is possible for the Hon'ble Members to argue that the numbers allotted to different groups are not strictly in accordance with their population. In matters of this type you cannot have a yard-stick for measuring millions of people and their interests, and would it have made any difference, if there had been two more of the Scheduled Castes or even one less of the Anglo-Indians? I do not think. One worthy representative like Dr. Ambedkar or like Mr. Anthony can, I think, do as much as half-a-dozen or more. It is not so much number as calibre and the spirit which inspires the members which ought to count in matters of this character. Let me hope that there will be no occasion for any regret when this Committee begins to function and that all will join together in congratulating this Committee when it has completed its labours.

Mr. President: Pandit Pant, you have not said anything regarding the amendment moved by Sir Gopaldaswamy Ayyangar.

The Hon'ble Pandit Govind Ballabh Pant: I accept that amendment.

Mr. President: The Resolution has been moved and after that the amendments have been moved and accepted by the Mover. Therefore the amended Resolution will now read thus:

This Assembly resolves that in pursuance of paragraph 20 of the Cabinet Mission's Statement of May 16, 1946, an Advisory Committee be constituted as hereinafter set out :

1.(a) The Advisory Committee shall consist of not more than 72 members who may include persons who are not members of the Assembly.

(b) It shall consist initially of the following members:—

1. Shri Jairamdas Daulatram.
2. The Hon'ble Shri Meherchand Khanna.
3. Dr. Gopi Chand Bhargava.
4. Bakshi Sir Tek Chand.
5. Dr. Profulla Chandra Ghosh.
6. Shri Surendra Mohan Ghose.
7. Dr. Syama Prasad Mookherjee.
8. Shri Prithvi Singh Azad.
9. Shri Dharam Prakash.
10. Shri H.J. Khandekar.
11. The Hon'ble Shri Jagjivan Ram.
12. Shri P.R. Thakur.

[Mr. President]

13. Dr. B.R. Ambedkar.
14. Shri V.I. Muniswami Pillai.
15. Sardar Jogendra Singh.
16. The Hon'ble Sardar Beldev Singh.
17. Sardar Pratap Singh.
18. Sardar Harnam Singh.
19. Sardar Ujjal Singh.
20. Gyani Kartar Singh.
21. Dr. H.C. Mookherjee.
22. Dr. Alban D'Souza.
23. Shri Salve.
24. Shri Roche-Victoria.
25. Mr. S.H. Prater.
26. Mr. Frank Reginald Anthony.
27. Mr. M.V.H. Collins.
28. Sir Homi Mody.
29. Shri M.R. Masani.
30. Shri R.K. Sidhwa.
31. Shri Rup Nath Brahma.
32. Khan Abdul Gaffar Khan.
33. Khan Abdul Samad Khan.
34. The Hon'ble Rev. J.J.M. Nichols-Roy.
35. Shri Mayang Mokcha.
36. Shri Phool Bhan Shaha.
37. Shri Devendra Nath Samanta.
38. Shri Jaipal Singh.
39. Acharya J.B. Kripalani.
40. The Hon'ble Maulana Abul Kalam Azad.
41. The Hon'ble Sardar J. Vallabhbhai Patel.
42. The Hon'ble Sri C. Rajagopalachariar.
43. Rajkumari Amrit Kaur.
44. Shrimati Hansa Mehta.
45. The Hon'ble Pandit Govind Ballabh Pant.
46. The Hon'ble Sriju Gopinath Bardoloi.
47. The Hon'ble Shri Purushottamdas Tandon.
48. Diwan Bahadur Sir Alladi Krishnaswami Ayyar.
49. Shri K.T. Shah.
50. Shri K.M. Munshi.

(c) The President may at any time or at different times nominate members to the Committee not exceeding 22, 7 of whom shall be Muslims representing the Provinces of Madras, Bombay, the United Provinces, Bihar, the Central Provinces, Orissa and Assam.

2. The Advisory Committee shall appoint Sub-Committees to prepare schemes for the administration of the North-Western tribal areas, the North-Eastern tribal areas and the excluded and partially excluded areas. Each of such Sub-Committees may co-opt more than 2 members from the particular tribal territory under its consideration for the time being, to assist it in its work in relation to that territory.

3. The Advisory Committee may appoint other Sub-Committees from time to time as it may deem necessary.

3-A. The quorum for the Committee or any of its Sub-Committees shall be one third of the total number of members for the time being of the Committee or of the Sub-Committee concerned.

4. The Advisory Committee shall submit the final report to the Union Constituent Assembly within three months from the date of this Resolution and may submit interim reports from time to time, but shall submit an interim report on Fundamental Rights within six weeks and an interim report on minority rights within ten weeks of such date.

5. Casual vacancies in the Advisory Committee shall be filled as soon as possible after they occur by nomination by the President.

6. The President may make standing orders for the conduct of the proceedings of the Committee.

I shall now put the Resolution, as amended, to vote.

The Resolution, as amended, was adopted.

Mr. President: We shall meet again in the afternoon at 3 o'clock and at that time we shall take up the budget in Committee. Therefore visitors need not take the trouble of attending the afternoon session.

The Assembly then adjourned for Lunch till Three of the Clock.

The Constituent Assembly re-assembled in Committee, after Lunch, at Three of the Clock, Mr. President (The Hon'ble Dr. Rajendra Prasad) in the Chair.

[Discussion of Budget Estimates was concluded.]

The Constituent Assembly then met in plenary session at fifty five minutes past Three of the Clock.

BUDGET ESTIMATES OF THE CONSTITUENT ASSEMBLY

Mr. President: Mr. Gadgil will formally move the Resolution.

Mr. N.V. Gadgil (Bombay: General): I formally move the Resolution. As a matter of fact, it was moved in the open session and after it was formally moved the House resolved itself into a Committee.

An Hon'ble Member. I second it.

Mr. President: The Resolution has been formally moved and seconded. I put the Resolutions to vote. I will read them once again.

"Resolved that the Assembly do accord sanction to the estimated expenditure of the Assembly for the years 1946-47 and 1947-48 as shown in the attached statements prepared by the Staff and Finance Committee in pursuance of rule 50 (1) of the Constituent Assembly Rules."

"Resolved that the Assembly do fix, under rule 51 (1) of the Constituent Assembly Rules the allowances of members of Assembly as in the attached Schedule approved by the Staff and Finance Committee".

I need not read the whole Schedule because the members know the Schedule.

I put the resolution to vote.

The Budget is passed.

The Budget was adopted.

Mr. President: This brings us to the close of the business of the day.

Mr. Deshbandhu Gupta (Delhi): May I ask one question, Sir? Has anything been decided as to whether the Government Service Rules will apply to the servants of the Constituent Assembly?

Mr. President: Nothing has been decided. Our servants are not Government servants.

Mr. Deshbandhu Gupta: Will the Government Service Rule apply to them or not?

Mr. President: We may have our own Rules. We have nothing to do with Government Rules. Those who have been borrowed from the Government may have loyalty and allegiance in their own way.

We shall meet again tomorrow in open session. Some resolutions will be taken up.

We adjourn till Eleven of the Clock tomorrow.

The Assembly then adjourned till Eleven of the Clock, on Saturday, the 25th January 1947.

BLANK

CONSTITUENT ASSEMBLY OF INDIA

Saturday, the 25th January, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eleven of the Clock, Mr. President (The Hon'ble Dr. Rajendra Prasad), in the Chair.

ELECTION OF VICE-PRESIDENT

Mr. President: Dr. H.C. Mookherjee is the only candidate who has been validly nominated for Vice-Presidentship. I accordingly declare him duly elected.

Dr. Pattabhi Sitaramayya will move the Resolution that is standing in his name.

ELECTION OF BUSINESS COMMITTEE

Dr. B. Pattabhi Sitaramayya (Madras: General): *[Mr. President, I read out the Resolution which I am going to move in English, first]*

“This Assembly resolves that a Committee consisting of—

1. The Hon'ble Sir N. Gopaldaswami Ayyangar,
2. Mr. K.M. Munshi, and
3. Sri Biswanath Das,

be appointed to recommend the order of the further business of this Assembly in framing the Constitution for all India and to submit its report before the commencement of the next session of this preliminary meeting of this Assembly”.

*[I shall explain to you the Resolution in Hindustani. The Resolution seeks to appoint a committee consisting of three elderly persons. The function of this Committee is to consider and recommend the order of business of this Assembly and to submit its report before the commencement of the next session of the Assembly.

The Resolution appears very ordinary but it is very important. We have so far traversed a part of our journey. Imagine a man who sets out on a journey; he travels the first stage of it easily. But when he embarks on the second stage he meets many hurdles and difficulties. Now what is the best course for him? He postpones his journey and sends a vanguard in order to acquire an idea of the difficulties he is likely to meet on his way. What we want to do now is exactly that. We want to appoint a committee to guide us as to how we should proceed further with our business. Perhaps, you remember that an Advisory Committee was appointed yesterday. To-day we are going to appoint another committee. With the help of this Committee we are to know as to what should be the order of the further business of this Assembly. With these words, I put the Resolution before you. I need not say anything more on it.]*

B. Gopal Reddi: *[I second the resolution.]*

[] English translation of Hindustani speech.

Mr. President: Does anyone want to speak about this?

Dr. B. Pattabhi Sitaramayya: There is a small amendment to this, Sir.

Mr. President: Mr. Satyanarayan Sinha has given notice of an amendment.

Mr. Satyanarayan Sinha (Bihar: General): Mr. President—

Sir, I beg to move—

“That at the end of the motion add the following new paragraph:—

“The Assembly further resolves that the presence of not less than two members of the Committee shall be necessary to constitute a meeting of the Committee.”

Mr. President: Dr. B. Pattabhi Sitaramayya, do you accept the amendment?

Dr. B. Pattabhi Sitaramayya: I accept the amendment.

Mr. President: Then I put the amended Resolution to vote.

The Resolution, as amended, was adopted.

COMMITTEE ON SUBJECTS ASSIGNED TO THE UNION CENTRE

The Hon'ble Sri C. Rajagopalachariar (Madras: General): I beg to move the Resolution standing in my name, which reads as follows:

WHEREAS In paragraph 15(i) of the Cabinet Delegation's Statement of May 16, the subjects assigned to the Union Centre are generally and compendiously indicated under four broad categories,

AND WHEREAS an understanding of the scope of these subjects is necessary for the purpose of framing the Union and other Constitutions, of avoiding as far as possible overlapping and conflicts between the provisions in the Constitution relating to the Union and those in the Constitutions referred to in clause (v) of paragraph 19 of the Statement, and of bringing all the said Constitutions into line with each other.

AND WHEREAS it is necessary to draw up lists of matters included in and interconnected with the subjects assigned to the Union before the framing of the Constitutions referred to in clause (v) of paragraph 19 of the Statement is taken up for consideration;

This Assembly resolves—

- (a) that a committee consisting initially of twelve members, elected according to the principle of promotional representation by means of the single transferable vote, be constituted to examine the above matters and to report to the Assembly not later than the 15th of April, 1947, and
- (b) that the President may add ten more persons to the committee, and that the selection of all or any of these ten additional members be made at such time and in such manner as the President may determine.

Sir, I might take the matter a little in advance and mention that there are three amendments that are going to be proposed to this motion of mine, and those amendments deal with subsidiary matters, Mr. Munshi and Mr. Satyanarayan Sinha will move them in due course and I propose to accept them. So, in order to make the matter easier to understand I shall read the Resolution as it will stand when these amendments are accepted. The first part of the Resolution, *i.e.*, the preamble, stand as before, but the operative part would read like this:

“This Assembly resolves—

- (a) that a committee consisting of the following members:

1. The Hon'ble Pandit Jawaharlal Nehru....

Mr. C. E. Gibbon (C. P. and Berar: General): On a point of order, Sir, until such time as the amendments are officially moved and the mover of the Resolution accepts them, how could he incorporate them in the original Resolution?

Mr. President: He has not incorporated any part of the amendment. He is only reading it out.

Mr. C. E. Gibbon: He is accepting it before it is moved.

Mr. President: He said he proposes to accept it.

The Hon'ble Sri C. Rajagopalachariar: I have read the Resolution as it stands in the Paper and I have referred to the amendments circulated and I think it would save time if I explained to the members in advance that I propose to accept those amendments, and in order that the matter may be clearly understood, I am reading it. If permitted, I shall go on.

Mr. President: Yes.

The Hon'ble Sri C. Rajagopalachariar: The operative part would read like this:

“This Assembly resolves—

(a) that a Committee consisting initially of the following members:

1. The Hon'ble Pandit Jawaharlal Nehru
2. Mr. Sarat Chandra Bose
3. Dr. B. Pattabhi Sitaramayya
4. The Hon'ble Pandit Govind Ballabh Pant
5. Mr. Jairam Das Daulatram
6. Sri Biswanath Das
7. The Hon'ble Sir N. Gopaldaswami Ayyangar
8. Bakshi Sir Tek Chand
9. Diwan Bahadur Sir Alladi Krishnaswami Ayyar
10. Mr. D. P. Khaitan
11. Mr. M. R. Masani
12. Mr. K. M. Munshi

be constituted to examine the above matters and to report to the Assembly not later than the 15th of April, 1947,

- (b) that the President may add ten more persons to the committee, and that the selection of all or any of these ten additional members be made at such time and in such manner as the President may determine,
- (c) that the quorum for the Committee shall be one-third of the total number of members for the time being of the Committee, and
- (d) that casual vacancies in the Committee be filled as soon as possible after they occur by nomination by the President from among the members of the Assembly”.

Sir, the object of the Resolution is to help this Assembly in framing the Constitution so as not to leave for the future any overlapping or conflicts that might occur if various proceedings took place without correlation in different Sections of the Assembly or otherwise. I may be permitted, therefore, to explain exactly what the possibilities are which we wish to avoid.

This Assembly, Sir, has been entrusted with a very serious task, perhaps more onerous than any Constituent Assembly in the world has had to deal with. The number of differences that have to be settled are enormous; the population that has to be satisfied is enormous; and the problems that are before the Assembly are as difficult as any which any other Assembly has had before it. The British Government's Statement has put things in a fairly clear way, but not quite as clearly as we would desire it. If we examine the British Government's Statement, on which this Assembly's programme is based, we will find few matters settled clearly.

No. 1—it is decided that we are to frame a constitution for a united India.

No. 2—we have to frame a constitution where the Centre is given the powers over Defence, Communications and Foreign Affairs and also powers necessary to raise the finances required for the above subjects.

And then thirdly another principle has been laid down that the residuary powers, that is to say, all powers which have not been transferred to the Central Government, should remain in the Provinces. Then fourthly, a subsidiary point is laid down also, that such powers as the Provinces agree to transfer to any Groups they may form would go to the Groups. All subjects other than the Union subjects and all residuary powers should vest in the Provinces. The States will retain all subjects and powers other than those ceded to the Union. This is (3) and (4) of Clause 15 of the State. It is further laid down that there will be a ten-year revision of this Constitution and the initiative for that revision is vested in the Provinces. These are the broad principles laid down in Clause 15:

But let us examine this a little more closely. We find in sub-clause (1) that:

“The Union should have all the powers necessary to raise the finances required for the above subject.”

Now, what are powers, unless we mean the power actually to enforce the law as prescribed for raising the finances and that would include, Sir, the power of collection and probably also the power of securing the services of a proper judiciary wherever required. No provision has been put down for this purpose. Again, if we examine clause 19 which gives the procedure for carrying out the principles set out in clause 15, we find, strangely enough, a lacuna. In sub-clause (v) of clause 19 it is stated that the Sections shall proceed to settle Provincial Constitutions and then they shall also decide whether any Group Constitution shall be set up, and if so with what provincial subjects the group shall deal. Then the representatives of the Sections and the Indian States shall re-assemble for the purpose of setting the Union Constitution. Now, there is no provision as to how and when the Group Constitution shall be settled. Beyond stating that whether any Group Constitution shall be set up may be decided in the Sections and also that the Sections shall set out the provincial subjects with which the groups should deal there is no provision for settling the Group Constitution itself.

Then, again, if we examine the provisions as to the Advisory Committee on Minorities, we find this. The Advisory Committee shall report to the Union Constituent Assembly upon the list of fundamental rights, clauses for protecting minorities and a scheme for the administration of Tribal and Excluded Areas, and it should advise whether these rights should be incorporated in the Provincial, the Group or the Union Constitutions. Now, it follows logically that when the Advisory Committee has reported to the Union Assembly, the Union Assembly should have the power to see whether it should be incorporated in the Provincial or in the Group or in the Union Constitutions. If the Provincial and Group constitutions should be settled beforehand, and at a later sitting of the Union Assembly, they decide that it should be incorporated in the Provincial or Group Constitutions, what is the procedure to be followed? Therefore, there is a great deal of correlation to be done before we can carry out the intentions of the Cabinet Mission's Statements, or the Resolutions of this Assembly. If we interpret the programme laid down in clause 19 literally and assume that what is asked to be done at the various sittings should be the only things done at this stage and nothing else, we will be landed in a great deal of difficulty at the end in carrying out the

explicit intentions of the Cabinet Mission's Statement. Considering all these matters, it has been found necessary, we have found it necessary, Sir, to make this motion for the appointment of a committee which shall do the required thinking on these matters and report to this House before we end the preliminary session so that we may frame our programme of future work.

This Assembly has to consider, as I said before, very serious matters, and we will have to do a great deal of thinking. We cannot do our work on the assumption that we are here only to register previously arrived at decisions, opinions and programmes. We have to do a lot of substantial thinking in this Constituent Assembly; and in the nature of things, therefore, we require the assistance of a select Committee to consider and advise us on the difficulties that may arise in the course of our work. It is with that object that this Committee has been proposed. It is not with the object of undermining the essential intentions of the Cabinet Mission's Statement or anything 'of that kind. It is to help us to think out our difficulties and to find solutions for those difficulties.

Sir, If I may venture to put it that way, it is not only a matter of culture or good-breeding, but it is statesmanship to think of those who are absent, to think of other people than ourselves, when we deal with any matter. That is why in proposing every motion, Hon'ble Members have dealt with the intentions and purposes of those who are not yet present in this Assembly. We find a great many possibilities of misunderstanding and we try to anticipate those difficulties and remove possibilities of misunderstanding as far as we can. In this connection I would mention, therefore, that those who are absent should not misunderstand the purpose of this Committee that I am proposing. The Muslim League policy has been to secure a separate, sovereign State of their own. Now, this Constituent Assembly has taken up its task on the basis of the Cabinet Mission's Statement and if one thing is more clearly decided in His Majesty's Government's Statement than anything else, It is this, that there shall be only one sovereign State in India. It has been decided clearly beyond all possibility of doubt that a division of India into two sovereign States is not to be thought of in this connection. That explains many of the things that we are doing and will remove many of the misunderstandings that are likely to arise. If I may put it that way, the League has gone the wrong way for securing their objective. If they had only restricted their claims to what legitimately should be asked in pursuance of their policy, possibly they might have achieved their object and they would not have been in the present difficulty. Let me put it frankly. The greatest difficulty for the Muslim League now is that they have to join this Assembly and thereby, once for all and beyond doubt, accept the single sovereign State of India. That is why they find it difficult to come in, and that is why these postponements. That is why the League fixes its date always after the meetings that the other major parties have programmed for their consultations. That is why we find to-day, even after the last adjournment, the League has been unable to make up its mind and join us. Let us understand the difficulties of the other side. If the League comes in, they come in on the express understanding that India shall be only one sovereign State, abandoning their separatist policy. This is difficult for them to do at once. Let us realise these difficulties and not misunderstand even the delays. We desire to proceed with the work as fast as possible, understanding very well the difficulties of the Muslim League members in the way of their coming and joining us at this stage. Let them think it over. Let us give them ample time to come. But that does not mean that we stop our work,

that we stop thinking, that we stop doing anything whatsoever, until they make up their minds. That would lead to indefinite postponement. Hence, Sir, I have no hesitation in recommending this Resolution that we should appoint this Committee of twelve members as proposed, so that they may think out all the difficulties and advise us so that we may frame a constitution for India which will create no difficulties for those who have to work it, and which will be a stable, strong constitution for the Centre with stable and strong constitutions for the provinces, to work under the Centre and in the single State that is being contemplated. Therefore Sir, I move that this Resolution be accepted by the House. As I said before, there are two amendments. One is to replace the election by proportional representation, by twelve members definitely named to the House; and the other is to provide for quorum and another is to provide for casual vacancies. I commend the Resolution with these amendments.

Mr. President: Mr. Munshi can move his amendment.

Mr. Satyanarayan Sinha: May I be permitted to move it?

Mr. President: Yes.

Mr. Satyanarayan Sinha: Sir, I beg to move the amendments which stand in the name of Mr. Munshi, as permitted by you:

“That in clause (a) of the motion, for the words beginning with ‘twelve members’ and ending with ‘the single transferable vote’, the following be substituted:—

‘the following members:

1. The Hon’ble Pandit Jawaharlal Nehru,
2. Mr. Sarat Chandra Bose,
3. Dr. B. Pattabhi Sitaramayya,
4. The Hon’ble Pandit Govind Ballabh Pant,
5. Mr. Jairam Das Daulatram,
6. Sri Biswanath Das,
7. The Hon’ble Sir N. Gopaldaswami Ayyangar,
8. Bakhshi Sir Tek Chand,
9. Diwan Bahadur Sir Alladi Krishnaswami Ayyar,
10. Mr. D. P. Khaitan,
11. Mr. M. R. Masani, and
12. Mr. K. M. Munshi.”

If you will permit me, Sir, I will move the other amendment also.

Mr. C. E. Gibbon: Sir, on another point of order. When Mr. Munshi, who has given notice of these amendments is not present in the House, can anybody else move them in his absence?

Mr. President: I suppose any one else can move them if permitted by the Chair.

Mr. Satyanarayan Sinha: The second amendment which is in the name of Mr. Munshi and which I move is as follows:

“That the word ‘and’ at the end of clause (a) be deleted and at the end of clause (b) the full stop be changed into a comma and the following be added:—

‘and (c) that casual vacancies in the committee be filled as soon as possible after they occur by nomination by the President from among the members of the Assembly.’”

“That the word ‘and’ at the end of clause (a) be deleted and at the end of clause (b) the full stop be changed into a comma and the following be added as a new paragraph:

‘(c) that the quorum for the committee shall be one-third of the total number of members for the time being of the committee.’”

Mr. P. R. Thakur (Bengal: General): This is an important Resolution and this Committee which is going to be appointed will consider the subjects that will be reserved to the Centre. My Hon’ble friend, Mr. Rajagopalachariar, did not say anything about the maintenance of peace

throughout the country and the prevention of famines. These two things are essential and I say so, because we, Bengalis, are the worst sufferers; we had recently communal rioting in Bengal and there was also famine. We asked for help from the Local Government but the Government was not able to give it, and we could not make any appeal to the Centre. Another thing is that when the Interim Government was formed, His Excellency the Viceroy said that this Government would not interfere with Provincial Governments. If the Centre cannot interfere in cases where there is communal disturbance or there is famine, then we will have to consider what will happen to the people of those Provinces. I hope the Committee will take this into serious consideration so that steps may be taken to maintain peace throughout the country and also to prevent famines. Another thing that I want to bring to the notice of the Congress High Command through this Assembly is this somehow or other there is a feeling that this High Command is not sympathetic towards the people of Bengal: they want to have independence at the cost of Bengal. I hope this Committee will consider this aspect seriously so that Bengal may not be affected in future either by famine or by communal disturbances.

Mr. Jaipal Singh (Bihar: General): Mr. President, this is a very imposing list and I personally have no quarrel. I know the names are of eminent men that have been proposed by Mr. Satyanarayan Sinha, but I do feel some concern, now that explanation has been given by Mr. Rajagopalachariar that under (b) the President may add ten more persons to the Committee. That implies that he is leaving room for our absent friends. Had he pointed out that the President would have discretion to nominate members from parties or groups that has been left out in the twelve names that had already been proposed, I would not have anything to say. Looking at the list, it seems to me that the plan is not for unity but for uniformity. I would have liked to see, for instance, the names of persons like Dr. Jayakar, Dr. Ambedkar and Dr. Deshmukh in the list.

The Hon'ble Sri C. Rajagopalachariar: Will you, Mr. President, request the speaker to come closer to the microphone and speak? I am unable to hear him.

Mr. Jaipal Singh: When I shouted yesterday, Pandit Govind Ballabh Pant thought I was being too vehement, and I said to myself I would be a little mellow this morning. But, for the benefit of Mr. Rajagopalachariar. I shall shout despite what Pandit Govind Ballabh Pant may feel. I will raise my voice for Mr. Rajagopalachariar's benefit.

Mr. President: It is not so much shouting that is required as speaking in front of the microphone.

Mr. Jaipal Singh: If there were microphones all around, then I need not come near the microphone, but look at members on all sides, I submit that, when Mr. Rajagopalachariar said that the ten members that the President would nominate subsequently were reserved for our absentee friends, I was concerned that no room had been left to accommodate sections, groups and parties who were not among the twelve people named herein. I know that as far as the fate of my own people is concerned, the temper of this House seems to be as it has been in the past, that they should be permanently excluded from all the good things of life! This is a very important thing. That is the impression I get; although that may not be true. Less important committees may give us a fair deal—I do not know, but I see no reason why here also some tribal representation could not have been given. I am not moving an amendment, I am only expressing my opinion when I say that I would like to have seen persons of the eminence of Dr. Jayakar, Dr. Ambedkar and Dr. Deshmukh on this Committee. I do think that they can render

as good service as the twelve members who are named here. I am not moving an amendment, but I am bound to say that I am surprised that Tribal Areas are completely left out of the picture; so are our eminent men whose names I have already mentioned.

Sardar Harnam Singh (Punjab: Sikh): I do not propose to make a speech on this Resolution. But I do want to say that this is not a committee on which communal representation or tribal representation is very, very necessary. This Committee, as the Resolution states, is simply formed for the purpose of understanding the scope of the Union subjects. It is not a committee even for defining the scope of the Union subjects. Therefore, I put before the House that no member of this House should insist on communal or tribal representation. The best men of this House must come on this Committee to make a report to the House as to the compass and scope of the Union subjects, and when that report will be before the House, we will be in a position to make any suggestions that we may like.

Prof. N. G. Ranga (Madras: General): Mr. President I wish to suggest that Dr. Ambedkar's name should be included in this list, and I appeal to one of the members whose names are suggested to offer to withdraw in his favour.

The Hon'ble Sri C. Rajagopalachariar: Sir, I would beg of the House to look at it rather from the point of view which Shri Harnam Singh put before the House than from any other point of view. After all, if you once more read these names, you will find among them men who are absolutely non-party men, who have given their time to considerations of issues and drafting difficulties and people who may more or less be described as experts in the art of bringing laws into existence. Clause (b) provides that the President may add ten more persons to the Committee. Now, the President is not invested with this authority for nothing. He is invested with this power to make up for defects. The President will consider the position when the Muslim League members, who are now absent, come in. We will know then how the position stands. It is not intended really that the President should exercise this nomination power in an arbitrary manner. He is going to get the opinion of the Muslim League members when they join and get them to elect their representatives and they will come in.

There is another absent element, the States. The President will consider who will best represent the States in this particular task and take them in and, if there is room, I have no doubt the President will add other eminent constitutionalists who are in the House, some of whose names have been mentioned and then the Committee will be a strong Committee. Relying upon this, I ask the House to accept the Resolution as it stands, with the amendments proposed.

Mr. President: I have now to put this Resolution to the vote of the House. Is it necessary to read out the Resolution once again? (Hon'ble members: No, no.)

An Hon'ble Member: What about Mr. Ranga's amendment?

Mr. President: Mr. Ranga did not move any amendment. He only made a suggestion. I will now put the Resolution, as amended, to vote.

The Resolution, as amended, was adopted.

Mr. President: I find on the Order Paper a motion in the names of Shrimati G. Durgabai and Shri M. Ananthasayanam Ayyangar. I understand that they do not propose to move it.

Mr. Satyanarayan Sinha (Bihar: General): I beg to move the following motion which stands in my name:

“This preliminary meeting of the Assembly do stand adjourned to such day in April as the President may fix.”

I may mention, Sir, that at the next meeting of the preliminary Session we will consider the general order of business and also the report of the Union Committee and other matters that may come up before the Assembly.

Sri K. Santhanam (Madras: General): On a point of order, Sir. I do not think it can be left vague like that, because Rule 21 says in the first proviso that the President shall not adjourn the session....

Mr. President: Please come to the microphone.

Shri Mohanlal Saksena (United Provinces: General): I second the motion.

Seth Govind Das (C. P. and Berar: General): *[Mr. President, I want to point out that there is no necessity for such a resolution. It is the President who is to decide as to when the sitting of the Constituent Assembly should be next held. When the previous session of the Assembly was adjourned, was any resolution passed for this? No. Therefore, I think there is no necessity for this Resolution. The current session of the Assembly is going to be adjourned. You have the right to summon it whenever you find it necessary.]*

Mr. President: According to Rule 21, the Assembly shall sit on such dates as the President may from time to time direct; provided that the President shall not adjourn the session for more than three days at a time except with the consent of the Assembly: Provided further that the Chairman may adjourn the session to the next working day. So, under this Rule the consent of the House is required for adjourning it for more than three days.

Sri K. Santhanam: My point is that the adjournment with the consent of the Assembly should be to a particular date. It cannot be to an indefinite date; otherwise the President gets the discretion of thirty days, while his discretion is limited to three days. I am not objecting to the motion on merits. Seeing that the Rules Committee have made the Rules somewhat rigid, I do not think it would be right if we do not interpret them correctly.

Mr. President: Rule 21 says that the Assembly shall sit on such dates as the President may from time to time direct; provided that the President shall not adjourn the session for more than three days at a time except with the consent of the Assembly. It is not indicated in the Rule that the adjournment should be to a particular date. All that it says is that if the House is to be adjourned for more than three days, the consent of the House has to be taken.

An Hon'ble Member: Rule 68 gives you ample power.

Mr. President: I think Rule 21 is quite enough.

Mr. H. V. Kamath (C. P. and Berar: General): While I do not object to the Resolution in principle, I desire that it should be more explicit and clear. When we met in December we hoped that the preliminary meeting would be over in that month.... (Hon'ble Members: 'No, no'). We adjourned to January. Now again we are adjourning to April. It means that the preliminary meeting will be going on for over six months. It must be made clear to Hon'ble Members who happen to be absent today that this Assembly resolves that no further adjournment of the Assembly shall be

[] English translation of Hindustani speech.

[Mr. H.V. Kamath]

made. We were eager to get the co-operation of members at the preliminary meeting. We are desirous of getting the co-operation of those who are absent today and we wish that they co-operate with us in the task of constitution-making. But all the same, just because some are absent we cannot go on adjourning the preliminary meeting. I wish that the idea that the meeting shall not be adjourned beyond April and that there will be no further adjournment of this preliminary meeting may be incorporated in the motion.

Mr. President: Do you move any amendment?

Mr. H. V. Kamath: I shall move an amendment if you desire it.

Mr. President: I have no desire in the matter.

Mr. H. V. Kamath: I shall move it.

The Hon'ble Sri N. Gopalaswami Ayyangar (Madras: General): Sir, I beg of you to reconsider the views to which you have given expression already on this matter. I think Mr. Santhanam's point is quite sound. The operative portion of Rule 21 is:

"The Assembly shall sit on such dates as the President, having regard to the state of business of the Assembly, may from time to time direct....."

The next sentence is merely a proviso to that part of the Rule, *viz.*—

"Provided that the President shall not adjourn the session for more than three days at a time except with the consent of the Assembly."

This proviso, I am afraid, Sir, does not give the President the discretion not to fix a date. It only means that the date that he may fix, if it is beyond three days from the date on which we adjourn, requires the consent of the Assembly. But the fixing of the date, I am afraid, is obligatory. In order to avoid possible legal or other difficulties, I suggest that we may fix a date in April for this proviso.

Mr. President: A point of order has been raised on it and I have given my ruling. I do not think it is necessary that at the time we adjourn, I should fix the date. I may fix the date even later. That is what has just now been suggested.

The Hon'ble Sri C. Rajagopalachariar: The leave of the House being taken for adjourning beyond three days, the President shall have the power from time to time to fix any date beyond three days.

Mr. H. V. Kamath: By your leave, Sir, I move that after the word 'fix', a comma be inserted and then the following words added, "and no further adjournment of the preliminary meeting of this Assembly shall be made."

Seth Govind Das: *[Mr. President, I oppose the amendment put in by Mr. Kamath. Conditions constantly change. Today we think that we should not adjourn this preliminary session of the Assembly beyond April. But if at that time we feel that the session should be adjourned further we will not be able to do so because of the binding of such a resolution. The amendment is unwise, and, therefore, I think we should accept the Resolution moved by Mr. Satyanarayan Sinha. We should not fix any date for the next sitting of this Assembly in April nor should we undertake that it will not be adjourned in future. Therefore, I oppose the amendment moved by Mr. Kamath.]*

Mr. President: Does anyone else wish to speak?

Hon'ble Members: No.

Mr. President: Mr. Satyanarayan Sinha, do you wish to reply?

Mr. Satyanarayan Sinha: When the Resolution was drafted, we took an aspects of the question into consideration and decided not to make

[] English translation of Hindustani speech.

any mention about whether or not there will be any occasion to summon any further meeting of this Preliminary Session. I appeal to Mr. Kamath to withdraw his amendment. I do not think any purpose will be served by his insisting on this amendment.

Mr. H. V. Kamath : The position as it stands.....

Hon'ble Members: Order, Order.

Mr. H. V. Kamath: I am going to withdraw the amendment.

Mr. President: I now put the Resolution to vote.

The motion was adopted.

CONGRATULATIONS TO VICE-PRESIDENT

Mr. President: This brings us to the close of our business. There is a suggestion made by some friends that we should give an opportunity to members to congratulate Dr. Mookherjee on his election as Vice-President. I desire to offer him my congratulations in the first place before anybody else does. Does anyone wish to speak?

Rev. Jerome D'Souza (Madras: General): Mr. President, I have very great pleasure in offering—I am sure in offering them I am also voicing the sentiments of this Hon'ble House—our sincere congratulations to Dr. H. C. Mookherjee on his election to the Vice-Presidentship of this august Assembly. Dr. Mookherjee is one who has gained the esteem of all the sections and communities of our land. He has been associated very closely with meritorious work as an educationist in Bengal. He belongs to a Christian body which has worked in close collaboration with other Christian bodies. His judgment, his patriotism, his amiable and attractive manners are known to all, and I am sure, Sir, that, if the occasion should come for him to direct the proceedings of this House, he will do it in a manner, I will not say brilliant, but in a way which will be in keeping with the manner which you, Sir, have set up as a tradition. I do not wish to take the time of the House more on this matter. Once again, with our hearty congratulations to Dr. Mookherjee, I offer him our good wishes for his success in this work.

Sri Biswanath Das (Orissa: General): Sir, I offer my hearty congratulations to Dr. H. C. Mookherjee on his election to the Vice-Presidentship of the Constituent Assembly. Dr. Mookherjee richly deserves this place. His election goes to prove that the minorities need not have any apprehensions in their mind about the majority communities. His election is an honour done to the minorities as also to Bengal. As President of the All India Christian Association, I know several attempts were made to drag him into the field of communalism. He has all along resisted those attempts and resisted them successfully, I have no hesitation in saying that he will carry out this tradition and make his office a success. We on our part will give him full co-operation. I wish him godspeed.

Mr. H. J. Khandekar (C. P. and Berar: General): *[Mr. President, I congratulate Dr. Mookherjee. I represent the community known today as Harijan. They are approximately ninety millions in India. On behalf of this community I offer my congratulations to Dr. Mookherjee. I hope he will render much help in the deliberations of the Assembly and tackle all problems that may arise. With these words, I conclude my speech.]*

Dr. Joseph Alban D'Souza (Bombay : General): Mr. President, I endorse every word that has fallen from my Hon'ble friend Reverend Jerome D'Souza, in what he has expressed in connection with the appointment of

[] English translation of Hindustani speech.

[Dr. Joseph Alban D'Souza]

Dr. H. C. Mookherjee as Vice-President, the first Vice-President amongst the five Presidents that would be appointed in the near future to this great Assembly. Sir, I may be pardoned if I connect Dr. H. C. Mookherjee particularly with the community to which I belong at present, the Indian Christian Community of this great nation. I think and I feel, Sir, that the appointment of Dr. H. C. Mookherjee is really an honour conferred upon the Indian Christian Community of India.

Sir, may I refer on this occasion to the Advisory Committee representation of the Indian Christians? We have adequate representation in that Committee and I am looking forward to Dr. H. C. Mookherjee to grant to that section of the Advisory Committee every assistance and aid in order to put through the affairs of the Indian Christian Community section to the best of his ability and to the satisfaction of the entire Indian Christian Community of this great nation. As Father Jerome has already informed you, his acquirements have been very great indeed. In the Province of Bengal, he has shown that in matters of statesmanship and in every other direction he is a luminary in that section of India.

Sir, it is quite possible that he might have one day to preside over the deliberations of this House and as Father Jerome has said it, I am sure, if it comes to that, he will do his duty as well, Sir, as you have had the honour of doing it during the time this Assembly has been in action. I congratulate Dr. H. C. Mookherjee, and in congratulating him, I say once again, that I congratulate the Indian Christian Community for the honour that has been conferred upon it. Thank you very much.

Mr. H. C. Mookherjee (Bengal: General): Mr. President, Ladies and Gentlemen. I trust that you will accept in advance an apology because I am going to place before you a history of the way in which from a Christian Communalist I became a Christian Indian Nationalist. It was merely an accident that brought me into politics. It was a case of *zid* and nothing else. Some people had egged me to seek election, but at the last moment deserted me and I was determined to show that though I have been a school-master all through my life. It was possible for a school-master to be a better man than the black-mailing voter. It so happened that the gentleman against whom I was fighting was a more experienced man with a longer record of service to the community than myself. It also happened that in those days it was more profitable to appeal to communal than to national feelings. I admit with a sense of the deepest shame that I dabbled with the matter. He appealed to communalism. I appealed even more strongly to communalism and that is how I got into politics. But when as President of the All-India Council of Indian Christians the members requested me that I should go and visit poor Christians, it was then and then only that I found out that the cause of the poor Christian Indian was no better than the cause of the equally poor Hindu Indian and the equally poor Mussalman Indian. It was then that from a Communalist I became a nationalist and if today you have done me the honour of putting me into the position of the Vice-President, be sure that while I am there, I shall not act as a communalist, but I shall remember the duty which I owe to the poor masses of my country. I am not a lawyer. I am not even a politician. Forty-two years of my life have been passed as a teacher or as a student. I do not know whether I am qualified to discharge the duties with which you have entrusted me but I do know one thing that I shall try to do it honestly and thereby I hope to add to the dignity of the House and add to the reputation of my community, which has hitherto had at least one thing in its favour, and that is, that it has never stood directly or indirectly against the political progress of my country. (*Loud cheers*).

MR. S. LAHIRI'S LETTER TO THE PRESIDENT

Mr. H. V. Kamath: Mr. President, Sir, before we bring our business to a close, permit me to invite your attention to the fact that several of us have received copies of a letter addressed to you by my Hon'ble friend, Mr. Somnath Lahiri. I submit, Sir, that we are not here concerned with the politics of the Indian Communist Party, with which most of us are at variance.

Sardar Harnam Singh: On a point of order, Sir, the Resolution proposed by Mr. Satyanarayan Sinha that the House stands adjourned to some day in April has been passed. Therefore, no work can be done now.

Mr. President: I have permitted Mr. Kamath to place before the House one fact which needs to be brought to the notice of the House. Some days ago, I received a letter from Mr. Somnath Lahiri, in which he complained that his house had been searched and papers relating to the proceedings of this Constituent Assembly and the notes which he had prepared for his speeches here have been seized by the Police and he raised the question of privilege whether that kind of action was justified or whether I could do anything to protect him. That is the matter which he is now mentioning. Therefore I permitted him to mention the matter. The fact is that after receiving the letter, I referred it to the Constitutional Adviser because it involves a question of law and I received his note only this morning, which I have not yet been able to study. So I have not been able to make up my mind as to what steps can be taken or need be taken in this matter. I shall consider this matter when I have studied that and if any steps are called for, I will take those steps and if I find that I have no power, I will leave the matter there.

Mr. Somnath Lahiri (Bengal: General): May I remind you, Sir, that you are not only the President of this Assembly, but also a Member of the Interim Government?

Mr. President: In this House, I am nothing else.

The House will now stand adjourned to such date in the month of April as I may fix later on.

The Assembly then adjourned to such day in the month of April as the Hon'ble the President might fix.

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Volume III



**28-4-1947
to
2-5-1947**

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF INDIA

President :

THE HON'BLE DR. RAJENDRA PRASAD.

Vice President :

DR. H.C. MOOKHERJEE.

Constitutional Adviser :

SIR B.N. RAO, C.I.E.

Secretary :

MR. H.V.R. IENGAR C.I.E., I.C.S.

Joint Secretary :

MR. R.K. RAMADHYANI, I.C.S. (from 1st May 1947).

Deputy Secretaries :

MR. R.K. RAMADHYANI, I.C.S. (from 28th April to 30th April 1947).

MR. B.F.H.B. TYABJI, I.C.S.

MR. JUGAL KISHORE KHANNA.

Under Secretary :

KHAN BAHADUR S.G. HASNAIN.

Assistant Secretary :

MR. K. V. PADMANABHAN.

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CONSTITUENT ASSEMBLY OF INDIA

Monday, the 28th April 1947

The Third Session of the Preliminary Meeting of the Constituent Assembly of India commenced in the Constitution Hall, New Delhi, at Eleven of the Clock, Mr. President (The Hon'ble Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The following Members presented their credentials and signed their names in the Register:

1. Sir Brojendra Lal Mitter (Baroda).
2. Mr. Gopaldas Ambaidas Desai (Baroda).
3. Mr. P. Govinda Menon (Cochin).
4. Sir T. Vijayaraghavacharya (Udaipur).
5. Sir V. T. Krishnamachari (Jaipur).
6. Pandit Hiralal Shastri (Jaipur).
7. Mr. C. S. Venkatachar (Jodhpur).
8. Mr. Jainarayan Vyas (Jodhpur).
9. Sardar K. M. Panikkar (Bikaner).
10. Raja Lal Shiva Bahadur Singh, Rao of Churhat (Rewa).
11. Mr. Lal Yadhendra Singh (Rewa).
12. Sardar Jaidev Singh, (Patiala).
13. Sardar Gian Singh Rarewala (Patiala).
14. The Hon'ble Dr. Kailash Nath Katju (U.P.: General).
15. Professor K. T. Shah (Bihar: General).
16. Mr. Mahavir Tyagi (U.P.: General).
17. Mr. Upendra Nath Burman (Bengal: General).
18. Mr. P. M. Velayudapani (Madras: General).

PRESIDENT'S ADDRESS

Mr. President: We are meeting just three months after the last session of the Assembly. In the meantime some important events have happened to which I consider it necessary to make a short reference. Before doing that I have to give to the House the sad news of the death of three of our Members :

1. Raja Maheshwar Dayal Seth from U.P.
2. Sir Azizul Haque from Bengal, and
3. Mr. K. L. Mazumdar from Baroda.

The death of the last named gentleman has come as a shock because of the tragic circumstances in which it took place. I understand that he was on his way to attend this Session of the Assembly and the railway compartment in which he was travelling caught fire as a result of which he lost his life. I seek the permission of the House to convey to the members of the bereaved families our sympathy with them in their bereavements.

I may on behalf of the House be permitted to extend a cordial welcome to the representatives of the States who are Attending this Session and I hope representatives of other States will also be coming soon to assist in the great work which this Assembly has undertaken. I need hardly point out that the tremendous task in which we are engaged requires and expects assistance from all sons and daughters of this country whether they are living in States or in British India and whether they

[Mr. President]

belong to one community or another. The future of the country very largely will depend upon the Constitution which we are able to frame and not only the people of this country but people all over the world are watching our efforts with interest not unmixed with anxiety and it is upto us, to whatever class or community and whatever part of India we belong, to make our contribution towards the accomplishment of this task.

News has come from our neighbour and erstwhile partner Burma that a Constituent Assembly has been elected there with objects similar to our own. May I on behalf of the House convey to that august body our greetings and good wishes and our great interest in the accomplishment of the task and the attainment of the object of a free Burma that the people of that country have before them ?

Since we met last the British Government have declared their intention to transfer power to Indians by June, 1948. This has naturally added urgency to our work and we must proceed in a business-like way to draw up our Constitution in as short a time as we can. The British Government is pledged to take preparatory measures for transfer of power in advance and while this is being done on one hand, we must be ready with our Constitution well in advance of the date-line to assume responsibility in accordance with the Constitution framed by us. I am, therefore, hoping that the Assembly will proceed with all expedition. There are undoubtedly difficulties which the Assembly will have to face but if we proceed with determination we shall be able to conquer them.

It will be recalled that the Assembly appointed several Sub-Committees. The Reports of four of these Committees will, I understand, be placed before the House in due course. I suggest that the Assembly should proceed to appoint Committees to formulate the principles on which the Constitution to be framed will be based and when those principles have been approved the work of drafting the Constitution could be undertaken by a suitable agency and finally the Constitution so drafted could be considered in detail by this Assembly. My suggestion to the Assembly will be that the Sub-Committee for framing the principles should be asked to submit its report in time for consideration by the Assembly some time in June or July and after the report has been considered by the Assembly, the drafting could be done and the Assembly itself could meet in September and finalise the Constitution by the end of October. This is roughly the time-table as the Order of the Business Committee and I envisage it. It is necessary that the Constitution should be finalised as early as possible so that there may be time thereafter for the process of transfer to be completed within the time fixed by the British Government. What I have suggested is tentative as developments are taking place and no one can say for certain what steps the Constituent Assembly may have to take to fulfil its functions. We have already defined our objective and the Constitution that has to be framed will naturally have to conform to it.

Whatever the nature of the Constitution that may have to be drafted whether for one undivided India or only for parts of it, we shall see to it that it gives satisfaction to all coming under its jurisdiction. While we have accepted the Cabinet Mission is Statement of 16th May which contemplated a Union of the different Provinces and States within the country, it may be that the Union may not comprise all the Provinces. If that unfortunately comes to pass, we shall have to be content with a constitution,

for a part of it. In that case we can and should insist that one principle will apply to all parts of the country and no constitution will be forced upon any unwilling part of it. This may mean not only a division of India but a division of some Provinces. For this we must be prepared and the Assembly may have to draw up a constitution based on such division. Let us not be daunted by the immensity of the task or diverted from our purpose by developments which may take place but go ahead with faith in ourselves and the country which has sent us here. I understand some members would like to say a few words. I request Sir B. L. Mitter to begin.

Sir Brojendra Lal Mitter (Baroda) : Sir, I thank you for the cordial terms in which you have welcomed us, the representatives of the States who are here today. I wish more had come in. I have every hope, however, that at the next Session, few of the States' seats will remain unoccupied. Sir, the Baroda Delegation has suffered a serious loss by the tragic death of one of its members who was on his way to the Constituent Assembly.

Sir, this Assembly is framing the Constitution of Free India. We, the States, are an integral part of India and we shall share the freedom with British India. We, therefore, want to share the responsibility of framing the Constitution. (*Hear, hear*).

We are hereby right of being Indians and not by sufferance. We claim that we are in a position to make substantial contribution to the common task. A hundred and fifty years of unitary British rule has resulted in a measure of uniformity in British India, but in the States there is still a great variety. Some States are as advanced as British India, where the people are associated with the administration. Some are absolute monarchies. Some are feudal and some are primitive. All these have to be fitted into the Indian Constitution, because our 93 millions of population are included in the Indian total of 400 millions. We do not want to disturb the main design, as indicated in the first Resolution of this Assembly; but we want to introduce a variety in the pattern so that we may fit into it according to our capacity.

We want unity in diversity. I appeal to our British Indian colleagues to exercise a little patience with us. We want to march along with them but the pace has to be regulated without impeding the forward move. We are at one with you in that the Indian Union should be strong in the Centre so that India may hold her head high in the comity of nations. We do not believe in isolated independent existence, which can only weaken the Union. We shall join you wholeheartedly in a spirit of co-operation and not in any spirit of securing special privileges at the cost of the Union. We shall endeavour to make the Constitution develop according to the genius and capacity of the different units, so that the development may be natural and healthy.

Sir, I thank you again.

Sardar K. M. Panikkar (Bikaner) : Mr. President, Sir, following what Sir Brojendra Mitter has so very eloquently said, I also, on behalf of the representatives of States who have joined and taken seats today, wish to express our thanks to you, Sir, for the welcome you have extended to us. This was indeed the day to which we have been looking forward. It is a dream which has come true, for at no time in India's history has a representative gathering of people who can speak on behalf of the whole of India met and taken counsel. There have been occasions in the past when sections of India have met. We in the States have also been meeting frequently; but never in the history of India, so far as I can remember, has

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there been an occasion when representatives from all parts of India have met together in order to decide their future. Therefore, I consider that the taking of seats of certain representatives of Indian States today has a symbolic value which far outweighs the actual number of representatives who have joined, or the insignificance of members who have themselves joined. This is indeed a symbol of the unity to come and from the work that begins today, in co-operation between the representatives of the States and those of the Indian Provinces, we can really hope to look forward to the emergence of a Union of India.

Before I proceed to any other matter, I must say a few words of thanks to the work of the Negotiating Committee which made it possible for us to come and sit here. No doubt a Report of that Committee's work will be made to you in a few minutes and it is not for me to say anything about it, but this much I think I might say that, but for the wisdom, courage and vision with which your representatives approached the question of Indian States, it would not have been possible for those of us who desired from the beginning to actively associate themselves with this work to take our place here. Therefore, on behalf of those of us who are here, I must thank the Negotiating Committee for having made this possible. It is true that we represent only a certain number of States. All of us who represent 93 millions in Indian States have not come here today. But one thing I should like to say, that we are by no means an insignificant minority. We, who have come here, represent no less than 20 million people out of 93 million people of Indian States and those who have formally and publicly announced their intention of joining the Constituent Assembly, form more than another 10 to 15 million people, so that actually when we come to think of it, a very substantial portion of the people of Indian States are represented in the Constituent Assembly today.

I should like to say one thing here and now, that we are not here by any means as a result of coercion or of any pressure that has been placed upon us. There has been no occasion for any pressure or any force to be used in regard to the States. This is a voluntary association that has been made clear from the very beginning. Any person, however highly placed who declares that our presence here is due to coercion or undue influence, I think, speaks without knowledge of facts. To such precious gentlemen, as would advise us to pause on account of alleged coercion, I have to say clearly and unequivocally that their insinuation is an insult to our intelligence. Are we less patriotic in matters connected with India ? Are we less concerned with the future of India that we have to be coerced to take part in a cause in which it is our right and duty to take part ? Therefore, I want to say firmly here and now, that there has been no coercion and it will not be in the wisdom of things or in the interest of things to talk about coercion of one part by the other.

One other point I desire to say. It is not by way of controversy or anything of the kind. We are not here as a matter of favour. We have a right to be here for the purpose of co-operating in the great task of organising India's freedom. We consider that we have as much right in that matter as any one else. We are indeed asked by some people to wait and see. This is indeed a strange doctrine, because we can only wait and see what happens to others.. Are we to wait and see as indifferent observers what happens ourselves ? That being so, we consider that organising India's freedom as much our duty as it is of others. Looked at from that point of view, where can be no question of our waiting and seeing. We want no favours nor do we want to confer obligations. All that we

want is that our problems should be viewed sympathetically by this august body in a sense of friendliness as affecting a large part of India. We, on our part, promise in all humility, to work for the betterment of India and for the Union which we all desire to see established. Sir, I thank you.

Mr. P. Govinda Menon (Cochin) : Mr. President, I am happy in that I have been invited to take part in the deliberations of this historic Assembly. During the last few months, discussions, controversies and negotiations were going on as to whether Indian States should send their representatives to this Assembly; if so, when and how ought they to be selected ? Much of this could have been avoided and the question would have been a most simple one if the question was tackled from the correct perspective, namely, from the perspective of the people of the Indian States.

They had never any doubts in the matter. The hundred millions of people of the Indian States never felt nor do they feel now, that they form an entity or group different from their 300 million brothers and sisters living in what is known as British India. For the last 27 years under the leadership of Mahatma Gandhi and other great leaders, India had been fighting for her independence. In that fight the people of the Indian States have always taken their due share, The people of the States did not feel nor did they take up the attitude that their lot lies elsewhere.

Now, after 25 years of war, when the nation sits down to frame the future Constitution we feel that it is our duty and our right to participate in the deliberations therefore. The people of the States. Sir, are one in their desire to participate in the Constituent Assembly.

Objections, doubts, questions come not from the people. They come when they do from Dewans, Ministers, Rulers, who by no means, except under the theory of Divine Right, can represent the people. Let me hope, Sir, that before the next Session of the Assembly, all the States would have taken the firm decision to collaborate with all of us and would send their representatives to this House.

In the matter of joining this Assembly as in many other matters, the attitude of my State, Cochin has been unequivocal from the very beginning. The people of Cochin, like the people of all other States, wanted from the very beginning to join this Constituent Assembly and desired that their representative or representatives shall be elected. Cochin has been fortunate in that her Ruler has been of the same view. Long before questions of States' representation in this Assembly began to be actively considered, on the 29th July, 1946, the Maharaja of Cochin in a message to the Legislative Council said as follows:

"The only other point remaining to be considered is about the Constituent Assembly and the representation of Cochin in it. It has not been settled yet how many representatives Cochin could send to this Assembly. However, to set at rest all doubts about the method of representation, I am glad to announce that, after mature consideration, I have decided to allow the people to elect their representative or representatives. This election will be by the Council."

The above statement was made at a time when the question of States representation had not begun to be actively considered. No State had then said that it would stand independent and would have nothing to do with the Indian Constituent Assembly. Recently some such statements have been made. Cochin's position remains unchanged even after such attractive doctrines have been dangled before her. Her reaction cannot better be expressed than in the words of the Maharaja himself who, while

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opening the Aikya Kerala Convention at Trichur the day before yesterday, said as follows:

“Now let me come to the question of Cochin’s relation to the rest of India. This Convention has met here for considering ways and means of establishing United Kerala. The Travancore Government has said that it does not favour this idea and has declared its intention of assuming independence after June, 1948. Its relations with the Central Government are going to be governed by Treaties. You would like to know in these circumstances what Cochin’s attitude is in this respect. I have no hesitation to declare that Cochin would continue to remain part of the mother country. It is joining the Constituent Assembly at one. No word or act of mine shall usher in a day when a Cochinite finds, he has lost the right to call himself an Indian.”

Because we are Indians, Sir, and because we want to share in the destinies of this great country, we have with pleasure and gratefulness accepted your kind invitation to take part in the deliberations of this historic Assembly. Sir, I thank you.

Sir T. Vijayaraghavachariar (Udaipur): Sir, I am glad to find myself in Delhi today. The old saying was that Delhi is at a great distance. I never felt the truth of it until this occasion. Previously I found Delhi so very near but on this occasion I find it has been very far and I am glad I am able to find myself here today, and I am glad that I am here today on a historic occasion. Cold as the winds that blow in December in Simla, and hard as flint like the rocks over which aeroplanes fly over the Baluchistan hills towards the west, must be the heart of the Indian who is not thrilled today at this sight of this Assembly, the Assembly which I feel certain will go down in history down the corridors of time. My feeling is that though we may come from different provinces and different States we are not here on behalf of any particular part of India; we are members of all India and that is quite clear. It is in that spirit that I feel certain that we shall all do our work here, not on behalf of any parochial interests, not on behalf of any narrow sectarian interests but on behalf of the broad interests of the one nation of India. I do not propose to refer to any local problems here; our local problems ought to be solved locally. This place is for all-India problems, and I do hope that all of us will so put our heads together and so do our work that our children and our grand-children and generations yet unborn, will say, “Our fathers and our grand-fathers sat in the year 1947 at Delhi and framed a constitution which has stood the test of time”, and on which history will say, “Blessed are these men; they did their work and they laid the foundations rightly, and on those foundations will the future history of India evolve”. It is not for us here to take any narrow views; we will take large views, and let us so conduct ourselves that in the future history of India they will say that we did our work properly and that we acquitted ourselves like men, like true sons of India and not true sons of any particular part of India.

I thank you, Mr. President, for the very kind words of welcome you have uttered.

Mr. Jainarayan Vyas (Jodhpur) *[Mr. President, on behalf of the people of the States and in their own language, I thank you for the welcome you have accorded to the representatives of the States.

We, the subjects of the States, had some status up to 1933, for in that year the Government of India Bill did refer to us in the expression ‘The Princes and their subjects. Unfortunately, after that our existence was ignored. No mention of the States subject was made in the Government of India Act of 1935. When Sir Stafford Cripps came to India we were

*[English translation of Hindustani speech begins.

again forgotten. Nor were we referred to in the Cabinet Mission Proposals. We were placed under such circumstances as would have prevented us from sitting and working in this Assembly with you unless the Princes and their Governments decided to associate us with themselves. It is a pleasure that we are today making history. We are sitting together with (the representatives of) the British Provinces and the representatives of the Rulers (of the Indian States). Had not our Rulers come forward to include us among the States Representatives or had not the Negotiating Committees insisted on our being represented (in the Assembly) it was very likely under the conditions in which we were placed at the time that we would not have been here (in the Constituent Assembly). But it is a pleasure to find that we are here in sufficient numbers with you; and we assure you that we will co-operate with you in all possible ways in making the future Constitution. not merely in our self-interest but in that of the whole of India. We consider ourselves as parts of India, although some outsiders had raised walls between us. But these unnatural walls are crumbling today, and we hope that within a short time India would be absolutely one single unit. Once again, I thank you.]*

Raja Lal Shiva Bahadur (Rewa) : Sir, I join my friends in thanking you for the very cordial welcome you have extended to us. I represent one of the very big States in Central India, and if the Rewa State had not taken the lead, Central India would have gone unrepresented. I hope, Sir, in a very short period my friends in other States and our neighbouring States will definitely decide to join this historic House. The Rewa State will not lag behind in rendering all possible service to the mother country.

I thank you Sir.

MESSAGE OF GOOD WISHES FROM COORG

Mr. President: The Coorg Legislative Council have passed a Resolution which has been communicated to me by the Chief Commissioner, Coorg, for being communicated to this House. I will read it:

“That this Council resolves to offer its prayerful wishes to the President and Members of the Constituent Assembly of India for the speedy and successful termination of their efforts to prepare an agreed constitution for India and recommends to the Chief Commissioner that these wishes be conveyed to the President of the Constituent Assembly, New Delhi.”

REPORT OF THE STATES COMMITTEE

Mr. President: The next item is the Resolution which will be moved by Pandit Jawaharlal Nehru.

The Hon'ble Pandit Jawaharlal Nehru (United Provinces: General): Sir, I beg to move:

“The Constituent Assembly, having taken the report of its States Committee into consideration, resolves that it be recorded.

The Assembly welcomes the States representatives who have already been chosen and expresses the hope that other States who have not chosen their representatives will take immediate steps to do so in accordance with the agreed procedure.”

I understand that copies of the Report have been circulated to all the Members; I shall not therefore take up the time of the House in reading that Report. That Report is a brief summary of the activities of the Negotiating Committee appointed by this House. We have tried to make it as precise a summary as possible and it shows what took place and what we did, so that the House may be acquainted with the procedure we adopted and all that was said on those occasions. I might add, however,

] *English translation of Hindustani speech ends.

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that if it is the wish of the House and if Members desire to see a fuller report of our proceedings, there is a verbatim Report in existence and this Report can be consulted in the Library of the House. I say this because sometimes all manner of rumours get about and people are misled and sometimes people imagine that we are not trying to put all the facts before the public. We have nothing to hide in this matter; indeed we could not possibly do so from this House; and therefore the verbatim Report of everything that was said on the occasions that we met with the Negotiating Committee of the Princes is available for reference to any Member of the House in the Library. It is too long a report for us to have it printed and circulated, nor is it normally desirable to have such reports published in the public press. But there can be no secret as between the Committee of this House and the Members of this House, and therefore, while that document is not meant for publication, I should like to remind the Members, that it is there to be consulted by any Member of this House in the Library.

The House will remember that this Committee was appointed for a specific purpose—for fixing the distribution of seats of the Assembly not exceeding 93, and for fixing the method by which the representatives of the States should be returned to the Assembly. These were the definite directions given to us and we proceeded accordingly, but when we met the negotiating Committee appointed by the Chamber of Princes, other questions were raised. We were confronted by various Resolutions passed by organizations of the Princes. We informed them that we had no authority to deal with any other matter. Our authority was limited to dealing with these two specific matters. Indeed we went a little further. We said we rather doubted the authority even of the Constituent Assembly to deal with all manner of other matters, that is to say, the Constituent Assembly as it is constituted at present. But in any event we were so anxious to get going, so anxious to remove any misapprehensions that might exist, that some of us had further conversations with them and some doubts that they raised were removed in the course of those conversations; some questions that were asked were answered informally, personally if you like on our behalf because it was not open to us to go beyond the terms of the mandate that you gave us. You will see a reference to that in the Report that is presented to you, in particular because—I am bound to make this point perfectly clear—a few important points were raised by them in the course of those discussions. As it happened, what I said in reply to those questions had more or less been said by me in this House before or by other Members of this House, and therefore, I had no difficulty in saying it to them because otherwise I would have had this great difficulty of saying anything which the House might not approve, or might disapprove as wrong. All of us have certain views in this matter and on one of the occasions when I addressed this House in connection with the Objectives Resolution, I referred also to the States and to the Princes and made it clear that while I, in my individual capacity, held certain views, those views did not come in the way of my stating what the Constituent Assembly stood for, and what its range of activities was going to be. I said then that, while we were deciding in favour of a Republic for the whole of India, that did not bar any State from continuing the monarchical form of Government so far as that State was concerned, provided, of course, that they fitted in the larger picture of freedom and provided, as I hope, that there was the same measure of freedom and responsible government in the State. So when these questions were raised. I had no particular difficulty in answering them because in effect they had been mentioned in this House previously.

What were those questions ? First, of course, was—it was an unnecessary question—as to the scope of our work, that is to say, how far we accepted the Cabinet Mission's Statement of May 16, 1946. We have accepted it, and we are functioning in accordance with that Statement. There the matter ends. I do not know what future changes may take place and how these changes might affect our work. Anyhow, we have accepted that Statement in its fullness and we are functioning accordingly.

That leads inevitably to another conclusion, *viz.*, that such subjects, as did not come within the scope of the Union, were subjects to be dealt with by the Units—by the States and the Provinces—and that has been clearly laid down in the Cabinet Mission's Statement. So we said there and we made that clear. What the Union subjects might or might not be is a matter for careful consideration by this House now. But any subjects which did not come within the scope of the Union subjects necessarily are subjects left over to the Units.

Further it was stated that the business of joining the Constituent Assembly or accepting the Scheme or not accepting it was entirely their own. As Mr. Panikkar has pointed out, there was no coercion, there can be no coercion either to a State, a Province or to any other part of India, which is participating in this Assembly. There can be no coercion, except, of course, the coercion or compulsion of events and that is certainly a compelling factor and a very big factor which none of us can ignore. So there is no question of compulsion; but at the same time it is true that if certain units or parts of India decide to come in, accepting their responsibilities, they get certain privileges in return, and those who do not come in do not get those privileges as they do not shoulder those responsibilities. That is inevitable. And once that decision has been taken by a Unit, State or other, other consequences inevitably follow, possibly widening the gulf between the two : that is the compulsion of events. Otherwise it is open to any State to do as it chooses in regard to this matter of coming in or not coming in. So that matter has been made clear.

The only other important matter that was raised in this connection was the monarchical form of Government in the States. As I stated in this House previously, in the world today this system of rule by monarchy, whatever good it may have done in the past, is not a system that might be considered to be popular. It is a passing institution : how long it will last I do not know. But in this matter my opinion is of little account. What counts in what this Assembly desires in this matter : what it is going to do : and we have made it clear on a previous occasion that we do not wish to interfere in the internal arrangement of the States. It is for the people of the States to decide what they want and what they do not want. The question, in fact, does not arise in this Assembly. Here we are dealing with Union matters, subjects of fundamental rights and the like. Therefore this question of the monarchical form of Government in the States did not arise here and I told them that so far as we were concerned we were not going to raise that particular subject here.

Lastly, there was the question or rather the misapprehension due to certain words in the Objectives Resolution of this Assembly, where some reference has been made to territorial boundaries being changed. The House will remember that that had no connection with the States as such. That was a provision for future adjustments as they are bound to be involved. Further it was a provision for suitable units to come into existence, which can be units of this Indian Union, obviously one cannot have very small units or small fractions of India to form part of the Union. Some arrangement has to be made for the formation of sizable units. Questions arise today and will arise tomorrow even about the division of Provinces. There is very, strong feeling about it. We are discussing today, though for

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other reasons, about the division of certain Provinces like the Punjab and Bengal. All these have to be considered but this has nothing to do with the provision in the Objectives Resolution. The point has been settled in the Negotiating Committee that any changes in territorial boundaries should be by consent.

Those were the statements I made on behalf of our Negotiating Committee to the other Committee and those statements removed a number of misapprehensions and we proceeded ahead with the consideration of other matters.

Among the other matters was, firstly, the question of the distribution of seats. We decided to refer this matter to the two Secretariats—the Secretariat of the Constituent Assembly and that of the Chamber of Princes. We referred this matter, I think, at 1-30 P.M. one day. Those two Secretariats met, I think, at 3 P.M. the same day and 5 P.M. they arrived at an agreed procedure. That was rather a remarkable thing which is worth remembering. It is true that the rules governing the distribution were to some extent laid down in the Cabinet Mission's Scheme—one seat per million, that is, 93 seats in all. Unfortunately these matters of distribution are difficult and often arouse great controversies and arguments. Nevertheless these two Committees met together and I am very glad that the Secretariat of the Constituent Assembly was helped by the representatives of the States to come to an agreed solution within two hours. That showed that if we approach any of these apparently difficult problems with good will, we find solutions and we find rapid solutions too. I do not mean to say that that solution in regard to the distribution of these seats was a perfect one. Since the agreement was reached certain objections have been raised and criticisms have been made in regard to the grouping of the States here and there. Ultimately we left it to a sub-Committee—a joint Committee of our Negotiating Committee and the States Negotiating Committee—to consider this matter and to make such minor alterations as they thought fit and proper. Now because of these grouping difficulties, a number of States, which might be represented here, are not here. That is to say, the States concerned want to come in and they are quite prepared to do so but the group has not begun to function. Therefore individually they are prevented from coming in. Only yesterday I was informed that one important State, the State of Cutch, was eager and anxious to come in but they formed part of a group of Kathiawar and other States, rightly or wrongly, and till the whole group gets into motion, they do not know how to come in separately. This is a matter to be considered by the sub-Committee. But the point I want to put before the House is this that in this matter as soon as we came to grips with the subject and gave up talking in vague generalities and principles or rights of this group and that group, we came to a decision soon enough and that is a good augury for our work in future, whether it relates to the people of the States or to the rest of India or to any group in India.

We, who meet here, meet under a heavy sense of responsibility—responsibility not only because the task which we have undertaken is a difficult one or because we presume to represent vast numbers of people, but because we are building for the future and we want to make sure that that building has strong foundations, and because, above all, we are meeting at a time when a number of disruptive forces are working in India pulling us this way and that way, and because, inevitably and unfortunately, when such forces are at work, there is a great deal of passion and prejudice in the air and our whole minds may be affected by it. We should not be deflected from that vision of the future which we ought to have, in

thinking of the present difficulties. That is a dangerous thing which we have to avoid, because we are not building for; today or tomorrow, we are making or trying to make a much more enduring structure. It is a warning which the House will forgive me, if I repeat—that we must not allow the passion and prejudice of the moment to make us forget what the real and ultimate problems are which we have to solve. We cannot forget the difficulties of the present because that come in our way all the time. We have to deal with the problems of the present, and in dealing with them, it may be, unfortunately that the troubles we have passed through all these years may affect us, but, nevertheless, we have to get on. We have to take quick decisions and final decisions in the sense that we have to act on them. We have to be realists and it is in this spirit of realism, as also in a spirit of idealism, that I say that our Negotiating Committee approached this task.

The House knows that some of the members of the Committee have been intimately associated with the struggle of the peoples of the States for their freedom. The more I have been associated with that struggle, the more I have seen that it cannot be separated from the all-India problem; it cannot be isolated. It is an essential and integral part of the all-India problem, all-India structure, just as the States are an integral part of India. You cannot separate them. And with all my anxiety to further the progress of the peoples of the States with such strength as is in me in my individual or other capacities, when I met the Negotiating Committee I had to subordinate my individual opinions because I had to remember all the time that I was representing this Constituent Assembly. I also had to remember that, above all, we had gone there not to bargain with each other, not to have heated argument with each other, but to achieve results, and to bring those people, even though they might have doubts, into this Assembly, so that they might come here and they might also be influenced by the atmosphere that prevails here. For me it was the solemnity of the task which we had undertaken, and not to talk in terms of results, or individuals or groupings, or assurances. What assurance do we seek from each other? What assurance is even this House going to give to anybody in India, except the assurance of freedom? Even that assurance will ultimately depend on the strength and wisdom of the Indian people afterwards. If the people are not strong enough and wise enough to hold together and proceed along the right path, the structure that you have built may be shattered. We can give no assurance to anybody.

With what assurance have we sought freedom for India all these years? We have looked forward to the time when some of the dreams that we were indulging in might become true. Perhaps, they are coming true, perhaps not exactly in the shape that we want, but, nevertheless, they will come true. It is in that conviction that we have proceeded all these years. We had no guarantees. We had no assurances about ourselves or about our future. Indeed, in the normal course of events the only partial guarantee that most of us had was the guarantee of tears and troubles, and we had plenty of that. It may be that we shall have plenty of that in the future too; we shall face them. This House will face it and the people of India will face it. So, who are we to give guarantees to anybody? But we do want to remove misapprehensions as far as possible. We do want every Indian to feel that we are going to treat him as an equal and brother. But we also wish him to know that in the future what will count is not so much the crown of gold or of silver or something else, but the crown of freedom, as a citizen of a free country. It may be that a time may come soon when it will be the highest honour and privilege for anybody, whether he is a Ruler or anybody else, to be a free citizen of a free India and to be called by no other appellation or title. We do not guarantee

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because we guarantee nothing to anybody, but that is the thing which we certainly hope to achieve and we are certain to achieve. We invite them to participate in that. We welcome those who have come, and we shall welcome those others when they come. And those who will not come—we shall say nothing about them. But, as I said before, inevitably, as things are, the gulf will widen between those who come and those who do not come. They will march along different paths and that will be unfortunate I am convinced that, even so, those paths will meet again, and meet sooner rather than later. But, in any event, there is going to be no compulsion. Those who want to come, will come, and those who do not want to come, do not come. But there is this much to be said. When we talk about people coming in and people who do not come in, let it be remembered, as Mr. Govinda Menon said, that the people of the States—I say with some assurance and with some authority in the matter—want to come into this Assembly, and if others prevent them from coming, it is not the fault of the people, but breaks and barriers are put in their way. However, I hope that these questions will not arise in the future and that in the coming month or two nearly all the States will be represented here, and, jointly we shall participate in the final stages of drawing up the Constitution.

I am placing this Resolution before the House to record the Report. There has been some argument about this matter too and people attach a great deal of importance to words and phrases and assurances and things like that. Is it not good enough that I have put it to the House? If it is not good enough, I may repeat what has been stated. Even if that is not good enough, what we have stated is there in the verbatim Report of the meetings; we have nothing to add to it, we shall stand by that. We do not go back. But the procedure to be adopted must be a correct procedure. When this Committee was appointed you asked us to report and we have reported. We had got to do something, and we tried to do that and did it. Now, if this matter was to come up for ratification before this House before it could be acted upon, obviously, representatives of the States who are here now would not have been here. They would have been sitting at the doorstep or somewhere outside waiting for ratification, waiting for something to happen till they came in. That was not the way in which we understood our directions. We understood that we had to come to some honourable agreement and act up to it so that representatives of the States might come in as early as possible. We were eager in fact that they should join the Committees of this Assembly,—the Advisory Committee, the Fundamental Rights Committee, the Union Powers Committee and the other Committees which we have formed. It is not our fault that there was delay. At the very first joint meeting of the Negotiating Committees we requested the States Committee to join quickly, indeed to send their representatives to these Committees of the Constituent Assembly as soon as possible. We were asked for assurance at every stage and there were delays. But the way we have understood your mandate was that we had to go ahead and not wait for ratification of every step that we had taken. We acted accordingly, and I am happy that some of the States' representatives are here today and I hope more will come. So the question of ratification does not arise so far as this Committee's work is concerned. The Report is before you. If you disapprove of any single step that we have taken, express your disapproval of whatever might have happened, or otherwise give your directions.

The resolution I have moved is for your adoption. I shall not go into the details in regard to the distribution of the seats and the manner of selection of the delegates from the States. It was a sort of compromise. Naturally it was my desire, as it was the desire of my colleagues that

the representatives of the States should be elected by the people of the States, partly because it was the right way, and partly because it was the way in which they could be fitted with the other elected elements of this House. On the other hand, I considered it right and desirable that the States governments should also be represented here to bring reality to the picture. The correct way and the right way ultimately will be for the State government itself to be representative of the people and then come in to represent them here. But we have to take things as they are. The States governments, generally speaking, do not represent the people in the democratic sense. In some places they partially represent them. Anyhow, we did consider it desirable that the State governments as such, should also be represented though we would have liked the largest number of representatives to come from the people. Ultimately after a great deal of discussion it was decided that not less than 50 per cent. of the representatives should be elected by the elected members of the assemblies where they exist, or by some other method of election which may be devised. We came to a compromise on this proportion, though we would have liked the proportion to be higher. Some of the States have actually acted as if the proportion were higher. I submit that this compromise that we came to was an honourable compromise for all parties concerned and I think it will lead to satisfactory results so far as this House is concerned, and I commend the resolution to the House.

Mr. President: The motion is:

“The Constituent Assembly having taken the report of its States Committee into consideration resolves that it be recorded.

The Assembly welcomes the States representatives who have already been chosen and expresses the hope that other States who have not chosen their representatives will take immediate steps to do so in accordance with the agreed procedure.”

Members who wish to say anything about this motion may now speak.

(At this stage Dr. Kailas Nath Katju approached the rostrum.)

Mr. Somnath Lahiri (Bengal : General) : On a point of information Sir, of the representatives of the States who have come to participate in this House, how many have been elected and how many nominated by the States?

Mr. President: The Secretary will give you this information. In the meantime, Dr. Kailas Nath Katju will please proceed with his speech.

The Hon'ble Dr. Kailas Nath Katju (U.P. : General): Mr. President, I ventured to come here for a few minutes and address you on this Resolution because I am connected with one of the States in Central India and also with some in Rajputana; and I have made my home in the United Provinces by adoption. I am, therefore, intensely interested in the endeavour which you are making and I venture to congratulate the Negotiating Committee on the great results that have been achieved.

There are a great variety of States, and there are hundreds of them. Some of the States go back and are rooted in the history of our race. Others are of very, recent origin, going back only a century or so and with little of tradition and little of moral authority behind them. I do not wish to pursue this topic at any great length; but I have no doubt in my mind that it is for the good of the States and it is for the good of the people of the States that they should join this great Indian Union of which Pandit Jawaharlal has spoken so eloquently. I have no doubt in my mind that the course of Indian history teaches us that a Union of this great country is an inevitability. When I hear of some Provinces or some States or territorial units claiming to be sovereign States or claiming authority for themselves, I wonder whether they have ever considered

[The Hon'ble Dr. Kailas Nath Katju]

the drift of Indian history. There is no shadow of doubt in my mind that within the course of the next fifty years, whatever we may do today, or whatever we may say today, the course of events will compel the people to bring about one united Government, one united Centre in India. It is good therefore for the people of the States, it is good for the people of all States, it is good for the Rulers of these States that they should come in and join in this great endeavour. Instead of the Rulers relying upon their so called strength, I think their safety, their integrity and their very existence lies in relying upon the affection, and upon the trust of their own people. If they rely upon that, they may continue, otherwise most of these States will disappear without much regret on the part of their people or on the part of the rest of India. With these words, I commend this Resolution to the care of the House and I should join in the appeal which has been made to every section of the House that in a short time, we will see almost all the States come in and join this Assembly.

Mr. President: Mr. Lahiri desires to know when notice of amendments should be given. He complains that notice of this Resolution was received by him last night. I am afraid it is now too late now for him to give notice of amendment.

I shall now put the Resolution to the House:

The question is:

“The Constituent Assembly having taken the report of its States Committee into consideration resolve that it be recorded.

The Assembly welcomes the States representatives who have already been chosen and expresses the hope that other States who have not chosen their representatives will take immediate steps to do so in accordance with the agreed procedure.”

The motion was adopted.

Mr. President: I desire to give the information wanted by Mr. Lahiri. Out of sixteen members representing the States who are attending today, five are nominated and eleven are elected.

ELECTION OF ADDITIONAL MEMBERS TO STEERING COMMITTEE

Shrimati G. Durgabai (Madras : General): Sir, I consider it my proud privilege to be able to stand here today and move the motion which stands in my name. Before I do so, I may be permitted to express my great joy at the presence of the representatives of some of the Indian States who are here today in our midst on this occasion. My heart-felt and sincere thanks are due to those States which have extended their co-operation and joined us in our work.

With your leave, Sir, I move:

“Resolved that this Assembly do proceed to elect, under sub-rule (2) of Rule 40 of the Constituent Assembly Rules, two additional members to the Steering Committee from among the representatives of the Indian States, in accordance with the principle of proportional representation by means of the single transferable vote.”

Sir, sub-rule (2) of Rule 40 of the Constituent Assembly Rules lays down the procedure for election of members to the Steering Committee. It says:

“The Assembly may from time to time elect, in such manner as it may deem appropriate, 8 additional members of whom four shall be reserved for election from among the representatives of the Indian States.”

Sub-rule (1) of Rule 40 lays down:

“A Steering Committee shall be set up for the duration of the Assembly and shall consist of eleven Members (other than the President) to be elected by the Assembly in accordance with the principle of proportional representation by means of the single transferable vote.”

Sir, I may be permitted to state in this connection that in accordance with these Rules, eleven members were initially elected to this Committee on 20th January and the Committee has been functioning with these members. According to sub-rule (2), eight additional members are to be elected from time to time out of whom four are reserved for election from among the representatives of Indian States. It is considered desirable at present that only two out of four will be elected now and that the election of the two other members shall be postponed to a future date. We would have been happy had all the four members been elected on this occasion. But we thought it desirable to elect only two members at present and postpone the election of two other members to a subsequent date, when we will be fortunate enough to have a much larger representation of Indian States on this Assembly and all present here. We fondly hoped that some of the leading States like Hyderabad, Travancore, Mysore and some other States would have made up their minds to join us here in our work and co-operate with us. But I am sadly disappointed to find that they are not able to come and see eye to eye with us and that they are still pursuing a policy of “wait and see”. I hope that it will not be before long, that they will follow the noble example set up by States like Baroda, Bikaner, Rewa, Gwalior, Cochin, Udaipur, Jodhpur and some other States, whose representatives we have here in our midst and send their representatives also to help us in this great task of forging a constitution for this great country. I extend a hearty welcome to those representatives who will be elected to this Committee, to function on this Committee to help us with their advice and guidance in our work. With these words, I commend this motion for the acceptance of this House.

Mr. President: Motion moved:

“Resolved that this Assembly do proceed to elect, under sub-rule (2) of Rule 40 of the Constituent Assembly Rules, two additional members to the Steering Committee from among the representatives of the Indian States, in accordance with the principle of proportional representation by means of the single transferable vote.”

Mr. H. V. Kamath (C. P. & Berar: General) : Sir, under sub-rule (2) of Rule 40, four seats have been reserved for election from among the representatives of the Indian States. You have just now been good enough to tell us that today only sixteen representatives are present and seventy-seven are absent. In fairness to the members who are absent, I would suggest that only one seat may be filled today and the other three seats may be filled up later on.

Mr. President: The amendment of Mr. Kamath is that in place of two seats, one seat should be filled by election today.

The Hon'ble Pandit Jawaharlal Nehru : Sir, the Steering Committee has to work from day to day, and if you keep seats vacant for those people who are not here, it is neither good for them nor for the House nor for the Steering Committee. The work of the Steering Committee does not really involve matters of high principle, but it is very important work and it does affect the business of the House. I think it is not fair that the places of those who do not come here should be kept vacant and we should go on waiting. Of course I do not want anything to be done which might be injurious to their interests, and therefore any important matter can be raised again. Now that we have a chance to take them in, we should do so. It is open to the House to reconsider any matter of vital importance later. At the present moment it is desirable to give full opportunities to those who will come to take part in the business.

Mr. H. V. Kamath: Sir, in view of the assurance given by the Hon'ble Pandit Nehru that the number of seats will be increased at a later date I beg to withdraw the amendment.

Mr. President: I now put the resolution to vote.

The motion was adopted.

Mr. President: Nominations will be received up to 2 P.M. tomorrow and elections, if any, will be held from 4 to 5 P.M. in Room No. 24.

REPORT OF THE COMMITTEE ON UNION SUBJECTS

Mr. President: Presentation of the Report of the Committee appointed by the Resolution of the Constituent Assembly of the 25th January, 1947, to examine the scope of Union subjects.

Mr. H. V. Kamath: Sir, is it only the presentation of the Report or is a motion being moved? There is no notice of a motion.

Mr. President: If the Hon'ble Member will wait and hear, he will know what it is.

The Hon'ble Sir N. Gopalaswami Ayyangar (Madras: General): Sir, I come forward to perform a merely routine and prosaic duty of presenting the Report of the Committee on Union subjects. It is not intended that any motion on this Report should be placed before this House today. This Committee was appointed on the 25th January for the purpose of examining the scope and content of the subjects assigned to the Centre in the Statement of the Cabinet Mission of May 16th and to draw up lists of matters included in and interconnected with the subjects so assigned. The Committee started with a strength of twelve and power was reserved to you, Sir, to nominate ten more, the intention being that some seats should be filled by nomination of representatives of the Muslim League if they came in, and others should be assigned to representatives of the Indian States. As it is, the Muslim League has not so far come in, and as Pandit Jawaharlal explained to you a little while ago, strenuous attempts were made to get the full quota of nominations for representatives of the Indian States being filled in, if possible. But it was not possible to do so. In the later stages of our deliberations, however, we have had the assistance of two distinguished representatives from Indian States.

Now, Sir, I said I was only performing this prosaic duty; I was not going to perform the function which my Hon'ble friend, Mr. Kamath, would have liked me to perform today. Copies of this Report, I believe, have been circulated to Members. It is not, therefore, necessary that I should read the Report; and in connection with mere presentation of reports in a deliberative assembly of this kind it is not usual to make a speech on the contents of such a report except on an occasion such as the one mentioned by Mr. Kamath, for instance, on a motion for taking the Report into consideration. That motion is not to be made today, nor is it intended by those to whom has been entrusted the task of steering the business of this Assembly. It is not their intention that such a motion should be placed before the House during the current Session. There are several reasons why this decision has been taken. In the first place, Sir, the subject is a very important one; it is a vital matter connected with the framing of the Constitution, and it is only desirable that this Report on so important a subject should be read through and studied carefully by Members of this House before it is taken into consideration. And then we have got to remember that the Committee had to work on the Cabinet

Mission's Plan. That Plan contains some very unusual features, the unusualness really resulting from the desire to satisfy the wishes of the Muslim League if it ever decided to come in. The coming in of the Muslim League is not yet officially ruled out; there is still a possibility of their coming in, though the probability is perhaps very small. Should this possibility materialise it would be only just and reasonable that the debate on so important a subject, as the subjects and powers to be assigned to the Union centre, should be held in a House which contains a full representation of the Muslim League. Whether they will come in or not will be definitely known before the June-July Session of this Assembly. And that is one main reason why we are not taking up the discussion of this matter in this current Session.

Then, Sir, there are the Indian States—a number of representatives of Indian States have joined us today but there is a very large number still to come in. Those have not come in because they require time for going through the procedure prescribed for the purpose of choosing them and sending them to this Assembly. The Indian States have got a very vital interest in the matter which is covered by the Report of this Committee, and it is desirable that as full a representation of the Indian States as possible should be in the Assembly before we begin to discuss so important a matter. Thirdly, Sir, there is the question of the present political conversations. The decisions on those conversations are not available yet: they will be available in all probability before we meet again in the June-July Session. The decisions will be of the most important character, and I think the House will agree with me in thinking that those decisions will have very important repercussions on the plan of work which this Constituent Assembly will have to adopt in framing the Constitution for the country if that decision should, as it is feared, take the shape of anything like the division of India into two or more independent States it may become necessary for this Assembly to deviate from rigid conformity to the Cabinet Mission's Plan. It is unnecessary for me to say now in what directions this deviation might become necessary. The nature of those deviations must necessarily depend upon the political decisions that are taken but apart from such deviations the number of subjects that have to be assigned to the Centre, their scope and content, the definition of a field of concurrent jurisdiction between the Union and the Units, and the relations between the Union and the Units as regards the exercise of legislative and administrative powers, will all be matters which would require a fresh and thorough examination. This examination will so far as I can visualize have to be done in close collaboration between the Committee on Union Subjects and the two Committees which are proposed to be set up in the course of the current Session—one for the purpose of determining the principles of the Union Constitution, and the other for determining the principles of a model provincial constitution. These three Committees will have to work in close collaboration, and it is necessary that before they enter into such collaboration, they must have before them the political decisions that will have been reached before them.

Now, Sir, taking all these facts into consideration, it is, I think, very necessary that the debate on the Report of the Committee on Union Subjects should be postponed beyond this Session, to the next Session, and therefore it is that I am not placing before you any motion for taking this Report into consideration today.

There is one matter about which I think I must ask the permission of the House to approve of what this Committee has done. In the original Resolution appointing this Committee, it was asked to submit its Report

before the 15th of April. As a matter of fact, the Committee signed its Report on the 17th of April. I do hope, Sir, that the House will excuse this delay of two days.

There is another matter which I might mention. This Report should not be taken as the final Report of the Committee on Union Subjects. I have already placed before you considerations which will necessitate the matter being reviewed and overhauled by the same Committee in collaboration with other Committees. There are matters, for instance, connected with Indian States, which require perhaps more consideration than it was possible to give them during the time that this Committee met between its appointment and today. The representatives of the States who wish to give us the benefit of their views feel that there are some matters which require further investigation before they could finally commit themselves, and there are also other matters and certain questions connected with the subjects which have been listed in this Report about which greater consideration, it is considered by certain members of the Committee, would be necessary. And apart from that there is looming before us the political decision which will necessitate our overhauling the entire Report if it comes to that. Therefore, Sir, I request the permission of the House to let this Committee submit a further Report if it becomes necessary. With these words, I merely present the Report of the Committee to the House.

Mr. President: The Report has been presented. I think the House will condone two days delay in signing it, and will also give permission to the Committee to submit another Report if it finds it necessary to do so.

This was unanimously agreed to.

Mr. R. K. Sidhwa (C.P. & Berar: General) : When the subsequent Report is presented, may I know whether this Report will also be open to discussion. We have not read even a single sentence of this Report which has been presented to the House.

Mr. President: We are not entering into any discussion on this Report. The Hon'ble Member will read this Report, and we can then discuss it during the next Session.

We will meet at 8-30 tomorrow morning and we will go on until 12-30 when we will adjourn. Any Member who has any amendments to suggest to the Report of the Fundamental Rights Committee should do, so before 5 o'clock this evening. The Report will be taken into consideration tomorrow. The House now stands adjourned until 8-30 A.M. tomorrow.

The Assembly then adjourned till half past Eight of the Clock, on Tuesday, the 29th April 1947.

APPENDIX A
CONSTITUENT ASSEMBLY OF INDIA

*Report of the Committee appointed to negotiate with the
States Negotiating Committee*

By a resolution of the Constituent Assembly passed on the 21st December 1946, the following members, *viz.*

- (1) The Hon'ble Pt. Jawaharlal Nehru
- (2) The Hon'ble Maulana Abul Kalam Azad
- (3) The Hon'ble Sardar Vallabhbhai J. Patel
- (4) Dr. B. Pattabhi Sitaramayya
- (5) Mr. Shankarrao Deo
- (6) The Hon'ble Sir N. Gopaldaswami Ayyangar

were appointed as a Committee to confer with the Negotiating Committee set up by the Chamber of Princes, and with other representatives of Indian States, for the purpose of:—

- (a) fixing the distribution of the seats, in the Assembly not exceeding 93 in number, which in the Cabinet Mission's Statement of May 16, 1946, are reserved for Indian States,
- (b) fixing the method by which the representatives of the States should be returned to the Assembly,

and thereafter to report the result of such negotiations. By a further resolution passed on the 21st January, 1947, we were empowered to confer with such persons as we thought fit, for examining the special problems of Bhutan and Sikkim, and to report to the Assembly the result of such examination. This report deals only with the negotiations conducted by us in pursuance of the resolution of the 21st December.

2. The first series of our joint meetings with the States Negotiating Committee were held on the 8th and 9th February, 1947. The discussion largely centred on the scope of subjects to be negotiated between the two committees. It was urged by the States Negotiating Committee that there had been no decision yet on the part of the States to enter the Constituent Assembly, and that it would not be possible for them to decide this issue till they received satisfactory assurances on a number of points mentioned in the resolution adopted on the 29th January, 1947, by the General Conference of Rulers (Appendix A). On the other hand, we pointed out that most of those points could only be discussed by a fully constituted Constituent Assembly including the representatives of the States; they were in any case clearly beyond our competence as a Committee, our own functions being limited to the matters laid down in the resolution of the Constituent Assembly passed on the 21st December, 1946. But while we were not prepared as a committee to discuss matters going beyond our mandate, we raised no objection to discussing, in a friendly and informal manner as individuals, certain difficulties, and to removing certain misapprehensions which seemed to be causing concern to the Princes. The more important of the points cleared up in the course of these discussions were summarised by Pandit Nehru as follows:—

“The first thing to be clear about is to proceed with the full acceptance of the Cabinet Mission's Statement. Apart from the legality of

that Statement one thing also seems to me obvious, namely, that the scheme is essentially a voluntary one, where no compulsion, except, as I said, compulsion of events, is indicated. No doubt, so far as we are concerned, we accept it as a voluntary scheme where people may join as individuals, as groups, or Rulers or otherwise. We are not trying to force any to join if they do not want to. It is a matter for negotiation throughout....

“Now, to go back, apart from the acceptance of the scheme which is basic, some points were raised yesterday. One was about the monarchical form of Government. That question has not arisen at all in the Constituent Assembly nor, so far as we can see, does it arise at all from the Statement. But it has been repeatedly stated on our behalf in the Constituent Assembly as outside that we have no objection to it we accept that, and we do not want to come in the way of the monarchical form of Government at all. This has been made perfectly clear.

“Another point that we raised in our discussion yesterday was about some apprehension about territorial readjustments. I tried to point out that the Resolution passed by the Constituent Assembly had no reference in the minds of those who framed the Resolution or who proposed it there, to any change regarding the States. It has no relation to the States. It was an indication that there will be provision made in the constitution or in the process of re-grouping units, etc., where some changes may have to be made. It had no reference to changing boundaries. I can concede territorial boundaries being changed for economic reasons, for facilitating governmental purposes, etc., but any such territorial readjustments, we are quite clear, should be made with the consent of the parties concerned, and not be forced down. I say, for the moment we are not thinking in terms of any such thing, but if this question arises, it should be essential that the parties concerned should consent to it.

“The scheme, as has already been stated, is a voluntary one, and whether in regard to the entry into the Constituent Assembly or subsequently when the Constituent Assembly decides and comes to conclusions, there will be no compulsion, and the States will have the right to have their say at any stage just as anybody else will have the right to have their say at any stage. So the coercive factor must be eliminated from that.

“In regard to some confusion which has possibly arisen in regard to subjects and powers, we go on what the Cabinet Mission’s, Statement specifically says. The Cabinet Mission’s Statement said: “The States will retain all subjects and powers other than those ceded to the Union.” That is perfectly clear, we accept that statement, we accept that entirely. Generally speaking, those are the matters that came up yesterday in the course of discussion, and perhaps we might proceed on that basis and consider matters now.”

We further explained that the Constituent Assembly could not possibly take up the position that they were not prepared to discuss matters with States not represented on the Chamber of Princes Negotiating Committee; or with representatives of States peoples, as that would involve an element of compulsion which was contrary to their conception of the scheme.

3. A general understanding having been arrived at, as a result of the above exchange of views, the States Negotiating Committee proceeded to consider the two matters on which we had been asked to negotiate by the Constituent Assembly. After a preliminary discussion, it was

decided that the question of the distribution of the 93 seats should be referred to the Secretariats of the Constituent Assembly and the Chamber of Princes, and their recommendations placed before the next meeting of the two committees on the 1st March, 1947.

4. In the meanwhile, the Dewan of Baroda had asked for direct negotiation with us on the representation of Baroda in the Constituent Assembly. We accordingly met Sir B. L. Mitter on the 9th February. In the course of our discussion, he made it clear that it was the decision of the Baroda State, both the Ruler and the people, to give the fullest cooperation to the Constituent Assembly in its work and that they were prepared to take steps forthwith for the selection of representatives so that these could take part in the work of the Assembly at the earliest possible date. It was agreed between us and the Dewan that Baroda should, having regard to its population, send three representatives and that these should be elected by the Dhara Sabha (the State legislature) on the principle of proportional representation, by means of the single transferable vote, and that only its elected and nominated non-official members should take part in the election.

5. The next joint meeting of the two committees was held on the 1st March, 1947. At this meeting we urged that H.M.G.'s declaration of the 20th February had introduced an additional element of urgency in our task and that it would be greatly to the advantage of the States no less than to the British Indian representatives in the Constituent Assembly if States' representatives could join the Assembly during April session. We pointed out that there was nothing in the State Paper of the 16th May which operated as a bar against States doing so. We also suggested that it would be to our mutual advantage if States' representatives could function forthwith on some of the committees set up by the Constituent Assembly, particularly the Union Powers Committee and the Advisory Committee on fundamental rights, etc. The States Negotiating Committee, however, expressed their inability to take these steps in the absence of a mandate from the General Conference of Rulers whom they promised to consult at an early date.

6. The discussion then turned on the method of distribution of the 93 seats allotted to the States. The Committees approved of the distribution as proposed by the two Secretariats, (Appendix B) and authorised the making of such minor modifications as are considered necessary by the parties concerned.

7. After this, we discussed the method of selecting representatives. Various proposals were made and discussed in a joint sub-committee set up for the purpose. Eventually, after a consideration of the sub-committee's report, the following formula was accepted by both Committees, *viz.*, that not less than 50 per cent. of the total representatives of States shall be elected by the elected members of legislatures or, where such legislatures do not exist, of other electoral colleges. The States would endeavour to increase the quota of elected representatives to as much above 50 per cent. of the total number as possible.

This formula has since been ratified by the General Conference of Rulers held on the 2nd April. A copy of the resolution passed by the Conference is attached (Appendix C).

We pointed out that in regard to two States, *viz.*, Hyderabad and Kashmir elections to their legislatures had been boycotted by important organisations representing the people of the States concerned, and the legislatures therefore could not be considered to represent the people as they were intended to do. In the cases of these two States, we suggested

that a suitable method of electing representatives for the Constituent Assembly should be devised. The Chancellor said that he would communicate the suggestion to the States concerned.

8. A Committee consisting of the following members: (1) Dr. Pattabhi Sitaramayya; (2) Sir N. Golpalaswami Ayyangar; (3) Sir V. T. Krishnamachari; (4) Sir Sultan Ahmed; (5) Sir B. N. Rau; (6) Mir Maqbool Mahmood; (7) Mr. H. V. R. Iengar was set up to consider the modifications referred to in para. 6 above and other matters of detail that might arise from time to time and to report, if necessary, to the two Negotiating Committees.

We have been informed that the States of Baroda, Jaipur, Jodhpur, Rewa, Cochin and Bikaner have already selected their representatives in accordance with the agreement arrived at. These representatives have been invited to take their seats at the forthcoming session of the Assembly. The States of Patiala, Udaipur, Gwalior and Bhavnagar have also announced that they will take part in the work of the Constituent Assembly.

JAWAHARLAL NEHRU.
A. K. AZAD.
VALLABHBHAI PATEL.
N. GOPALASWAMI.
SHANKARRAO DEO.
B. PATTABHI SITARAMAYYA.

NEW DELHI;
24th April 1947.

[Enclosure 1 to Appendix A]

TEXT OF RESOLUTION PASSED AT PRINCES MEETING HELD ON 29-1-47.

1. This meeting reiterates the willingness of the States to render the fullest possible co-operation in framing an agreed Constitution for, and in the setting up of, the proposed Union of India in accordance with the accepted plan; and declares:—

- (a) that the following fundamental proposition *inter alia* form the basis for the States' acceptance of the Cabinet Mission's plan—
- (i) The entry of the States into the Union of India in accordance with the accepted plan shall be on no other basis than that of negotiation, and the final decision shall rest with each State. The proposed Union shall comprise, so far as the States are concerned, the territories of only such States or groups of States as may decide to join the Union, it being understood that their participation in the constitutional discussions in the meantime will imply no commitments in regard to their ultimate decision which can only be taken after consideration of the complete picture of the constitution.
 - (ii) The States will retain all subjects and powers other than those ceded by them to the Union. Paramountcy will terminate at the close of the interim period and will not be transferred to or inherited by the new Government of India. All the rights surrendered by the States to the Paramount Power will return to the States. The proposed Union of India will, therefore, exercise only such functions in relation to the States in regard to Union subjects as are assigned or delegated by them to the Union. Every State shall continue to retain its sovereignty and all rights and powers except to the extent that those rights and powers have been expressly delegated by it. There can be no question of any powers being vested or inherent or implied in the Union in respect of the States unless specifically agreed to by them.
 - (iii) The Constitution of each State, its territorial integrity, and the succession of its reigning dynasty in accordance with the custom, law and usage of the State, shall not be interfered with by the Union or any Unit thereof, nor shall the existing boundaries of a State be altered except by its free consent and approval.
 - (iv) So far as the States are concerned, the Constituent Assembly is authorised only to settle the Union Constitution in accordance with the Cabinet Mission's plan, and is not authorised to deal with questions bearing on the internal administrations or constitutions of individual States or groups of States.
 - (v) His Majesty's Government have made it clear in Parliament that it is for the States to decide freely to come in or not as they choose. Moreover according to the Cabinet Mission's Memorandum of 12th May, 1946, on States Treaties and Paramountcy "Political arrangements between the States on the one side and the British Crown and British India on the other will be brought to an end" after the interim period. "The void will have to be filled either by the States entering

into a federal relationship with the successor Government.....
in British India, or failing this, entering into particular political
arrangements with it.”

- (b) that the States Negotiating Committee, selected by the Standing Committee of the Chamber of Princes and set up at the request of His Excellency the Viceroy in accordance with paragraph 21 of the Cabinet Mission’s Statement of the 16th May, 1946, is the only authoritative body competent under the Cabinet Mission’s plan to conduct preliminary negotiations on behalf of the States, on such questions relating to their position in the new Indian Constitutional structure as the States might entrust to it.
- (c) that while the distribution *inter se* of the States’ quota of seats on the Constituent Assembly is a matter for the States to consider and decide among themselves, the method of selection of the States representatives is a matter for consultation between the States Negotiating Committee and the corresponding Committee of the British- India portion of the Constituent Assembly before final decision is taken by the States concerned.

2. This meeting—

- (a) endorses the Press Statement issued on 10th June, 1946, by the Standing Committee of the Chamber of Princes in consultation with the Committee of Ministers and the Constitutional Advisory Committee, in regard to the attitude of the States towards the Cabinet Mission’s plan; and
- (b) supports the official statement of the views communicated by the States Delegation to the Cabinet Mission on 2nd April, 1946, which *inter alia* associated the States with the general desire in the country for India’s complete self-government or independence in accordance with the accepted plan.

3. This meeting resolves that, in accordance with this Resolution and the instructions and Resolutions of the States’ Constitutional Advisory Committee as endorsed by the Standing Committee of Princes and the Committee of Ministers, the States Negotiating Committee be authorised to confer with the corresponding Committee of the British India portion of the Constituent Assembly, as contemplated and declared by His Majesty’s Government in Parliament in order to negotiate (a) the terms of the States’ participation in the Constituent Assembly when it reassembles under paragraph 19(6) of the Cabinet Mission’s Statement and (b) in regard to their ultimate position in the All-India Union, provided that the results of these negotiations will be subject to the approval of the aforesaid States’ Committees and ratification by the States.

[Enclosure 2 to Appendix A]

NOTE ON THE PROPOSED ALLOCATION OF SEATS AMONG STATES

1. The allocation of seats proposed in the annexure has been prepared by the Secretariats of the Constituent Assembly and the Chamber of Princes and is intended as a basis of discussion for the Committees concerned.

2. As in British India, seats to individual States have been allotted generally on the basis of one seat for one million of the population, fractions of three-fourth or more counting as one and lesser fractions being ignored. In the case of groups, fractions of more than half have been counted as one, lower fractions being ignored.

3. States so desiring may pool or share their proportion of the allotted representation, whether individual or grouped, with that of any other State or group of States by mutual agreement, provided:—

- (a) that the total representation of the States and/or the groups affected is not disturbed, and
- (b) that geographic proximity, economic considerations and ethnic, cultural and linguistic affinity are duly kept in view.

ANNEXURE

A

SINGLE STATES

Division as shown in the Table of seats appended to Part II of the First Schedule to the Govt. of India Act, 1935		Names of States	Population in millions	Number of seats in the Constituent Assembly
1	2		3	4
I	Hyderabad	16.33	16
II	Mysore	7.32	7
II	Kashmir	4.02	4
IV	Gwalior	4.00	4
V	Baroda	2.85	3
IX	Travancore	6.07	6
IX	Cochin	1.42	1
X	Udaipur	1.92	2
X	Jaipur	3.04	3
X	Jodhpur	2.55	2
X	Bikaner	1.29	1
X	Alwar	0.82	1
X	Kotah	0.77	1
XI	Indore	1.51	1
XI	Bhopal	0.78	1
XI	Rewa	1.82	2

1	2	3	4
XIII	Kolhapur	1.09	1
XIV	Patiala	1.93	2
XIV	Bahawalpur	1.34	1
XVI	Mayurbhanj	0.99	1
20		611.86	60

B

FRONTIER GROUPS

Division	Names of States in the Group	Population in millions	Number of seats in the Constituent Assembly
XIV	Kalat	0.25	0.66 } 1
	Las Bela	0.07	
	Kharan	0.03	
XIV	Khairpur	0.31	
VII	Sikkim	0.12	0.7 } 1
XV	Cooch Behar	0.64	
XV	Tripura	0.51	1.23 } 1
XV	Manipur	0.51	
XVII	Khasi States	0.21	
XVII	Amb	0.25	0.67 } 1
	Chitral	0.10	
	Dir.	0.35	
	Swat	0.26	
	Phulra	0.01	
		3.32	4

C
INTERIOR GROUPS

Division	Names of States in the Group	Population in millions	Number of seats in the Constituent Assembly
VIII	Rampur Benares	} 0.93	1
IX	Pudukottai Banganapalle Sandur	} 0.49	Included in residuary Group XVII below.
X	Bharatpur Tonk Dholpur Karauli Bundi Sirohi Dungarpur Banswara Partapgarh Jhalawar Jaisalmer Kishengarh	} 2.86	
(13 States)			
XI	Shahpura		
XI	Datia Orchha Dhar Dewas (Senior) Dewas (Junior) Jaora Ratlam Panna Samthar Ajaigarh Bijawar Charkhari Chhatarpur Baoni Nagod Maihar Baraundha Barwani Ali Rajpur Jhabua Sailana Sitamau Rajgarh Narsingar Khilchipur	} 3.11	3
(26 States)			
XVII	Kurwai		

Division	Names of States in the Group	Population in millions	Number of seats in the Constituent Assembly
XII	Cutch	3.65	4
	Idar		
	Nawanagar		
	Bhavnagar		
	Junagadh		
	Dharangadhra		
	Gondal		
(16 States)	Porbandar		
	Morvi		
	Radhanpur		
	Wankaner		
	Palitana		
	Dhrol		
	Limbdi		
	Wadhwan		
XII-A	Rajkot		
	Jafrabad		
	Rajpipla		
	Palanpar		
	Cambay		
	Dharampur		
	Balasinor		
	Baria		
(15 States)	Chhota Udepur		
	Sant		
	Lunawada		
	Bansda		
	Sachin		
	Jawhar		
	Danta		
XIII	Janjiri	1.56	2
XIII	Sangli		
	Savantvadi		
	Mudhol		
	Bhor		
	Jamkhandi		
	Miraj (Senior)		
	Miraj (Junior)		
(14 States)	Kurundwad (Senior)		
	Kurundwad (Junior)		
Pudukottai-Banganapalle and Sandur	Akalkot		
	Phaltan		
	Jath		
	Aundh		
	Ramdurg		
XIV	Kapurthala	2.70	3
	Jind		
	Nabha		
	Mandi		
	Bilaspur		
	Suket		
(14 States)	Tehri-Garhwal		
	Sirmur		
	Chamba		
	Faridkot		
	Malerkotla		
	Loharu		
XVII	Kalsia		
	Bashahr		

Division	Names of States in the Group	Population in millions	Number of seats in the Constituent Assembly
XVI	Sonepur	}	4
	Patna		
	Kalahandi		
	Keonjhar		
	Dhenkanal		
	Nayagarh		
	Talcher		
	Nilgiri		
(25 States)	Gangpur		
	Bamra		
	Seraikela		
	Baud		
	Bonai		
XVII	Athgarh		
	Pal Lahara		
	Athmalik		
	Hindol		
	Narsingpur		
	Baramba		
	Tigiria		
	Khandpara		
	Ranpur		
	Daspalla		
	Rairakhol		
	Kharsawan		
XVI-A	Bastar	}	3
	Surguja		
	Raigarh		
	Nandgaon		
	Khairagarh		
	Jashpur		
(14 States)	Kanker		
	Korea		
	Sarangarh		
XVII	Changbhakar		
	Chhuikhadan		
	Kawardha		
	Sakti		
	Udaipur		
XVII	A-1 other States including three States mentioned in Division IX, viz.	4.26	4
		27.82	29

[Enclosure 3 to Appendix A]

TEXT OF THE RESOLUTION PASSED AT PRINCES MEETING HELD IN BOMBAY ON
2-4-47

1. This conference reiterates the support of the States to the freedom of the country, and their willingness to render the fullest possible co-operation in framing an agreed constitution and to all genuine efforts towards facilitating the transfer of power on an agreed basis. The conference reaffirms the resolution adopted by the General Conference of Rulers and representatives of States on January 29, 1947.

2. It ratifies the general understanding reached between the States Negotiating Committee and the corresponding Committee set up by the Constituent Assembly in regard to the allocation of the States' quota of seats in, and the method of selection of the State representatives to, the Constituent Assembly, and on the fundamental points discussed at their meetings held on February 8 and 9 and on March 1 and 2, subject to the acceptance of the aforesaid understanding by the Constituent Assembly.

3. It reiterates the previous decisions of the States to adhere strictly to the Cabinet Mission's plan, under which the representatives of such States as may so desire, may join the Constituent Assembly at the appropriate stage when that Assembly meets, in accordance with the Cabinet Mission's plan to settle the Union constitution, provided that such participation in preceded by acceptance by the Constituent Assembly, of the general understanding reached between the two Negotiating Committees in regard to the fundamental points, and other matters referred to in the second resolution.

4. The conference is glad to note that Mr. Attlee's statement of February 20, 1947, further confirms the declaration made by the Cabinet Mission that paramountcy will cease at the close of the interim period. This means that all the rights surrendered by the States to the paramount power will revert to them, and they will be in a position, as independent units, to negotiate freely in regard to their future relationship with others concerned.

5. This conference reaffirms its previous recommendations in regard to internal reforms, and emphasizes the urgency and importance of suitable action being taken without delay, where needed, with due regard to local conditions.

6. In view of the element of urgency introduced by Mr. Attlee's statement of February 20, 1947, this conference authorizes the Chancellor and the Standing Committee of the Chamber of Princes to conduct negotiations through the States' Negotiating Committee or such other sub-committees as the Standing Committee may appoint, in regard to questions affecting the States in general: (a) with the Crown Representative in regard to matters relating to the lapse of paramountcy, and those arising out of the proposed transfer of power, so far as they affect the States; (b) with Interim Government and the competent British Indian authorities in regard to matters referred to in Paragraph 4 of the Cabinet Mission's memorandum of May 12, 1946, on the States' treaties and paramountcy, provided that (1) these negotiations will be conducted in accordance with the resolution adopted by the General Conference of Rulers on January 29, 1947, and the instructions and resolutions of the States Constitutional Advisory Committee as endorsed by the Standing Committee of Princes and the Committee of Ministers; (2) the results of these negotiations will be subject to the approval of aforesaid States' Committee and ratification by the States.

7. This Conference requests His Highness the Chancellor to address His Excellency the Crown Representative with a view to ensuring early and satisfactory settlement by His Majesty's Government of questions relating to individual States prior to the transfer of power.

APPENDIX B
CONSTITUENT ASSEMBLY OF INDIA

REPORT OF THE UNION POWERS COMMITTEE TO THE
CONSTITUENT ASSEMBLY

We, the undersigned, members of the Committee appointed by the resolution of the Constituent Assembly of the 25th January to examine the scope of Union Powers, have the honour to submit this our report. Sir V. T. Krishnamachari and Sir B.L. Mitter were nominated to the Committee on 10th April, 1947, and the rest of us have had an opportunity of going over the entire ground again with them.

2. We consider that the scope of the subjects, Defence, Foreign Affairs and Communications in the Cabinet Delegation's Statement of the 16th May covers the following:—

A—"Defence" connotes the defence of the Union and of every part thereof and includes generally all preparation for defence, as well as all such acts in times of war as may be conducive to its successful prosecution and Communications in the Cabinet Delegation's Statement—of the 16th 'Defence' includes—

- (1) The raising, training, maintenance and control of Naval, Military and Air Forces and employment thereof for the defence of the Union and the execution of the laws of the Union and its Units; the strength, Organisation and control of the existing armed forces raised and employed in Indian States;
- (2) Defence industries;
- (3) Naval, Military and Air Force works;
- (4) Local self-government in cantonment areas, the constitution and powers within such areas of cantonment authorities, the regulation of house accommodation in such areas and the delimitation of such areas;
- (5) Arms, fire arms, ammuniton and explosives;
- (6) Atomic energy, and mineral resources essential to its production.

We recommend further that in order to enable the Union Government effectively to discharge its responsibility for defence, it should be vested with the powers similar to those contained in Sections 102 and 126-A of the Government of India Act, 1935.

B—"Foreign Affairs" connotes all matters which bring the Union into relation with any foreign country and in particular includes the following subjects :—

- (1) Diplomatic, consular and trade representation;
- (2) United Nations Organisation;
- (3) Participation in international conferences, associations and other bodies and implementing of decisions made thereat;
- (4) War and Peace;
- (5) The entering into and implementing of treaties and agreements with other countries;
- (6) Trade and Commerce with foreign countries;
- (7) Foreign loans;
- (8) Naturalisation and aliens;

- (9) Extradition;
- (10) Passports and visas;
- (11) Foreign jurisdiction;
- (12) Admiralty jurisdiction;
- (13) Piracies, felonies committed on the high seas and offences committed in the air against the law of nations;
- (14) Admission into, and emigration and expulsion from, the Union;
- (15) Port quarantine;
- (16) Import and export across customs frontiers as defined by the Union Government;
- (17) Fishing and fisheries beyond territorial waters.

C—The term “Communications” although it is wide enough to cover any connection between place should for the present purposes of the Union, in our opinion, include the following:—

- (1) Airways;
- (2) Highways and waterways declared by the Union to be Union highways and waterways;
- (3) Shipping and navigation on inland waterways, declared by the Union to be Union waterways, as regards mechanically propelled vessels, and the rule of the road on such waterways; carriage of passengers, and goods on such waterways;
- (4) (a) Posts and Telegraphs:
 Provided that the rights existing in favour of any individual State unit at the date of the establishment of the Union shall be preserved to the unit till the same are modified or extinguished by agreement between the Union and Unit concerned, subject however to the power of the Union to make laws for the regulation and control of the same.
- (b) Union telephones, wireless, broadcasting and other life forms of communications; the regulation and control of all other telephones, wireless, broadcasting and other like forms of communication;
- (5) Union railways; the regulation of all railways (other than minor railways) in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administration of such railways as carriers of goods and passengers;
- (6) Maritime shipping and navigation, including shipping and navigation on tidal waters; Admiralty jurisdiction;
- (7) Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein;
- (8) Aircraft and air navigation; the provision of aerodromes, regulation and organisation of air traffic and of aerodromes;
- (9) Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft;
- (10) Carriage of passengers and goods by sea or by air;
- (11) Union Meteorological Services;
- (12) Inter-Union quarantine.

D—The expression “the powers necessary to raise the finances required” for the Union subjects in the Cabinet Delegation’s Statement necessarily includes the power, to raise finances by taxation and loans. In existing

circumstances, we recommend the following sources of revenue for the Union:—

- (1) Duties of customs, including export duties;
- (2) Excise duties;
- (3) Corporation tax;
- (4) Taxes on income other than agricultural income;
- (5) Taxes on the capital value of the assets, exclusive of agricultural land of individuals and companies; taxes on the capital of companies;
- (6) Duties in respect of succession to property other than agricultural land;
- (7) Estate duty in respect of property other than agricultural land;
- (8) Fees in respect of any of the matters in the list of Union Powers, but not including fees taken in any Court, other than the Union Court.

We realise that, in the matter, of industrial development, the States are in varying degrees of advancement and conditions in British India and the States are in many respects dissimilar. Some of the above taxes are now regulated by agreements between the Government of India and the States. We, therefore, think that it may not be possible to impose a uniform standard of taxation throughout the Union all at once. We recommend that uniformity of taxation throughout the Units may, for an agreed period of years after the establishment of the Union not exceeding 15, be kept in abeyance and the incidences, levy, realisation and apportionment of the above taxes in the State Units shall be subject to agreements between them and the Union Government. Provision should accordingly be made in the Constitution for implementing the above recommendation.

This is in addition to the recommendations of the Sub-Committee on Fundamental Rights regarding internal customs duties.

3. It is impossible to enumerate the powers implied or inherent in or resultant from the express powers of the Union. We think that in any case the following powers come within the category :—

- (1) Union judiciary;
- (2) Acquisition of property for the purposes of the Union;
- (3) Union agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies;
- (4) Census;
- (5) Offences against laws with respect to any of the matters in the list of Union powers;
- (6) Enquiries, surveys and statistics for the purposes of the Union;
- (7) Union Services;
- (8) Industrial disputes concerning Union employees;
- (9) Reserve Bank of India;
- (10) Property of the Union and the revenue therefrom;
- (11) Public debt of the Union;
- (12) Currency, coinage and legal tender;
- (13) All subjects in respect of Union areas;
- (14) Powers to deal with grave economic emergencies in any part of the Union affecting the Union.

4. We are of the opinion that provision should be made in the new constitution for the recognition throughout the Union of the laws and public acts laid records of the judicial proceedings of the Units and for judgments and orders delivered in one Unit being enforced in other Units. We note that a provision to this effect has already been made in the list of Fundamental Rights.

5. In addition to the above subjects which, in our view, come within the scope of Union powers in accordance with the Cabinet Delegation's Statement, we hope that the following subjects will also be included in the Union List by agreement:—

- (1) Insurance;
- (2) Company Laws;
- (3) Banking;
- (4) Negotiable Instruments;
- (5) Patents; trade marks, trade designs; copyright;
- (6) Planning;
- (7) Ancient and Historical Monuments;
- (8) Standard Weights and Measures.

Such an arrangement will ensure uniformity, throughout the territories of the union, in matters bearing on trade and commerce as has in fact been recognised in many federal constitutions. We have included Planning in the above list for the reason that, although authority may rest in respect of different subjects with the Units it is obviously in their interest to have a coordinating machinery to assist them.

6. We recommend the insertion in the constitution of a provision on the lines of Article (*xxxvii*) of Section 51 of the Australian Constitution Act.

7. We also recommend that by agreement there may be a list of concurrent subjects as between the Union and the Units.

(Sd.) JAWAHARLAL NEHRU
,, GOVIND BALLABH PANT
,, B. L. MITTER
,, JAIRAMDAS DAULATRAM
,, N. GOPALASWAMI AYYANGAR
,, K. M. MUNSHI
,, V. T. KRISHNAMACHARI
,, B. PATTABHAI SITARAMAYYA
,, BISWANATH DAS
,, A. KRISHNASWAMI AYYAR

New Delhi;
17th April 1947.

CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 29th April 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at half past Eight of the Clock, Mr. President (The Hon'ble Dr. Rajendra Prasad) in the Chair.

EXTENSION OF TIME LIMIT FOR THE REPORT OF THE ADVISORY COMMITTEE

The Hon'ble Sardar Vallabhbhai Patel (Bombay: General) : Sir, I move:

“That the Constituent Assembly do extend the time fixed for the presentation of the report of the Advisory Committee appointed by the resolution of the Assembly of the 24th January, 1947 until such date or dates as the President may choose in his discretion.”

The House is aware that when this Resolution was passed we were required to submit an interim report on Fundamental Rights within six weeks, an interim report on Minorities Rights within ten weeks and our final report within three months from the date of our appointment. We have tried our best to adhere to this time table, but regret that it has not been possible for us to carry it out. At our first meeting held on the 27th February, 1947, we decided unanimously to request you to extend the time limit for the submission of the reports in anticipation of the sanction of the Assembly.

We are full conscious of the necessity of completing our work with the utmost despatch, but we fear it is not possible to work to a rigid time table. We request therefore that the Assembly may be moved to extend the time limit to such date or dates as you may choose in your discretion.

Mr. President: The question is:

“That the Constituent Assembly do extend the time fixed for the presentation of the report of the Advisory Committee appointed by the resolution of the Assembly of the 24th January, 1947 until such date or dates as the President may choose in his discretion.”

The motion was adopted.

INTERIM REPORT ON FUNDAMENTAL RIGHTS*

The Hon'ble Sardar Vallabhbhai Patel: Sir, I move:

“That the Constituent Assembly do proceed to take into consideration the interim report on the subject of Fundamental Rights submitted by the Advisory Committee appointed by the resolution of the Assembly of the 24th January, 1947.”

Sir, this is a preliminary report or an interim report, because the Committee when it sat down to consider the question of fixing the fundamental rights and its incorporation in the Constitution, came to the conclusion, firstly, that the fundamental rights should be divided into parts—the first part justiciable and the other part non-justiciable. Even while considering the first part it came to the conclusion that we could not come to a final decision as to what fundamental rights are to be incorporated in the Constitution. Considering all the circumstances that exist today and that may

*Appendix at end.

[The Hon'ble Sardar Vallabhbhai Patel]

arise within the course of the consideration of the various Committees' reports and the drafting of the Constitution, points may arise for suggesting additional fundamental rights and also for making minor alterations or suggestions that may be considered advisable. This report is a draft report. I may also suggest for the consideration of the House that in considering the various clauses that have been recommended by the Advisory Committee, the House may not strictly consider the wording of each clause of the rights suggested. Certain changes may be required while actually legally drafting the clauses, and it would be better to leave the drafting to the Drafting Committee which will make such changes as may be necessary to put them in proper phraseology. What I would submit to the House to do today is generally to accept the principles of each of the clauses that have been suggested for consideration, so that we may not have to devote more time in considering the technical legal details of the phraseology to be adopted.

We have now suggested for the consideration of the House those rights that are justiciable. The second chapter we have ourselves not been able to consider. The Fundamental Rights Sub-Committee met and considered this matter for a fortnight and devoted considerable labour and time. After that, the Report was passed on to the Minorities Rights Sub-Committee. That Committee also sat over this Report and anxiously considered various clauses and made certain changes and those changes were adopted. They sat for three days, and then this report was again placed before the Advisory Committee for its consideration. The Advisory Committee sat for two days and at their two sittings they considered the whole thing over again—so, the House will see that this is not a haphazard Report, it has been considered in all its various aspects. It is quite possible to make suggestions, alterations and additions and move amendments, but the House may not have that time which the Committees had, I would humbly submit to the House carefully to consider the various clauses that have been suggested, and when amendments are put forward before the House, they will also be carefully scrutinised. There are about 150 amendments, I hear and scrutiny of the amendments will take some time. The Office has been able to scrutinise about 25 or 30 amendments and that will perhaps take the whole of today's meeting. I move that the Report be taken into consideration, and if that motion is adopted, then we can go and consider the rights clause by clause.

Mr. President: Motion moved:

“Resolved that the Constituent Assembly do proceed to take into consideration the interim report on the subject of Fundamental Rights submitted by the Advisory Committee appointed by the resolution of the Assembly of the 24th January, 1947.”

The Hon'ble Pandit Hirday Nath Kunzru (United Provinces: General) Mr. President, the Report before us purports to deal with only those fundamental rights that are enforceable by the courts, but a close study of it shows that it refers to matters which cannot be included under the head “Fundamental Rights”, and that it deals with those fundamental rights which are not justiciable. To give an instance, Sir, If a matter which does not fall under the category of fundamental rights, I shall refer to clause 10 which makes “trade, commerce and intercourse among the units by and between the citizens” absolutely free.

Sri L. Krishnaswami Bharathi (Madras: General): On a point of order, Sir, I should like to know whether Pandit Hirday Nath Kunzru is opposing the motion or supporting it. He objects to a particular clause, but this is not the time for it. I should like to know whether he is supporting the motion, for consideration or opposing it.

Mr. President: If you just allow the Hon'ble Member to complete his speech, you will be able to know whether he is supporting the motion or opposing it.

The Hon'ble Pandit Hirday Nath Kunzru: This is the stage at which according to the rules followed by the Legislatures, general observations can be made, and I hope I am strictly in order in dealing with the Report generally. It is not necessary for me to say whether I agree to the main provisions of the Report, or whether I want it to be rejected as a whole. All that I can be fairly called upon to do at this stage is to state my point of view and to ask the House to be careful in dealing with some important matters which are included in this Report.

Sir, to illustrate my first point, I refer to clause 10 of the Report which deals with what may roughly be called freedom of inter-State commerce. It may be a very desirable thing in itself, probably every one here will want that trade between the different Units of the Indian Union should be absolutely free, but I doubt whether a clause like this can be included among fundamental rights. Clause 10 deals with a matter which impinges directly on the rights of the Provinces. You may deal with it when you come to settle the powers of the Union and the Provinces; but I submit that you cannot take so important a matter outside the purview of the Committee that will consider the Union and the Provincial Constitutions by calling the freedom of inter-state commerce a fundamental right.

Again, Sir, it is stated in one of the provisos to this clause that nothing in this section shall prevent any Unit from imposing on goods imported from other Units the same duties and taxes to which the goods produced in the Unit are subjected by them. Now, I should like this to be clearly explained. If there is to be absolute freedom of commerce and trade between the different units, how can any unit be allowed to tax the goods of.....

Mr. F. R. Anthony (Bengal: General): On a point of order, Sir. Can all of us make our respective comments on the provisions of the Fundamental Rights at this stage?

The Hon'ble Pandit Hirday Nath Kunzru: Sir, Mr. Anthony is a Member of the Central Assembly and he knows very well that in making general observations, say, on a Bill, one can refer to a few clauses to illustrate one's point of view. I am astonished that he should get up and object to my observations, which are of a general character, though he may think that they refer to matters of detail. I am sure that on many occasions he has exercised in the Central Assembly the right which I am exercising here now.

Sir, there are other examples of this kind that I could give; but I do not think that I need do so in order to illustrate what I have in mind. Now, I will give an illustration or two to show where matters which can hardly be called justiciable have been included in the Report. Clause 8 deals with certain familiar fundamental rights; the freedom of speech, the right to assemble peaceably and without arms and the right to form associations. But they have all been made subject to certain safeguards, which, generally speaking, have been considered necessary in every country. But it is well known, Sir, that these safeguards practically make the rights that I have just mentioned non-justiciable. You may confer general rights on the citizens of India, but if they are to be surrounded with the restrictions mentioned here,—and I submit that they will have to be surrounded with some such restrictions—then the right will in practice cease to be justiciable. They will be no more than directive principles of a policy, and there seems to me to be no advantage in considering such matters at this stage when,

[The Hon'ble Pandit Hirday Nath Kunzru]

according to Mr. Patel, we should be considering only those rights that are, strictly speaking, enforceable by the courts.

I shall give another instance, Sir, in order to make my point of view still clear. I refer, Sir, to clause 8, sub-clause (e), which deals with the right of every citizen to reside and settle in any part of the Union, to acquire property and to follow any occupation, trade, business or profession. This is subject to the condition that "provision may be made by law to impose such reasonable restrictions as may be necessary in the public interest including the protection of minority groups and tribes." Now, Sir, it is very desirable, in general, that there should be freedom of movement; but I do not think that we can accept without qualification the right of the people of one province to settle in another province. The Government of the province concerned must be given the power.... (*Cries of* "We cannot hear, the microphone is not working), Sir, I can make myself heard without the aid of the microphone. I was dealing with clause 8, sub-clause (e). This clause states that every citizen has the right to reside and settle in any part of the Union. My submission is that while freedom of movement in the Union is desirable and essential, the right to reside and settle in any part of the Union cannot be called non-controversial.

Mr. President: The microphone is now working.

The Hon'ble Pandit Hirday Nath Kunzru: Thank you, Sir, but I think I can make myself heard without it. The province, I was saying, must have the right to decide, in view of its resources what the size of its population at any time should be. No Provincial Government can fairly be asked to allow an unlimited influx of immigrants from another province in pursuance of the principle enunciated here. Let us take the case of Assam, to understand this fully. Will anybody force the Government of Assam at the present time to allow an unlimited number of people from any of the neighbouring provinces to enter Assam and settle down there? That Government is faced with an extraordinary difficult problem and clause 8(e) shows a strange disregard of the existing state of things there. I think, Sir, that this right can be conferred only under certain conditions which will have to be clearly defined.

Dr. B. R. Ambedkar (Bengal: General) : I do not wish to interrupt the speaker; but in dealing with clause 8(e), he is rather giving a wrong impression of the whole clause.

Dr. B. Pattabhi Sitaramayya (Madras: General): Instead of giving illustrations to make his points clear, he is going into a discussion of the merits.

The Hon'ble Pandit Hirday Nath Kunzru: As a parliamentarian, Sir, you understand what I am doing. As regards Dr. Ambedkar's objection, I may say—and I am sure you will bear me out,—I read out the entire clause including the proviso.

Mr. President: I would request the Member to confine himself to the point which he wants to illustrate and not go into the merits of the proposal.

The Hon'ble Pandit Hirday Nath Kunzru: I have given only two illustrations so far and this is only the third illustration that I am giving in order to explain clearly to the House what I have in mind. I am not discussing each and every clause. Sir, I have already read out the proviso to clause 8(e) but in order to satisfy Dr. Ambedkar, I shall read it out again:

"Provision may be made by law to impose such reasonable restrictions as may be necessary in the public interest including the protection of minority groups and tribes."

Probably Dr. Ambedkar's contention is that this phraseology is such as to enable a province to decide whether it would allow people coming from outside to reside and settle down within its jurisdiction. If so, a special interpretation will have to be placed on these words. Again, if the proviso is so wide as Dr. Ambedkar contends it is, then the right conferred by clause 8(e) virtually ceases to be a justiciable right.

Sir, I think I have said enough in order to indicate my point of view. I need not therefore labour the point further, but, before I sit down, I may say again that there seems to be no particular advantage in considering many provisions of this Report at the present time. They can be considered along with the other fundamental rights which have yet to be dealt with by the Fundamental Rights Sub-committee. But if the House wants to proceed with the consideration of this Report, it will have to take special care to see that only those matters are included in it which are really justiciable.

Mr. Promatha Ranjan Thakur (Bengal: General): Sir, this is a list of fundamental rights which are only justiciable. I do not understand why economic fundamental rights should not be included in these justiciable rights. Economic rights are essential while framing a country's constitution and they must also be made justiciable. I do not understand why mines, key industries and basic industries should not be nationalised. Moreover, this list of fundamental rights should have been considered in the light of reports of the Minorities Sub-committee. The Minorities Sub-committee sat only for two days and they could not go into details as regards safeguards required for minority communities. You know that Minority Sub-committee's Report is very much connected with the list of fundamental rights.

Another point to which I wish to refer is in relation to clause 6—regarding 'untouchability' where it is said that—

"Untouchability in any form is abolished and the imposition of any disability on that account shall be an offence."

I do not understand how you can abolish untouchability without abolishing the very caste system. Untouchability is nothing but the symptom of the disease, namely, the caste system. It exists as a matter of caste system. I do not understand how this, in its present form, can be allowed to stand in the list of fundamental rights. I think the House should consider this point seriously. Unless we can do away with the caste system altogether there is no use tinkering with the problem of untouchability superficially. I have nothing more to say. I hope the House will consider my suggestion seriously.

Mr. President: I take it that the Hon'ble Member does not wish to move his amendment.

Mr. Promatha Ranjan Thakur: I do not move my amendment.

Mr. Somnath Lahiri (Bengal: General): I agree with what Pandit Kunzru suggested because it is rather difficult to make a fine distinction between what are justiciable rights and what are not. For instance, when we make a provision that people should have the right to work, that is, unemployment should not be allowed to exist in our country, it would be a social right. If you make it an inalienable provision of our fundamental rights, naturally it will have to be justiciable. Similarly, take the question of nationalisation of land. If we want to say that land belongs to the people and to no body else, that would be a social and fundamental right no doubt. But, nevertheless, it will also be a justiciable right, if that is to

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be given effect to. Therefore, it is rather arbitrary to make any fine distinction between what are justiciable rights and what are social and economic rights. Therefore, we would be in a better position to consider the whole thing if the full Report was forthcoming so that we might know what is in it. Otherwise, there is the danger that when we might put certain things as essential, we would be told that social and economic rights will come up not now but later on. Therefore, I support Pandit Kunzru's suggestion for taking all these things together. I do not see any great hurry for getting these few fundamental rights passed just now. I was surprised to read this Report submitted by the Committee. Before this Report was submitted by the Committee, I got a circular from the Congress Party section of the Constituent Assembly enumerating certain rights. Many good points were contained in them. Afterwards, when we received this Report, we find that many of the good points which were mentioned in that circular have been omitted. Let me put it a little more strongly. I feel that many of these fundamental rights have been framed from the point of view of a police constable and many such provisions have been incorporated. Why? Because you will find that very minimum rights have been conceded and those too very grudgingly and these so-called rights are almost invariably followed by a proviso. Almost every article is followed by a proviso which takes away the right almost completely, because everywhere it is stated that in case of grave emergency these rights will be taken away. Now, Sir, what constitutes a 'grave emergency' God alone knows. It will depend on the executive obtaining at a particular period of government. So, naturally anything that the party in power or the executive may not like would be considered a grave emergency and the very meagre fundamental rights which are conceded in this resolution will be whittled down. Therefore, it is necessary for us to see the whole thing together and see what people are going to get. I should like to mention one or two things as examples. What should be our conception of fundamental rights? Apart from the knowledge that we can gather from the experience of other countries, there is also the knowledge born out of our own experience, that is, there are certain rights which we have been denied in the past by an alien and autocratic government. We have come up against those difficulties. We want to incorporate every one of those rights which our people want to get. One vital thing which our people have been suffering from in the past has been the curtailment of the liberty of the press by means of securities and by other methods. The press has been crushed completely. This is a thing against which every patriotic Indian is up in arms, including every Congressman, and, therefore, in his heart of hearts every Indian feels that in a free India in order that people may feel freedom and act up to it, there should not be such drastic curtailment of liberties of the press. But what do we find? There is not even a mention of the liberty of the press in this whole list of fundamental rights submitted by the Committee, except a solitary mention made at one place that there will be liberty of expression. Sir, this is something which goes against our experience and must be protected.

Similarly, there is another thing that we have found all along that a Government which does not depend on the people and which rules the country by autocracy and by means of force, detains people without trial, without having to go through a judicial process. This is a thing against which Indians have been entertaining the bitterest feelings and they have been agitating against this from the Congress and every other platform. But in the fundamental rights that have been cooked up by this Committee we do not find this right. That is why I am constrained to say that these are fundamental rights from a police constable's point of view and not

from the point of view of a free and fighting nation. Here whatever right is given is taken away by a proviso. Does Sardar Patel want even more powers than the British Government—an alien Government, an autocratic Government which is against the people—needs to protect itself? Certainly not. Sardar Patel has the support of the overwhelming masses of the people and, therefore, he can do with much less powers to rule the country than an autocratic government would require. But here we find that none of the existing provisions of the powers of the executive has been done away with; rather in some respects those powers are sought to be increased. And if some of the amendments are passed—specially that of Shri Rajagopalachariar—it will in certain cases be even worse than the conditions obtaining at present. I will give one example. Here according to Sardar Patel a seditious speech is a punishable crime. If I say at any time in the future, or the Socialist Party says, that the Government in power is despicable, Sardar Patel, if he is in power at that time, will be able to put the Socialist Party people and myself in jail, though, as far as I know, even in England a speech, however seditious it may be, is never considered a crime unless an overt act is done. These are the fundamental bases of the fundamental rights of a free country, but here a seditious speech also is going to be an offence; and Shri Rajagopalachariar wants to go further. Sardar Patel would punish us if we make a speech, but Rajaji would punish us even before we have made the speech. He wants to prevent the making of the speech itself if in his great wisdom he thinks that the fellow is going to make a seditious speech.

Dr. B. Pattabhi Sitaramayya: Sir, we cannot anticipate amendments.

Mr. Somnath Lahiri: I will not discuss any more of the amendments.

We thus find that the feeling among Congressmen in general, as evidenced by this circular of the Constituent Assembly section of the Congress Party, is for extended fundamental and civic rights which will enable the country to function in a free manner and for political oppositions to grow. What is the necessity of fundamental rights in a bourgeois national democracy which you are trying to have? There one of the fundamental objects is that a political opposition must have full freedom to express its views, to draw its own conclusions and to say anything it likes. If I am in the opposition or if some one else is in the opposition it is certainly his business to say that the existing Government is despicable; otherwise he would not be in the opposition. Why should my right to say that be curtailed and at the same time we should assume that political opposition will grow and democracy will develop? It cannot; it will have to depend on the sweet will and the tender mercies of the party in power or the executive in power. That is not the basis of democracy.

Sir, I would request the Committee to consider the amendments very liberally and try their best to accommodate the amendments so that we can have really good and democratic fundamental rights which will give our people a real feeling of freedom and from which our country will go on gathering strength. Otherwise, if we lay down fundamental rights and then insert provisions in every clause for taking away those rights, we will simply make ourselves a laughing stock before the whole democratic world.

Mr. R. K. Sidhwa (C.P. and Berar: General): Sir, I will deal with Mr. Lahiri's statement first. He has misinformed the House by stating that the Committee has absolutely ignored the economic rights and the fundamental rights in various aspects. Sardar Patel in moving his motion made it clear that this is only a preliminary report or rather an interim report; the motion regarding economic and political rights is not here and will be taken up hereafter. Mr. Lahiri must know that we are not unmindful about this matter. We are much more keen on these economic and political

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rights of the citizens than he imagines; and therefore to say that those rights should have been presented to us now in this document and that failing that we would be making a laughing-stock of ourselves to the world is not fair to this House.

Now, coming to Dr. Kunzru, I was really very sorry to find him stating that some of the clauses in this statement do not come within the purview of fundamental rights or justiciable rights. If any one has studied the various constitutions of other countries he will find that there are chapters and chapters and clauses and clauses dealing with economic, commercial and trading rights of the people. And for Dr. Kunzru to state that this is not a fundamental right or a justiciable right is not fair to this House. I will quote a few paragraphs from some constitutions to show that commerce and trade and economics are considered justiciable fundamental rights. In Germany, Part 2 of Art. 138 says :

“Property and other rights of unions in respect of a property devoted for public purposes, social and commercial, are guaranteed.”

“Then in Art. 151 it says :

“Freedom of trade and industry is guaranteed in accordance with the provisions of the laws of the Reich.”

A number of these may be quoted but I will content myself with just a few Art. 156 says :

“The Reich may by legislation in case of present necessity and in the economic interest of the community oblige economic undertakings and associations to combine in a self-governing basis for the purpose of ensuring the co-operation of all productive factors of the nation, associating employers and employees in the management and regulating the production, manufacture, distribution, consumption, prices and the import and export of commodities upon principles determined by the economic interests of the community.”

Then further take South Africa. Section 136 says:

“There shall be free trade throughout the Union, but until Parliament otherwise provides the duties of customs and of excise leviable under the laws existing in any of the colonies at the establishment of the Union shall remain in force.”

Clause 10 and clause 8, to which Dr. Kunzru has made reference, refer to trade within the Units and the Union, and I see no reason why such a clause should not stand for the protection of the various trades that would move about from Unit to Unit and from Unit to Union. As regards clause 8(e) it says :

“The right of every citizen to reside and settle in any part of the Union, to acquire property and to follow any occupation, trade, business or profession.”

It is considered a justiciable and fundamental right. If a right to reside and settle is not a justiciable or fundamental right, I do not know what else it could be. Under the circumstances I do feel that the objections of Dr. Kunzru are untenable and I agree with Mr. Lahiri that in some respects this Report is certainly not complete, and we have to give elaborate personal and political rights. It is not that we have ignored that part. There are various amendments on the order paper; I have moved some of them and other Hon'ble Members have also done so. They will be considered by this House. I might also state that the Committee had suggested that the secrecy of correspondence should be guaranteed and that there should be no kind of interception of correspondence, telegrams and telephones, but the main Committee has deleted it. Therefore, it is unfair to say that the Fundamental Rights Committee did not consider this question. We have now moved amendments to that effect, and it is for the House to consider those amendments. Mr. Lahiri should not have made all those general remarks; he should have confined himself to the amendments which have been moved. Therefore, I contend, Sir, that these fundamental rights are

justiciable, and I do feel that the objection of Dr. Kunzru is not justifiable and that Mr. Lahiri, in his anxiety to move more amendments to protect the rights of every citizen, made an uncalled for remark that we will be making this country a laughing-stock of the world. This is too much indeed.

Prof. N. G. Ranga (Madras: General): I wish to congratulate this Committee on having produced this very valuable document and presented it to this House.

I think it is not worthy of any member of this House to describe this as a sort of cooked-up document from a responsible Committee like this. But I am not surprised that this remark, unworthy as it is, has fallen from the lips of one of our members, considering the political history of the member as well as the antecedents of his party.

Mr. President: Please do not make any personal remarks.

Prof. N. G. Ranga: I have said enough about it.

We are told that this document is prepared from the view point of a policeman. I do not know where the policeman comes in except by way of our attempt to keep him out of the exercise of our fundamental rights. That is exactly the main object with which this charter of Fundamental Rights has been prepared. We have had such a bitter experience of policemen in this country that the authors of this document have had to formulate these clauses in such a way as to have the least possible interference of policemen. If there are any provisions, they are intended to see that those people who believe in liberalism at one end and communism at the other will not be enabled to take advantage of these rights to pave the way for totalitarianism. It happened like that in several States of Europe between the two wars. They took advantage of the fundamental rights there to the extent that they came to power and paved the way for Nazism on the one hand and for communism on the other. We want to safeguard ourselves against such a menace. We have had this experience before us and it is the duty of any responsible body like this to make provision for such provisos as will enable a democratic parliament in this country to prevent any mischief-monger—organized or unorganized—from demoralizing our own democratic State to such an extent as to pave the way and effectively achieve a totalitarian State in this country.

A reference has been made to the absence of any reference in this particular document to freedom of the press. But if a little care had been exercised, it would have been found that this has been provided for in the very first clause—sub-clause 8(a):

“The right of every citizen to freedom of speech and expression.” Expression’ includes freedom of the press.

Now come to the other point—where is the provision for the functioning of the opposition party in these fundamental rights, we are asked ? To draw your attention to a very small thing I need only say that the Congress Party itself is such a democratic body as to make it possible for people like Rajaji to give notice of one set of amendments and people like so many of us to give notice of other amendments which may be diametrically opposite to them, and yet we are able to digest these, consider them all and come to an agreeable decision, a decision which will be democratic and which may come to be acceptable to all parties in the House. We have to make it possible for various political parties to function in our country; we all agree on that. It does not come to us as a sort of a new thought from abroad or from other country, but what I wish to remind this House as well as the member concerned is this : in that country which is upheld as a sort of an ideal to us all,

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where is there any scope for the opposition party ? Is there any scope for the opposition party at all ? Indeed in Soviet Russia, people are not allowed to organize themselves into free trade unions. Here in in this country we are already enjoying these rights and we are epitomizing them in this great document. Look at it from every point of view and you will find that this document proposes to give to our masses in this country more democratic, more liberal, more comprehensive, and more fundamental rights than are being enjoyed in any other country, not even excluding Soviet Russia.

There is another point raised by my Hon'ble friend, Dr. Kunzru, namely that several of these things are not justiciable. I am not a lawyer, and, therefore, I do not wish to go into the technical side of it. All that I say is to express my extreme satisfaction with regard to clause 22(1) and 22(2) wherein the right is given to the ordinary citizen to move the Supreme Court by appropriate proceedings for the enforcement of any of the rights guaranteed by this part. This is a very important privilege that is being conferred on our citizens. The only additional privilege that I wanted to be conferred upon them is that—as I said on an earlier occasion—those citizens who are so poor as not to be able to move the Supreme Court, should be enabled under proper safeguards, of course at the cost of the State, to move the Supreme Court in regard to the exercise of any of these fundamental rights. With all these provisos Dr. Kunzru told us that the very essence of these fundamental rights is being lost and Mr. Lahiri has agreed with him. It is rather amusing how Liberalism and Communism can come together and coincide with each other. We have our experience of the way in which the Public Safety Ordinances were enforced in this country. We know that those Ordinances were very arbitrary; they conferred terrible powers, unquestionable powers upon the executive. Are we to be told now that in the same way we should not have any of these provisos at all but that simply power should be conferred upon the Government and that any order made under this particular clause or that particular clause cannot be questioned in a court of law ? That is how it is. We were detained and the orders that were passed to detain us could not be questioned at all in any court of law. But in spite of that there were noble judges. Hon'ble judges of the Calcutta High Court and also of the Central Provinces, who had the courage of their conviction, who were able to look in between the words of those very same ordinances as well as the Public Safety Act and were able to save many people from the gallows by setting aside the judgments of the so-called Special Courts. Similarly, it must be possible and it would be possible, when this document becomes a part of our own Constitutional Law. This document has been so carefully drafted as not to give arbitrary powers but to give just as much power as can possibly be digested in the organisational or institutional exercise of his rights by the ordinary citizen in this country, either organisedly or individually—as much power as possible to those people to see that these individuals, these organisations or institutions are given every possible safeguard or protection. Therefore, these provisos are not going to make these rights nugatory at all. These provisos are intended to prevent our democracy being demoralised or degraded into a dictatorship. These rights are intended to protect our citizens, our law-abiding citizens who believe in democracy from those who believe in dictatorship but only pretend to work for the cause of democracy in order to establish their own dictatorship.

Dr. B. Pattabhi Sitaramayya: Sir, I now move for closure being applied to the discussion.

Mr. President : I think we have had sufficient discussion on the motion. The question is:

“That the question be now put.”

The motion was adopted.

The Hon'ble Sardar Vallabhbhai Patel: Sir, when I moved my motion for the consideration of this Report I did not anticipate any long debate on this question. I thought that there would be plenty of opportunities for scrutinising the clauses, omitting some clauses, if necessary, that may be considered objectionable or improving any if need be. Now that the debate has taken place I want to place before the House certain aspects of the proceedings of the Committee which will give the House an idea that this is neither a haphazard Report nor a report cooked or uncooked. It is carefully considered Report. There were two schools of thought in the Committee and there was a large number of very eminent lawyers who could scrutinise every word of every sentence, even commas and semi-colons, from a very critical point of view. These two schools viewed the matter from two different angles. One school considered it advisable to include as many rights as possible in this Report—rights which could straightaway be enforceable in a court of law, rights in regard to which a citizen may without difficulty go straightaway to a court of law and get his rights enforced. The other school of thought considered it advisable to restrict fundamental rights to a few very essential things that may be considered fundamental. Between the two schools there was considerable amount of discussion and finally a mean was drawn which was considered to be a very good mean. It must not be understood, because this Report is called an Interim Report, that the second Report will be much bigger, or that many more important things will come under the subsequent report. It cannot, in the nature of things, be that the principal report which comes before the House would be containing less important things. Very essential things have been included in this Report. But there is another report which has to be considered and that is the report on fundamental rights which are non-justiciable. There may be other points that may strike this House or may be suggested from outside which may have to be considered and the Committee may take them into account. But I may inform the House that this Report has gone through three Committees. Of course the third school of thought was absent in the Committee. That school would require that under the fundamental rights which were provided for a free India there should be no police, there should be no jail, there should be no restrictions on the press, the baton, the lathi or the bullet. Every body should be free in a free India to do what he likes. That school was absent in the Committee. But the two schools of thought that considered this Report studied not the fundamental rights of one country alone but of almost every country in the World. They studied all the Constitutions of the world and they came to the conclusion that in this Report we should include as far as possible rights which may be considered to be reasonable. On that there may be difference of opinion in this House and this House is entitled to consider every clause from a critical point of view and to suggest alterations, modifications or omissions but what I have moved in this House, now is, that this Report may be taken into consideration. Therefore, I thought that any elaborate speech was not necessary and hence I suggested that whatever has to be considered, or whatever suggestions have to be made, may be made at the time when clauses are considered. As I told the House there are about 150 amendments, though the time given was about ten hours or so. The House contains members who are very studious, very critical and very well-informed and therefore it is to the credit of the House that we have got as much as 150 amendments in such a short space of time. I think if we proceed at this rate we will debate

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perhaps for a much longer period than we expect. So, I suggest that the Report be taken into consideration, and if that is accepted, we may take clause by clause.

Mr. President: The question is:

“That the Constituent Assembly do proceed to take into consideration the interim report on the subject of Fundamental Rights submitted by the Advisory Committee appointed by the resolution of the Assembly of the 24th January, 1947.”

The motion was adopted.

CLAUSE 1—DEFINITIONS

Mr. President: We now proceed to consider the Report clause by clause. Clause 1.

The Hon'ble Sardar Vallabhbhai Patel: Clause 1 is a clause which gives the definition:

“Unless the context otherwise requires—

- (i) ‘The State’ includes the legislatures and the governments of the Union and Units and all local or other authorities within the territories of the Union.
- (ii) ‘The Union’ means the Union of India.
- (iii) ‘The law of the Union’ includes any law made by the Union legislature and any existing Indian law as in force within the Union or any part thereof.”

I do not think that this clause requires any speech in support of it. Therefore I formally move this clause for the consideration of the House.

Mr. President: I have got notice of several amendments to clause 1. Mr. Kamath.

Mr. K. M. Munshi (Bombay: General): I have given notice of certain verbal amendments to this clause. I could do this only this morning, and if you will be pleased to give me leave.....

Some Hon'ble Members: Louder, please.

Mr. K. M. Munshi: I have submitted to the Office certain verbal amendments to clause 1, which I have already presented to you, and I beg leave under our rules to move these amendments. They are not amendments of substance; they merely make some verbal changes. If you will be pleased to give me leave I may also move them.

Mr. President: I am afraid I have not seen those amendments. But if they are only verbal amendments, I suppose the House will have no objection to their being moved. But I should like to say that I would not allow substantial amendments to be taken up without due notice. (To Mr. Munshi), I shall take up your amendments a little later, unless they can be covered by Mr. Kamath's or any other amendment.

The Hon'ble Sardar Vallabhbhai Patel: Are there any amendments to this clause ?

Mr. President: I have got notice from two Hon'ble Members.

Mr. K. M. Munshi: Before Mr. Kamath moves his amendment, may I say that mine is a verbal amendment to clause 1(i). If that is permitted to be moved, it will remove any doubt that there may be.

Mr. President: You can move yours. (To Mr. Munshi).

Mr. K. M. Munshi: I beg to move that in clause 1, sub-clause (i), insert the words “for the purpose of this Annexure” between the words “State”; and “includes”. The reason of this amendment is very clear. In order to have one convenient phrase only for the purpose of this annexure we have

to use the word "State". The word "State" has been used here only for the purpose of verbal convenience and only for the purpose of this Chapter. If it be left as it is, it might lead perhaps to an impression that this is the definition of "State" in the Constitution Act. Therefore, I submit that the words "for the purpose of this Annexure", that is, for the purpose of the preliminary report in this Annexure, be inserted as I have moved above.

An Hon'ble Member: Then how will the clause read?

Mr. President: Clause 1, sub-clause (i) will read thus:

"The State' for the purpose of this Annexure includes the legislatures and the governments of the Union, etc., etc."

(To Mr. Munshi). In other places the word "Part" is used, and the word can be used in place of "annexure".

Mr. K. M. Munshi: I will accept that.

Mr. President: Sub-clause (i) will read as follows:

"The State' in this Part includes the legislatures and the governments of the Union, etc., etc."

The Hon'ble Sardar Vallabhbhai Patel: I accept this amendment.

Sri L. Krishnaswami Bharti: I submit that amendment of Mr. Munshi may appropriately be prefixed to the first sentence itself to cover all the three definitions of that clause. We can say—

"Unless the context otherwise requires, and for the purpose of this Part—"

and then give the definitions as in the clause.

Mr. President: Instead of putting in the words "for the purpose of this Part" after the word "State", let those words come in the beginning. Then it will read as follows:

"In this Part, unless the context otherwise requires—

(i) 'The State' includes the legislatures and the governments of the Union and the Units and all local or other authorities within the territories of the Union....."

and so on.

Mr. K. M. Munshi: I have no objection, Sir. "Union" must mean the Union of India wherever it is.

Sri K. Santhanam (Madras: General): The amendment is to the definition of "The State" and not to any other definition.

Mr. President: Mr. Munshi's amendment as recast by me has been accepted by the Mover. Does the House accept the amendment?

The amendment was adopted.

Mr. K. M. Munshi: I have an amendment to clause 1, sub-clause (iii), that is purely verbal. Sub-clause (iii) says:

"The law of the Union' includes any law made by the Union legislature and any existing Indian law as in force within the Union or any part thereof".

I want to delete the word "as" in the phrase "as in force".

The Hon'ble Sardar Vallabhbhai Patel: I accept this amendment.

Mr. K. M. Munshi: It was felt by many that if the word 'as' is put in, it would mean something as may be in force. Otherwise the word 'as' should be deleted.

Mr. Promatha Ranjan Thakur : Sir, the words "The law of the Union" include any law made by the Union. Sometimes the Union executive may pass orders which have got the force of law. I think the orders made by the Union executive must also be included in this clause.

Mr. President: Did you move an amendment?

Mr. Promatha Ranjan Thakur: No, it is not an amendment.

Mr. President: Mr. Munshi's amendment wants the word 'as' to be omitted and the mover has accepted this amendment. Can I take it that the House accepts this amendment?

The amendment was adopted.

Mr. President: Mr. Kamath will please move his amendment.

Mr. H. V. Kamath (C.P. and Berar: General): Mr. President, since I sent in my amendment I have learnt that the terms whose definitions have been incorporated in this clause have been arranged in alphabetical order and I am further told that in the matter of definitions the alphabetical order should and does take precedence over any other order. In these circumstances, I do not desire to move my amendment and beg leave of the House to withdraw the same.

Mr. President: Dr. Syama Prasad Mookherjee may move his amendment.

Dr. Syama Prasad Mookherjee (Bengal: General): Sir, in view of Mr. Munshi's amendment, it is not necessary for me to move my amendment.

Mr. President: Mr. Chaudhury may move his amendment.

Srijut Rohini Kumar Chaudhury (Assam: General): Sir, I beg to move that in clause 1, the following new definitions be inserted:—

“(iv) ‘School’ means any educational institution.”;

In these clauses dealing with the fundamental rights, we find the word ‘school’ and also the words ‘educational institutions’ being used at different places, leading one to think that some distinction is intended. I would like it to be clearly stated that by school we mean any educational institution. I am referring to clause 18, sub-clause (2) where it is stated—

“No minority whether based on religion, community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on them.”

Here the words used are “State educational institutions”. In sub-clause(3)(a) it is laid down—

“All minorities whether based on religion, community or language shall be free in any Unit to establish and administer educational institutions of their choice.”

Here we have the words “educational institutions”. And in sub-clause(3)(b) the word ‘schools’ is used—

“The State shall not, while providing State aid to schools, discriminate against schools under the management of minorities whether based on religion, community or language.”

This is likely to lead to confusion and my amendment is intended to avoid this confusion.

We have to safeguard our rights in the schools also. Some like you, Sir, are extremely good at their studies and knock off all the prizes. But others there are who have other kind of memories of their school days. They remember standing on the bench, standing on the floor, kneeling down on the floor, kneeling under the bench, and all that. We do not want any such things to happen again, because the clauses here are not clear. They should apply equally to schools and to all educational institutions. Therefore, I suggest it may be put down that schools mean any educational institutions.

Mr. K.M. Munshi: In clause 18 (3) (b) the word “schools” has not been used to narrow down the scope of the clause but to discriminate them from other educational institutions. This question, I think can best

be dealt with when we come to clause 18. Actually sub-clause (3) (b) was intended to apply only in regard to the system of primary education.

Mr. President : Shall I put the amendment to vote now ? The amendment is—one part of it—

That in clause 1, the following new definitions be inserted:—

‘School’ means any educational institution.

The amendment was negatived.

Srijut Rohini Kumar Chaudhury: The second part of my amendment is, for defining untouchability, it may be clearly stated that.

“‘Untouchability’ means any act committed in exercise of discrimination on, grounds of religion, caste or lawful vocation of life mentioned in clause 4.”

Sir, in the fundamental rights, it has been laid down that untouchability in any form should be an offence punishable by law. That being so it is necessary that the offence should be properly defined. As it stands, the word ‘untouchability’ is very vague. It should be defined in the manner in which I have put it, or in some other better form which may be decided upon by the House.

Dr. S. C. Banerjee (Bengal: General): Mr. President, the word ‘untouchability’ actually requires clarification. We have been accustomed to this word for the last 25 years, still there is a lot of confusion as to what it connotes. Sometimes it means merely taking a glass of water and sometimes it has been used in the sense of admission of ‘Harijans’ into temples, sometimes it meant inter-caste dinner, sometimes inter-caste marriage. Mahatma Gandhi who is the main exponent of ‘untouchability’, has used it in various ways and on different occasions with different meanings. So when we are going to use the word ‘untouchability’, we should be very clear in our mind as to what we really mean by it. What is the real implication of this word? I think we should make no distinction between untouchability and caste distinction, because as Mr. Thakur has said, untouchability is merely a symptom, the root cause is caste distinction and unless and until the root cause, that is caste distinction is removed, untouchability in some form or other is bound to exist and when we are going to have an independent India, we should expect everyone to be enjoying equal social conditions. It is incumbent on us that we should be very clear as to make it explicit that in the future independent India, there should be no distinction between man and man in the social field. In other words, caste distinction must be abolished. Of course there is difficulty as to whether we can make it justiciable or not. I have thought over it for a long time. I do really believe that in place of untouchability, some other word, such as, ‘caste distinction’ should be used or the word ‘untouchability’ should be clearly defined so as to leave no doubt in the mind of any one as to what we really mean by it.

Mr. K. M. Munshi: Sir, I oppose this amendment. The definition is so worded that if it is accepted, it will make any discrimination even on the ground of place of birth or caste or even sex untouchability. What does the definition say ?

“‘Untouchability’ means any act committed in exercise of discrimination on grounds of religion, caste or lawful vocation of life mentioned in clause 4.”

Now, Sir, clause 4 does not deal with untouchability at all. It deals with discrimination regarding services and various other things. It may mean discrimination even between touchables and touchables, between people of one province and another. The word ‘untouchability’ is mentioned in clause 6. The word ‘untouchability’ is put purposely within inverted commas in order to indicate that the Union legislature when it defines ‘untouchability’ will be able to deal with it in the sense in which it is normally understood.

[Mr. K. M. Munshi]

The present amendment will be extending the scope of the definition of untouchability. Sir, I oppose the amendment.

Mr. Dharendra Nath Datta (Bengal: General): Sir, it seems to me that whether the definition suggested by Mr. Rohini Kumar Chaudhury is accepted or not, it is necessary that there should be some definition put in. Here it is said that 'untouchability' in any form is an offence. A magistrate or a judge dealing with offences shall have to look to the definition. One magistrate will consider a particular thing to be untouchability, while another magistrate may hold a different thing to be untouchability, with the result there will be no uniformity on the part of the magistracy in dealing with offences. It will be very difficult for the judge to decide cases. Moreover, untouchability means different things in different areas. In Bengal, untouchability means one thing, while in other provinces, it means an entirely different thing. So, unless a definition is put in, it would be impossible for the judiciary to deal with offences coming under untouchability. Whether you accept the amendment of Mr. Rohini Kumar Chaudhury or not, some definition must be there. This question may be left to the Drafting Committee to find out some suitable definition of the word 'untouchability'. I strongly feel that unless there is a definition, it cannot be dealt with as an offence. We all feel that untouchability should be made an offence and it should be done away with. I also feel with my friend Mr. Thakur that the root cause of untouchability, namely, the caste system, in Hindu society should be abolished altogether. Unless the caste system is abolished, untouchability will persist in some form or other. It has been said times without number by our leaders that unless Hindu society is drastically reformed by abolishing the caste system, it is bound to perish. Caste system should be abolished. So, if we are to deal with 'untouchability' as an offence, there should be some definition and I hope it would be left to the Drafting Committee to frame suitable definition so that it will be placed before the House for discussion. With these words, I support the amendment.

Mr. President: I should like to draw the attention of the House to clause 24 which says :

"The Union Legislature shall make laws to give effect to those provisions of this part which require such legislation and to prescribe punishment for those acts which are declared to be offences in this part and are not already punishable."

I take it that the Union legislature will define the word 'untouchability' so that the courts might prescribe proper punishment.

Srijut Rohini Kumar Chaudhury: I beg leave to withdraw the amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: I do not propose to put to vote of the House clause by clause. We will discuss each clause and the House will come to certain decisions. These decisions will be reviewed when the whole Constitution is ready. Suitable alterations will be made in the light of what precedes and what follows, so that there might be no discrepancy between one part and another. Therefore, the House need not be very meticulous about words now.

The Hon'ble Sardar Vallabhbhai Patel: There shall be no duplication of debates and it shall not be open to reopen the whole thing. There shall be only reconciliation between various clauses, in the matter of phraseology.

Mr. President: I do not suggest any duplication or any second discussion clause by clause. When in the whole draft comes back we shall see how each clause fits and that there is no discrepancy. Subject to that I think the House can take clause by clause into consideration.

Srijut Rohini Kumar Chaudhury: Sir, on a point of information, I should like to know whether a separate Bill like the Bill of Rights will embody all these provisions and then will be presented to this House. In that case it will be unnecessary to discuss these amendments.

Mr. President: We are now discussing that very thing. As I said, we shall see at the end that all conflicts and discrepancies are removed; not that we shall discuss the whole thing over again.

Sri M. Ananthasayanam Ayyangar (Madras: General): Sir, you should put the question that clause 1, as amended, be passed.

Mr. President: I am not taking formal votes because it will not then be open to review later on. Therefore, I am taking up the consideration of the clauses one after another.

The Hon'ble Sardar Vallabhbhai Patel: Sir, unless it is accepted by the House there is no point in going through the whole Report. When the whole Report is gone through, if it is understood that the necessary adjustments will be made. But if you leave the whole thing open without taking votes there is no point in going through the Report.

Mr. N. V. Gadgil (Bombay: General): Does a vote mean that it is finally accepted and there is no further scope of any further suggestions even in the matter of principle ?

Sri K. Santhanam: Sir, some of the rules may be changed afterwards and you can ask the House to change anything. But let us accept the clauses.

Mr. President: It is always open to the House to review its own decisions and in that way every decision that we take today will be open to review. But I was suggesting that even without re-opening the whole thing we might remove all conflicts and discrepancies which may appear later on by making the necessary adjustments. In any case I will put clause 1 to vote.

The question is that clause 1, as amended, be passed.

The motion was adopted.

CLAUSE 2—APPLICATION OF LAWS

The Hon'ble Sardar Vallabhbhai Patel: Sir, I move that clause 2 be accepted. The clause runs thus :

“All existing laws, notifications, regulations, customs or usages in force within the territories of the Union inconsistent with the rights guaranteed under this part of the Constitution shall stand abrogated to the extent of such inconsistency, nor shall the Union or any unit make any law taking away or abridging any such right.”

If we make a fundamental right justiciable this is not a necessary corollary of it but in this connection I should like to draw the attention of the House to paragraph 7 of the Report which says :

“Clause 2 lays down that all existing laws, regulations, notifications, customs, or usage in force within the territories of the Union inconsistent with the fundamental rights shall stand abrogated to the extent of such inconsistency. While in the course of our discussions and proceedings we have kept in view the provisions of existing Statute law, we have not had sufficient time to examine in detail the effect of this clause on the mass of existing legislation. We recommend that such an examination be undertaken before this clause is finally inserted in the Constitution.”

Therefore, this clause is subject to examination of its effect on the existing laws and this should be done before the Constitution is finally drafted and the clause finally adopted.

Sir, I move.

Sri K. Santhanam: Sir, I gave notice of an amendment but I will move it in a somewhat modified form in terms of a suggestion made by Sardar Patel. I move that in clause 2 for the words “nor shall the Union or any

[Sri K. Santhanam]

unit make any law taking away or abridging any such right”, the following be substituted:

“Nor shall any such right be taken away or abridged except by an amendment of the Constitution.”

The only reason is that if the clause stands as it is then even by an amendment of the Constitution we shall not be able to change any of these rights if found unsatisfactory or inconvenient. In some constitutions they have provided that some parts of the Constitution may be changed by future constitutional amendments and other parts may not be changed. In order to avoid any such doubts I have moved this amendment and I hope it will be accepted.

The Hon'ble Sardar Vallabhbhai Patel: Sir, I accept the amendment.

Mr. Promatha Ranjan Thakur: Sir, the words are “nor shall the Union or unit etc.” “Union” has been defined in the first clause but not “unit”; That also should be defined.

Mr. President: The word “unit” does not occur in Mr. Santhanam's amendment and so the question does not arise.

The Hon'ble Rev. J. J. M. Nichols-Roy (Assam: General): Sir, we understand that there will be provincial constitutions and each province will frame its own constitution. If so, the amendment of any law relating to a province should be left to the provinces instead of to the Union. The power to amend the Provincial law must lie in an autonomous province. If it is true, as we understand now, that the Union will deal with certain subjects only like Defence, External Affairs and Communications, we do not want that any provincial power should be limited by any fundamental right or any of its powers to be taken by the Union of India. Therefore, it seems to me that this amendment will be dangerous. I suggest that we should deal with all the fundamental rights first and take up this clause 2 last. I want to see whether any provision in the fundamental rights, does not encroach on the powers of an autonomous province or State.

Mr. B. Das (Orissa: General): I am inclined to agree with the Hon'ble Rev. Nichols-Roy, and I cannot accept Mr. Santhanam's amendment. We cannot delegate that power to the Union Legislature or the Provincial Legislature. That means that the future Constituent Assembly be called upon to make such fundamental changes that are implied by the amendment of Mr. Santhanam. I would suggest to the House to see to whom we are delegating this power before we accept this amendment and leave the Provincial Legislature to do any thing it likes.

The Hon'ble Sardar Vallabhbhai Patel: The amendment suggested would make all the fundamental rights obligatory because it is absolutely essential that this clause should be passed if these rights are considered justiciable and fundamental. If these are not justiciable then they are not consistent. But if it is considered that those clauses which confer rights on citizens which could be enforced in law, then it is necessary that any act, custom, regulation or notification which takes away or abridges this right, must be abrogated. Otherwise, it is meaningless. Therefore, Sir, I oppose the postponement of the motion. I have of course accepted Mr. Santhanam's amendment.

Mr. President: The mover of the Resolution has accepted Mr. Santhanam's amendment. The question now is:

“That in clause 2 for the words ‘nor shall the Union or any unit make any law taking away or abridging any such right,’ the following be substituted:

‘nor shall any such right be taken away or abridged except by an amendment of the constitution’.”

The motion was adopted.

Mr. President: The question is—(I will now read the amended clause)—

“All existing laws, notifications, regulations, customs or usages in force within the territories of the Union inconsistent with the rights guaranteed under this part of the constitution shall stand abrogated to the extent of such inconsistency, nor shall any such right be taken away or abridged except by an amendment of the constitution.”

The Constitution will provide rules for its own amendment, and the Constitution will be amended in accordance with the rules which will be provided in the Constitution. This clause also, if necessary may be amended in the same way as any other clause in the Constitution.

The motion was adopted.

CLAUSE 3—CITIZENSHIP

The Hon’ble Sardar Vallabhbhai Patel: Now I will take up clause 3:

“Every person born in the Union or naturalised in the Union according to its laws and subject to the jurisdiction thereof shall be a citizen of the Union.”

To this should be added:

“Further provision governing Union citizenship may be made by the laws of the Union.”

That was originally passed by the Committee but in printing it was omitted by mistake. It will be moved by Mr. Munshi.

Mr. K. M. Munshi: These words were originally in the Report which was placed before the Advisory Committee, but it seems due to some oversight they did not find a place in the final Report. The idea is that the Union will not only have to make laws with regard to naturalisation but with regard to citizenship further provisions may also have to be made. So those words have to find a place in this particular clause; otherwise the whole idea will remain incomplete. I therefore move that the following words may be added at the end of this clause:

“Further provision governing Union citizenship may be made by the laws of the Union.”

Mr. Promatha Ranjan Thakur: The clause as it stands is rather vague. It reads—

“Every person born in the Union or naturalised in the Union according to its laws... ”

I do not understand how a person can be born according to law. There should be a comma after ‘Union’; you must not leave it vague.

Mr. B. Das: This clause is the only outstanding fundamental right a citizen can claim—political equality. ‘Every person born in the Union..’ will include any non-Indian—a German, or a Japanese who will enjoy the rights of Indian citizenship from the 14th to 21st year unless he declares that he is not an Indian. I would like a provision should be made that—

“a person born in the Union can declare for the nationality open to him by virtue of descent.”

It seems that the Fundamental Rights Committee has not bothered about this aspect of the question.

European born sons and daughters will seek occupation in State and private services and later they can turn as aliens. Lord Roberts was born in India and yet he was one of the greatest satraps to keep down Indians. Of course only one European, Pierre Loti, was born in India and he remained a friend of India throughout. I do agree with my leaders as far as they are thinking on the right lines, viz., that they will bring further provisions by legislation to define fundamental rights. It appears to me that the present draft of citizenship is very wrong as it concedes economic exploitation to aliens on some pretext. Nowhere have you defined nationality, as has been suggested by Mr. Sidhwa. We do see that the Fundamental

[Mr. B. Das]

Rights Committee had to race against time and that they had no time to take into consideration certain factors which they have ignored so far. I do hope that this House will look into that aspect of the matter and will not agree to exploitation of Indian citizens in any shape or manner, by aliens or alien-born I feel very unhappy over this lacuna of exploitation.

Mr. K. M. Munshi: Sir, on a point of personal explanation I was in error in stating that this clause was omitted by mistake. I looked into the Minutes and I find that it was dropped in the Advisory Committee. I was under a wrong impression.

Mr. President: The point that has been raised by Mr. Das deserves consideration and I want the mover to consider it. The wording of the clause as it stands is—

“every person born in the Union shall be a citizen of the Union.”

Mr. Das says that the wording is too wide and may include the child of any foreigner born in this country, as he would acquire the right of citizenship by the mere fact of his birth.

Mr. K. M. Munshi: May I point out that the wording is “subject to jurisdiction”—That is the doctrine of allegiance. Persons born of foreigners, consuls and diplomats, will not be included.

Mr. President : “Subject to jurisdiction” will not include allegiance. I am not quite sure about it but the lawyers in this House have to help us on that.

Mr. K. M. Munshi: “Subject to jurisdiction” has been defined by several authorities and it means persons born of persons who owe allegiance to the Union. If necessary, I will satisfy the Hon'ble Member who has put forward this point of view. The wording “subject to jurisdiction” has been taken from the American Constitution and has been expressly ‘construed’ to mean this.

Mr. President: Our Constitution should be self-contained as far as possible. We should not depend on the interpretation of clauses in other constitutions, as it may lead us to any amount of confusion.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar (Madras: General): Sir, this clause has been borrowed from the American Constitution. There are two ideas of citizenship. In the Continental countries citizenship is based upon race: it has nothing to do with the birth of a person in any particular place. In the Anglo-American system if a person is born in a particular place, he gets his citizenship. If you want to adopt a different system you may. Under the American system if a Hindu goes to America even today, he becomes an American citizen, though if it is a question of naturalisation there are difficulties in the way of such naturalisation. So the question of birth stands on a different footing from the question of naturalisation. If I may say so, with respect to my friend, Mr. Munshi, that phrase “subject to jurisdiction” is put in for a purpose different from what he stated. Supposing a consul is here and a child is born to him, the child will not get citizenship, because the consul or his child will not be subject to the jurisdiction of the Union. That is why “subject to jurisdiction” is used here, because a person born to a consul here is supposed to be born in his own country. So far as any ambassador or consul or any other person holding a similar status is concerned, the child will not get the citizenship. That is why the expression “subject to the jurisdiction” occurs in that clause. Therefore the main principle underlying this clause is that if a person is born here he must get the citizenship, even if he is a foreigner. That is the principle obtaining in England in America and in every other country in which Anglo American jurisprudence prevails.

So far as continental countries are concerned citizenship is based upon blood: it is based upon race: and therefore wherever that person may be if he is the son of a person of a race he has to get citizenship. That is the principle. No doubt difficulties have been expressed in regard to this principle of birth, when people leave their country and children are born to them. That is why provision is made in the British Nationalities Act in regard to birth of children to British citizens abroad and an appropriate provision may be made in the Union laws to cover such cases. The first part of the clause commits the Constitution to the fundamental principle that every person who is born in this Union is a citizen of the Union. The second part of it refers to naturalisation and then both of them are subject to the jurisdiction thereof. Other cases where children are born to nationals who go abroad from this country will have to be provided for by the Union law. That is the exact position. This is merely the principle obtaining in the Anglo-American law, viz., that if a person is born within the jurisdiction he shall get the citizenship. If you want to depart from it, it may land you in difficulties. You may borrow the whole of the continental system—either the German, French or the Italian system of nationality. But we thought that it would be much better to follow the Anglo-American system, a system with which we are acquainted.

Mr. President: I want to ask one question. Suppose a Jap by birth is travelling through this country and while travelling a child is born to him. What happens?

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: In spite of the language of the clause the American Supreme Court has held on this very clause that a casual visitor like that will not come within the language of the Constitution.

Sri M. Ananthasayanam Ayyangar: Why not?

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: My answer is that the Supreme Court of America construing this particular clause has held that. I think it is a reasonable exception which can be made. I have looked into this particular point yesterday thinking that this point would come up for consideration, because even a lady passenger in a railway train may give birth to a child, and an exception should be made to cover that class of person who is transiently present in this country to whom a child is born, that that person shall not have citizenship. But then what exactly is the meaning of 'transient presence'? That will have to be provided for and it will be very difficult. Under those circumstances there is no great hardship felt in America by adopting the rule that birth determines citizenship. Otherwise you must have a detailed provision as in the British Nationalities Act, where there are four special clauses to cover such cases. You must borrow all the clauses of the British Nationalities Act, which provides a more comprehensive definition than this. But we thought that on the whole it would be better to adopt the shorter form as in the American Constitution which can find a place in a chapter on Fundamental Rights.

Mr. President: It seems to be a very important question and we should thrash it out. What would happen to a man who is not simply passing through the country but stays in this country, say, for some years for trade purposes or some other purpose?

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: His son will become a citizen, but political rights are distinct from civic rights. There is no general rule of law that a citizen is entitled to political rights, because we know as a fact that according to the American law of citizenship the citizen is only entitled to civic rights. It does not stand in the way of the Constitution being so framed as not to concede political and other rights to the citizen. Citizenship by itself does not carry anything like minimum

[Diwan Bahadur Sir Alladi Krishnaswami Ayyar]

rights. Citizenship may confer certain rights in particular cases. If you think that those clauses should not be extended to all the citizens, it is for you to make a distinction. Citizenship right by itself normally under the American law from which it borrowed—does not connote any minimal rights. Though the Eighteenth Amendment is applicable to every State in U.S.A., the citizen does not possess political and other similar rights in various States in the Union. Certain rights we have extended to all people. So far the area of fundamental rights of citizens has been considerably reduced and no considerable difficulty can possibly arise in regard to citizenship in matters relating to religion, protection of property, protection of person, protection of organisation and some safeguards as to public order and all that. But the difficulty is likely to arise by importing the idea of political rights into citizenship. Otherwise, we must consider the question whether we have to borrow this principle at all or depart from it altogether. We have got that very thing in the British Nationality Act itself. Or we shall, have to have some concept of citizenship distinct from the British Nationality Act, distinct from the American law, borrowing from the German or Italian conception or we must have our own idea of what citizenship is. That is how the matter stands.

Mr. President : Personally, I do not like that we should follow the precedent of any other country. We should have our own citizenship and formulate what that citizenship connotes.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: While I greatly appreciate that, I cannot altogether forget the fact that citizenship will carry with it protection in the international field. In dealing with citizenship we have to remember we are fighting against discrimination and all that against South Africa and other States. It is for you to consider whether our conception of citizenship should be universal, or should be racial or should be secretarian. That is a question of politics on which I am not so competent as some other people here. But so far as this is concerned, I merely state the law as it is and the principles on which the Fundamental Rights Committee has proceeded.

Sri M. Ananthasayanam Ayyangar: Take the case of a Japanese who comes into this country and stays here for some time and a son is born to him. Does he lose the citizenship which he inherits from his mother in Japan or he does not do so and he continues to be a citizen of both countries.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: The problem of double nationality is one of the most difficult questions which international jurists have to face. All that we can provide for is a kind of citizenship. We cannot try to remove all the complications that will arise out of the problem either of Statelessness or double nationality. Owing to conflict between the continental and Anglo, Saxon systems differences might arise. You might provide for a particular person choosing his citizenship in cases where such conflict arises, but you cannot possibly provide in a chapter on fundamental rights all the complications that may arise on account of the problem of double citizenship, Statelessness and all those considerations.

Sri M. Ananthasayanam Ayyangar: In clause 4 it is said:

“The State shall make no discrimination against any citizen on grounds of religion, race, caste or sex.”

Therefore, that is an unqualified citizenship and thus a fundamental right. This can only be modified by a modification of the Constitution, not even by the law of a unit or of the Union Legislature. Therefore, you are not

making a discrimination between citizenship rights and political rights. Is it not desirable that we should not leave this definition in an indefinite form as it now stands in this paper?

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: The clause relating to discrimination in the context can only refer to civic right. It will be for the Provincial and the Union Constitution to give franchise in any form. You can make it subject, if necessary, to qualifications as to franchise both in the Provincial and the Union Constitutions. I may also say that in fact some members of the Committee were anxious to say that every right must be a human right. I hope I am not disclosing any secret when I say that Mr. Masani went to the length of saying that most of the rights should be extended to human beings who are in this country; that was the stand he took up. As a matter of fact, there is nothing novel in that. The first Ten Amendments of the American Constitution are not confined to citizens. Whatever may be the interpretation put upon them by the Supreme Court, the first Ten Amendments of the American Constitution are not confined to citizens. It extends to every human being generally. Of course, the word "discrimination" has been understood not to extend to Political right, and it is only confined to civic right ordinarily exercised by the citizen. We are not doing anything novel.

Shri R. V. Dhulekar (United Provinces: General): I submit there is no provision made for any child which has been born outside the Union of parents who are citizens of the Union. I should like to know whether that child will also obtain the right of citizenship or not?

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: That is why provision has been made that the law of the Union may provide for it.

One other suggestion I would like to make. When we draft the Union Constitution you may consider it. If you accept the view, that normally speaking we have to adopt the general principle in Anglo-Saxon or American jurisprudence subject to necessary modifications or modifications that may be introduced by the Law of the Constitution for the time being, especially in view of what has already fallen from you, we will consider the whole thing in juxtaposition with other provisions of the Constitution, and if it is likely to come into conflict, that may be considered. But one thing. Are we going to bring in race idea, namely, only those who are born of parents—you call them Indians or other people—are entitled to citizenship or are you going to subscribe to the principle that birth settles citizenship, though necessary exception will have to be engrafted for the purpose of providing for children of Indian nationals who are born abroad? I am not at all suggesting that you must rigorously follow the principle of what you call *lex soli*, that is, place of birth? The two principles are *lex soli* and *lex sanguinis*. *Lex soli* means the law of the place of birth and *lex sanguinis* means according to blood. These are the two different principles in the field of international law.

Mr. R. K. Sidhwa: When this question was considered in the main Advisory Committee, the clause read thus:

"Every person born in the Union or naturalised in the Union shall be a citizen of the Union."

I moved an amendment there that the citizenship clause being very vague should be made more clear as you have rightly pointed out. I put a definite period. I said, whoever is not naturalised for at least ten years in this country shall not be considered a citizen.

On this the following words were added:—

"According to the laws and subject to the jurisdiction thereof."

I was told that this would cover my point; although I was not satisfied as a commonsense man I felt—that this did not cover the view point I raised.

[Mr. R.K. Sidhwa]

I was, however, helpless before the views of the legal luminaries. It is, therefore, very necessary that we should have a clear definition of the word 'citizen', and it should be put down in the Constitution and not left to be dealt with when we are making laws hereafter. I suggest that it should be explicitly defined here, and that this clause be postponed and dealt with tomorrow.

Mr. Jagat Narain Lal (Bihar: General): Sir, I feel that the definition of citizenship given in the Constitution of the Irish Free State may be useful in this connection. The definition there is—

“Every person, without distinction of sex, domiciled in the area of the jurisdiction of the Irish Free State at the time of the coming into operation of this Constitution, who was born in Ireland or either of whose parents was born in Ireland or who has been ordinarily resident in the area of the jurisdiction of the Irish Free State for not less than seven years, is a citizen of the Irish Free State.”

I think, Sir, if some such time limit, as seven years for domicile is laid down, that will solve our difficulty.

Sri M. Ananthasayanam Ayyangar: Sir, I find that the words in this definition are taken, almost word for word, from the American Constitution. In the American Constitution it reads thus—

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are the citizens of the United States and of the State wherein they reside.”

But this definition of 1868, we are told, has been given various interpretations during the subsequent years. I would therefore request this matter to be left over for being dealt with tomorrow. It is one of the most important clauses. On the question of citizenship there have been lots of quarrels all over the world, in Jerusalem, for instance. This is a matter on which there is scope of difference of opinion. For example, if a Japanese child is born in this country, should it be allowed to become a citizen of this country or become a national of this country merely because of the fact that it was born here? Or can we lay it down that if a man lives in this land for a period of 10 or 15 years, he should get the right of being a citizen of this country? I do not think we should make any distinction between foreigners in the matter of citizenship in this country. I feel it is not contemplated in the fundamental rights, it is an innovation. These are matters which require deep thought. I would, therefore, suggest leaving this question over till tomorrow when we will sit together and find out how to modify the present definition.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: Sir, I would only invite the attention of the House to the definition of a British citizen and even this has given rise to difficulties and they have had to make special provision for married women. It is not an easy thing to produce a Nationality Act by tomorrow morning.

The definition says:—

(1) The following persons shall be deemed to be natural born British subjects, namely:—

- (a) Any person born within His Majesty's dominion and allegiance; and
- (b) Any person born out of His Majesty's dominions whose father was, at the time of that person's birth, a British subject, and who fulfills any of the following conditions, that is to say, if either,
 - (i) his father was born within His Majesty's allegiance; or
 - (ii) his father was a person to whom a certificate of naturalisation had been granted; or
 - (iii) his father had become a British subject by reason of any annexation of territory; or
 - (iv) his father was at the time of that person's birth in the service of the crown; or

- (v) his birth was registered at a British consulate within one year or in special circumstances, etc.
- (c) Any person born on board a British ship whether in foreign territorial waters or not.

Even this Act had caused difficulty in the case of married women. Therefore, if at least one thing is decided upon and if we generally accept the general principle, that will be better. My friend, Mr. Ananthasayanam Ayyangar is more hopeful than myself. I do not think it will be possible to come with a ready-made solution of this difficulty by tomorrow coming. For the time being, let us accept the general principle. The exact qualifications and modifications necessary may be considered later. We need not overnight manufacture a law of nationality before 11 o'clock tomorrow morning.

Mr. President: May I make one suggestion for the consideration of the mover? As it is a very important matter—and it is one to which I myself attach great importance—if an amendment like this could be accepted, it might remove most of our difficulties. You begin the sentence like this:

“Save as otherwise provided by the law of the Union, every person born in the Union or naturalised in the Union according to its laws and subject to the jurisdiction thereof shall be a citizen of the Union.”

Now, as the clause reads, apart from what the American precedent is, about which I do not know, it seems to me that it is so wide that every one born in this country will be a citizen of the Union, and the rights of a citizen are specifically given, in clause 9.

The Hon'ble Sardar Vallabhbhai Patel: There are two ideas about nationality in the modern world, one is broad-based nationally and the other is narrow nationality. Now, in South Africa we claim for Indians born there South African nationality. It is not right for us to take a narrow view.

Mr. President: We claim for Indians in South Africa the nationality of that country not merely by birth but by reason of settling there.

The Hon'ble Sardar Vallabhbhai Patel: Yes. This Constitution is for a period of ten years after which it will be subject to revision. We have added a proviso which covers all our difficulties. I suggest for your consideration how many foreign men and women come to India for giving birth to children to acquire Indian nationality. It is a curious idea that for that purpose you introduce racial phraseology in our Constitution. It is important to remember that the provision about citizenship will be scrutinised all over the world. They are watching what we are doing. We will be undergoing great risk if you postpone this matter and raise legal controversies. By commenting on every word in this, you will never come to an end. This is a simple problem. We must always have a few foreigners coming here. This will be accidental nationality—If by the accident of birth, some one comes and stays here, subject to the proviso which we have enacted, we can control double citizenship by our legislation. We can always control that.

The Hon'ble Sri C. Rajagopalachariar (Madras: General): We must remember that this clause is intended for the positive purpose of creating a unitary citizenship of India. We should not be obsessed by foreign accidental possibilities.

The Hon'ble Dr. Kailas Nath Katju (United Provinces: General): Mr. President, it is hardly necessary for me to add to the illuminating exposition of Sir Alladi Krishnaswami Ayyar. I suggest that in the definition as it stands we might add something on these lines. Under the present law every person who is born in British India today has Indian citizenship. If a person is born anywhere outside India, then he becomes an

[The Hon'ble Dr. Kailas Nath Katju]

Indian subject because he is the son of an Indian subject. That ought to be made quite beyond controversy. That should not be left to the proviso. Wherever the subject of the Indian Union goes to any part of the globe and if a child is born to him there, then that child becomes the subject of the Indian Union. I understand that to be the law. If that is not the law, then it ought to be the law of the Union. We are now sending a number of Ambassadors abroad in order to establish contacts with all foreign countries. It would be lamentable if Indian people who go there and if a child is born to them, then that child should not be treated as an Indian subject. This ought to be added to the definition. I do not wish to say anything about double nationality. The law is quite clear. It was very much stressed during the trials of the Indian National army personnel. It was then found that it sometimes happens that if a child of a non-British subject is born in India, then that child may have double nationality of the country where he is born and of the country of his parents. When he becomes a major, it is open to him to accept one nationality and renounce the other. Speaking for myself, whoever is born on Indian soil should be welcomed as a subject of the Indian Union. That is a plain and intelligible proposition. I think we should accept it.

Mr. K. M. Munshi: As has been suggested by Dr. Katju, every child born of Indian parents should have the citizenship of the Union. Now as a matter of fact, the clause as originally sought to be inserted, has this provision that children would be citizens of India, if when they are born the parents are Indian citizens. But it was felt that if you once start introducing various elements and considerations in this clause, then we will be engaged in enacting a nationality law here and now. Therefore the amendment, which I moved, was inserted, *viz.*, that further provisions required for these different cases will be made by a law of the Union. After all we are not making a law of nationality. We are only enacting two indispensable conditions, namely, persons born in India and naturalised according to the law of the Union shall be citizens. The world is divided between the ideas of racial citizenship and democratic citizenship, and therefore, the words 'born in India' become necessary to indicate that we align ourselves with the democratic principle.

The Hon'ble Sardar Vallabhbhai Patel: As I have already explained all these different points of view can be easily provided for under the clause,—

“Further provision governing Union citizenship may be made by the law of the Union.”

All the difficulties suggested from various points of view can be covered in this. It is open to the Union to make any law governing citizenship, if it is necessary. After all how many people are going outside ? A few people. Supposing some children are born outside and if there is any such necessity, this proviso amply covers such difficulties. The difficulties on the opposite side also are covered. Therefore, our general preface or the general right of citizenship under these fundamental rights should be so broad-based that any one who reads our laws cannot take any other view than that we have taken an enlightened modern civilised view. The citizenship clause has been taken from the American model which is more or less consistent with the English. And therefore we should not disturb this and we need not be frightened about it because it is not going to create any difficulties in the intervening period of ten years. If we find any difficulties after our experience of the working of the Constitution for ten years one can easily change it. But I have no doubt that there is going to be no intricacy or difficulty.

It is a simple clause which will be fit and proper for the first Constitution of free India, and we need not have any suspicions.

The Hon'ble Sri C. Rajagopalachariar: Sir, I think it should be "further provisions". It must be plural and not singular.

Mr. President : Even after listening to the learned discourses that have been given to us by eminent lawyers, I confess that I am not yet convinced that the clause as it is, has been rightly put. But it is of course open to the House to accept it in this form.

Srijut Rohini Kumar Chaudhuri: Sir, I suggest that the consideration of this clause may be further postponed.

Mr. President: I am afraid that is not possible. The words—

"Further provisions governing Indian citizenship may be made by the law of the Union." would not improve matters, because "further" means in addition to and not in modification of. Therefore, that would not in any way take away from the amplitude of the clause as it is in the first part of it. But, as I have said, I do not like to influence the House beyond expressing my own opinion, and I leave it to you to give your vote.

Several Hon'ble Members: The clause may be held over.

The Hon'ble Sri C. Rajagopalachariar: Sir, will you permit me to say a word ? There is some misunderstanding.

Mr. President: I do not think it would be right at this stage to allow any member to speak on this clause. There is a suggestion which seems to come from many members that the consideration of this clause may be postponed.

The question is:

"That the consideration of this clause be postponed."

(Votes were taken by show of hands).

The motion was adopted.

Mr. President : I will particularly request lawyers and jurists who are members of this House to give their attention to this clause and to give us something which will be acceptable to all. If they too feel that the clause as it stands should be accepted, I have no doubt that the House will accept their opinion with the respect which is due to them.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar : Sir, we have a big Committee and it is an unworkable proposition for twenty people to discuss the question of citizenship. The whole point has been discussed and I suggest that a small Committee may be appointed to consider this clause.

Mr. K. M. Munshi: That will be better; they can meet and have a discussion because this is a purely technical discussion.

Mr. President: This is a purely legal matter and, therefore, I should like to leave it to the lawyers to give us a draft.

Mr. K. M. Munshi: Three Committees have discussed this question thread-bare and you can now nominate any persons you like and they can discuss it with you.

Mr. President. It is not as if I alone am not convinced about it but a great part of the House is doubtful about this. So there is no use discussing with me alone; even if I am convinced and if the House is not convinced that would not take matters very far.

Shri R. V. Dhulekar: Sir, I propose that a small Committee consisting of Sir B. L. Mitter, Dr. Katju and Mr. K. M. Munshi be appointed to go into this.

The Hon'ble Pandit Jawaharlal Nehru: I think it should be left to the President and the Chairman of the Committee.

Mr. President: If it is left to me I will ask the lawyers to go into it.

Dr. B. Pattabhi Sitaramayya: I suggest that in addition to three lawyers one man of common sense may also be added.

Mr. President: I do not exclude lawyers from the category of people with common sense.

CLAUSE 4—RIGHTS OF EQUALITY

The Hon'ble Sardar Vallabhbhai Patel: Sir, I beg to move clause 4 which runs as follows:

“4. (1) The State shall make no discrimination against any citizen on grounds of religion, race, caste or sex.

(2) There shall be no discrimination against any citizen on any ground of religion, race, caste or sex in regard to—

(a) access to trading establishments including public restaurants and hotels;

(b) the use of wells, tanks, roads and places of public resorts maintained wholly or partly out of public funds or dedicated to the use of the general public:

Provided that nothing contained in this clause shall prevent separate provision being made for women and children.

This is a non-discriminatory clause which is provided in almost all constitutions and adjustments have been made here to suit the special conditions of our country. There may be various points of view and in the Committee also there was a full discussion on this question and I am sure there will be discussion in this House also. A proviso has been made which was found to be necessary because even in a non-discriminatory clause it would be necessary in the present condition of our country to make special provision for women and children.

Some amendments have been given notice of to remove doubts. In clause (2) (a) the words “and places of public entertainment” were suggested in the course of discussion to be added; and in clause 2(b), the words “State funds” are sought to be substituted for “public funds”, Public funds may be by subscriptions or private arrangements; the clause is meant to apply to State funds. In clause (1) it is suggested that for “make no discrimination”; the words “not discriminate”; should be substituted. I shall accept these amendments when they are formally moved.

The Hon'ble Shri Purushottamdas Tandon (United Provinces: General): Is Sardar Patel himself putting forward these amendments ?

The Hon'ble Sardar Vallabhbhai Patel: I said that when these are formally moved I shall be prepared to accept them.

Shri Mahavir Tyagi (United Provinces: General): May I know one thing from the Hon'ble the mover ? May I know why he thought it necessary to repeat in sub-clause (2) what he has already said in sub-clause (1)—I mean the words—

“There shall be no discrimination against any citizen on any ground of religion, race, caste or sex.....”

The Hon'ble Sardar Vallabhbhai Patel: It is very simple. The first clause is about the State obligation; the second clause deals with many matters which have nothing to do with the State such as public restaurants—they are not run by States; and hotels—they are not run by State. It is an entirely different idea, and therefore, it is absolutely essential.

Shri Mahavir Tyagi: It does not satisfy me. The second clause pertains to hotels and restaurants. To say that restaurants and hotels shall do this or that and there shall be no discrimination against any

citizen on any ground of religion, race, caste or sex in regard to access to trading establishments including public restaurants and hotels, is including such establishments which are not included in the State. It is their outlook. But if we are also to enact for those which are not included in the State, then we should make it clear. Could we not put it in one clause that no discrimination shall be allowed against any citizen in regard to restaurants, hotels, well, tanks, roads, and so on? The clause as it stands does not mean this. Either the language should be slightly different, or perhaps I have not exactly followed the meaning of this clause.

Mr. R. K. Sidhva: The words 'Hotels and public restaurants' have been mentioned for special reasons and specific purposes. They are used by the public and even at present licence from the local bodies is necessary before they are allowed to function. It is very necessary that these public places of entertainment—hotels, and restaurants—should be specifically mentioned, so that the owners may not say that A shall be allowed and B shall not be allowed. These words have a definite and special meaning, and they are absolutely necessary. I, therefore strongly suggest that the words be retained as the Hon'ble Sardar Patel has moved.

Mr. K. M. Munshi: Mr. President, Sir. I move:

1. "That in clause 4 (1) the words 'not discriminate' may be substituted in place of 'make no discrimination'."

It is merely a matter of phraseology.

2. "That in clause 4, sub-clause (2) (a) the following words may be added: 'and places of public entertainment'."

A doubt was raised whether places of public entertainment could be treated as trading establishments. In order to make it clear that places of public entertainment are trading establishments, this amendment has been moved:

3. "That in clause 4, sub-clause (2) (b) substitute the words 'State funds' for public funds'."

"Public funds" might be construed differently; it may be even money raised by public subscription for specific purpose. This amendment will clear this doubt.

Mr. President: We have received notice of a number of other amendments to this clause.

Mr. P. S. Deshmukh (C. P. and Berar: General): May I say a word as a matter of general observation on this clause? In drafting such a long clause we are throwing a shadow of untouchability over the whole Constitution of India. In this particular clause, I submit to the House, if we merely say that—

"the State shall not permit any discrimination against any citizen on grounds only of religion, race, caste or sex."

It should be quite sufficient, and it will leave ample opportunity to the Union Government to make specific provisions with regard to hotels, restaurants, parks, theatres, etc. I think, therefore, that the whole of the second part should be omitted. We should not forget that we have to confine ourselves to the rights which are and must be fundamental. This is not the place to enumerate all the various rights a citizen should have. We are here concerned with only justiciable fundamental rights and it would be improper to burden the clauses with a detailed list of places which should be accessible to all. I, therefore, suggest, Sir, that it will serve our purpose if we merely substitute in the place of the whole clause the following—

"That the State shall not make nor permit any discrimination against any citizen, on mere grounds of religion, race, caste or sex."

Mr. Somnath Lahiri: Sir, I support the original motion but there should not be any discrimination on the ground of political creed. The whole idea of these clauses is that discrimination should not be exercised by the State or by other public bodies in respect of religion, caste etc. In the unnatural circumstances of today in India, religious, communal, caste and similar distinctions loom large. But when things have settled down political differences are sure to come to the forefront and there may be a tendency on the part of the State or public bodies to discriminate against members of political parties on the basis of difference in political creeds. In every country in the world you will find that measures are taken generally to obviate this kind of discrimination on the ground of political creed or party. Therefore I want to move:

“That in sub-clause (1) of clause 4, after the words ‘grounds of’, the words ‘political creed’ be inserted.”

Similarly, I beg to move:

“That in sub-clause 2 of clause 4, after the word ‘caste’ the word ‘creed’ be inserted.”

I support also Mr. Kamath’s amendment to the same sub-clauses of clause 4.

Mr. President: Have you moved both the amendments?

Mr. Somnath Lahiri: I have moved both the amendments, Sir.

Mr. H. V. Kamath: Sir, in moving this amendment I seek to draw a distinction between religion and creed. I think the word religion is not comprehensive enough to include in its scope creed as well. For instance, a person may not accept any religion in the conventional or formal sense of the term, yet he may have a creed. A man may say that he has no religion, yet he may say that he is a rationalist or a free-thinker and that I suppose is a creed which anybody can profess and still he may say that he does not belong to the Hindu, Muslim or Sikh religion, or for the matter of that to any other religion. Therefore, I think that the word creed should be inserted in this clause.

I do not subscribe to my friend Mr. Lahiri’s suggestion regarding political creed. I do recognise that times may arise when we may have to discriminate against persons who hold a creed which seeks to subvert the State by violence or similar objectionable methods. We may have to impose discrimination against such persons. But I submit that the word ‘creed’ has a different connotation from the words ‘political creed’.

As regards ‘colour’ perhaps it is included in the word ‘race’. Yet I have my own doubts on that point as well. Personally, I do not think that the word ‘race’ should find a place here, as that would mean that we recognise a multiplicity of races in India—a doctrine to which I do not subscribe. Yet if ethnologists who are present here think that there are many races in India and the word ‘race’ must be there, I will yield to them on that point. But I think in that case the word colour should find a place in this clause.

An Hon’ble Member: What do you mean by colour?

Mr. H. V. Kamath: ‘Colour’ means colour of your complexion. Two persons may belong to the same race but may have different colours physically. Therefore to make it comprehensive. I move:

“That in sub-clause (1) and (2) of clause 4, after the word ‘caste’ the words ‘colour, creed’ be inserted.”

Srijut Rohini Kumar Chaudhuri: Sir, I beg to move:

“That in sub-clause (2) of clause 4, after the word ‘sex’, the following words be inserted:

‘or of dress worn by any nationality.’”

It seems almost a laughing matter. But even today when we are on the threshold of independence there are hotels which do not welcome people dressed in Indian style. I know of an instance which recently occurred when four Indian gentlemen of my province were not allowed to live in a hotel because they wore Indian dress. I am not afraid that in future the same restriction will be observed by any hotel owners. Today of course unfortunately there are some European-owned or European-managed hotels which do not take in Indians in Indian dress or make it a condition that they must not come to their dining rooms in that dress. I am not afraid of the future, because I believe that when India is independent such restriction would disappear. But what I am afraid of is a reprisal or a revenge taken against such European-minded people and people in European dress may not be allowed to come into hotels. For that reason particularly I want that this amendment should be accepted by this House.

Mr. Dharendra Nath Datta: Sir, I do not want to move the amendment which stands in my name. (Amendment No. 12 on Supplementary List, dated 28th April 1947).

Sri D. Govinda Doss (Madras: General): (Spoke in Telugu). Sir, I move:

“That in sub-clause 2 (b) of clause 4, after the word ‘roads’ the words ‘Schools, temples or places of worship’ be inserted.”

Sri V. C. Kesava Rao (Madras: General): I move:

“That in sub-clause 2 (b) of clause 4, after the word ‘roads’ the words ‘Schools, hostels, temples or places of worship’ be inserted.”

I want to say that though some schools are thrown open to the Harijans in the villages, they are not allowed to sit along with the caste Hindu students. They are asked to sit on the floor or at a distance. I would like to say in this connection that education is the birth-right of every citizen. So a Harijan or an untouchable should be given the same right as every other citizen. As regards temples, I may submit that untouchables are made to worship God only from a distance and not before God. Even though the untouchables are saying that they are Hindus for the last so many centuries, they are being denied this right and they are made to worship God only from a distance and not within the temple itself. I think that untouchability is the sole cause for the non-admission of untouchables into temples. I request that these things may be taken into consideration.

Mr. President: There is another amendment in the name of Shri P. Kakkan. But that is covered by the amendments that have already been moved by Mr. Govinda Doss and Mr. Kesava Rao, and it is not necessary to move that amendment (that is, amendment No. 15).

Shri Ajit Prasad Jain (United Provinces: General): I beg to move:

“That in sub-clause (2) (b) of clause 4, after the word ‘roads’ the words ‘educational institution, hospital or dispensary’, be inserted; and after the word ‘resort’ the words ‘built or’ be inserted.”

The speaker who preceded me just now has spoken about educational institutions. It is not necessary for me to repeat those arguments. I have also included hospitals and dispensaries among the places in regard to which no discrimination should be made provided they receive aid from State funds. Educational institutions, dispensaries and hospitals are very necessary for the moral, mental and physical, development and

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my opinion is that any public institution which receives any assistance from State funds should be open to all persons irrespective of their religion, caste, race or sex. In this connection, I would like to refer to paragraph 18 (3) (b) which says:

“The State shall not, while providing State aid to schools, discriminate against schools under the management of minorities whether based on religion, community or language.”

Now, the amendment which I have suggested would negative this provision, for I would make it compulsory that any educational institution, hospital or dispensary, if it receives any aid or assistance should be thrown open to all persons. Secondly, I want the words “built or” to be inserted after the word “resort”, for the States assistance may take the form of a lump sum or a periodical amount for the purpose of maintaining the thing. The present clause as it stands will not include institutions which receive any lump sum aid for construction and, therefore, my second suggestion is that the words “built or” be inserted after the word “resort” so that both the institutions which have been built or are maintained by the State funds may come within the mischief of this clause.

Mr. R. R. Diwakar (Bombay: General): I beg to move:

“That in sub-clause (2) (b) of clause 4 for the word ‘and’ a comma be substituted, and after the word ‘resort’, the following words be inserted:—

and schools, colleges and other institutions.”

I should like to bring to the notice of the House that this is a question of equal opportunity. Equal opportunity to all should be given in schools, colleges and other institutions which are State-aided, so that people may not be shut out from any institution on account of race, creed, religion, etc. There may be some apprehension that if this amendment is accepted certain schools which are denominational or run by certain sections or communities may be flooded, or entry may be demanded by all into such schools. But I may state that there is a sufficient safeguard in the phrase which says, “dedicated to the use of the general public”. Unless the institutions are run wholly or partly by State funds and are dedicated to the use of the general public, there is no such danger arising by the acceptance of this amendment. Therefore, I request the House to accept it.

I also move:

“That after the words ‘general public’ at the end of sub-clause (2) (b) of clause 4, the following be added:—

‘and (c) the use of all kinds of public conveyances’.”

I do not think it necessary for me to say anything about it.

Srijut Rohini Kumar Chaudhuri: I beg to move:

“That the following explanation be added at the end of clause 4:—

‘*Explanation* : A place of public resort includes a yard or house attached to any temple where musical and dramatic performances, cinema shows or other entertainments are held for entertainment of general public’.”

There are many temples which have got attached to them houses called Nat Mandirs. During festivals and on other occasions also dramatic performances and cinema shows are held there. The performances are sometimes given by people belonging to what you call the Harijans, but the Harijans themselves are not allowed to go. This is very galling to the people. Therefore, whenever any show or any dramatic performance takes place in any place attached to the temple, all members of the public must have access to it.

Mr. President: Have you a new clause to be added, or is it an amendment to clause 4?

Srijut Rohini Kumar Chaudhury: It has been misplaced, or wrongly placed. It should be under clause 6 as an amendment.

Mr. President: You can take it up with clause 6.

Now all the amendments of which notice was given have been moved. Therefore, the motion as well as the amendments are now open for discussion.

Mr. K. M. Munshi: Sir, regarding adding the words "schools, etc." to clause 4, I submit that this matter be left over till we come to clause 18. Otherwise the discussion on clause 4 will drift to other matters which are connected to this subject. If it becomes necessary as a result of discussion, to make some modification in clause 4, that may be made later. The discussion will be more cognate so far as education is concerned, if it is taken up with clause 18.

As regards the amendments relating to temples, they relate to untouchability and I submit that they should be taken up with clause 6. This particular clause—clause 4, relates only to rights of citizens with regard to places of public use.

I, therefore, submit that permission may be given to members to deal with these amendments under clause 18 and clause 6.

Mr. R. R. Diwakar: In view of the suggestion by Shri Munshi, I hold over my amendment regarding schools.

Sri M. Ananthasayanam Ayyangar: I would like to submit that there are sources of water supply other than wells, tanks, etc., such as channels, and I think these also should be covered by clause No. 4. Therefore, I think it necessary to add the words "and other sources of water supply" after the word "tank". Otherwise, there will be a lacuna.

Then again, there may be discrimination in giving medical relief, on grounds of religion, etc. That will be a dangerous thing. Therefore, Sir, if you do not think want of notice a serious objection against it, I would request you to permit me to add the words "and medical institutions" after the word "public resort". It will then read:—

"the use of wells, tanks, roads and places of public resort and medical institutions maintained wholly or partly out of public funds or dedicated to the use of the general public."

Mr. R. K. Sidhva: I want to have one point clarified, Sir. Suppose a well is constructed by a philanthropic person at a public place in a small village, but he has not dedicated it for public use, and allows everyone to use it, except a few persons in the village, he has used a public place but not dedicated for public use, what will happen? What will be the position then? As it is, this clause is not happily worded, and the House might like to have it worded in a better way.

Mr. President: I would request the mover to give his reply now.

The Hon'ble Sardar Vallabhbhai Patel: The first amendment is from Mr. Somnath Lahiri. He wants that there should be no discrimination on grounds of political creed. I do not know what discrimination he has in view. The non-discrimination clause is restricted to, or is provided for on grounds of religion, race, caste or sex. He wants 'political creed' also to be included. I think it is an absurd idea to provide for non-discrimination as regards a political creed. Political creed may be of any kind. There may be some political creeds highly objectionable. Some may not be deserving of discrimination, but may actually be deserving of suppression altogether. So, I think it does not fit in here. The other amendment relates to colour. I do not know what is the meaning of it. There are different kinds of colours among Indians themselves. Have we got to provide for all of them. Therefore, I do

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not think all these amendments are necessary at all. The amendment relating to schools and colleges can be provided for when we come to discuss a separate clause relating thereto.

I am glad that on the whole the House is of opinion that this clause is aptly drafted.

Now there is only amendment left of Srijut Rohini Kumar Chaudhury. I do not think this is really necessary. There is no bar against any particular kind of dress. In my present dress I go to the Viceroy's house as well as to the abode of the humblest peasant. There is now no discrimination on account of dress.

Srijut Rohini Kumar Chaudhury: In some hotels and restaurants there is ban against the entry of Indians dressed in Indian national costume.

The Hon'ble Sardar Vallabhbhai Patel: All the foreigners are going. You need not be obsessed on that account. Such things as dress cannot be put in the fundamental rights. If the world at large should read such provisions in our fundamental rights, then they would naturally conclude that we do not even know how to treat our nationals and how to treat our fellow beings. I may assure my friend that there is no discrimination now on account of dress. I do not think such things should be provided for in fundamental rights.

Srijut Rohini Kumar Chaudhury: What about the ban of entry of Indians in some hotels and restaurants because of their dress?

The Hon'ble Sardar Vallabhbhai Patel: The whole conception is born out of the idea of slavery. That idea of slavery has been haunting some of our people. Not even a shadow of it is left now.

Mr. President: Mr. Deshmukh has suggested that it would be sufficient if you put one clause as follows:

"The State shall not make or permit any discrimination merely on the ground of religion, etc:....."

The idea is if you put it like that, that would cover all cases and the second sub-clause will not be necessary. It would cover cases of private institutions as well as State institutions. We can have one comprehensive clause.

The Hon'ble Sardar Vallabhbhai Patel: If there is no formal amendment, I should prefer the present clause to stand as it is.

Mr. President: Now, I will put the amendments one by one. The first amendment of Mr. Munshi is:

"For the words, 'the State shall make no discrimination', the words 'the State shall not discriminate' be substituted."

The Hon'ble Sardar Vallabhbhai Patel: I accept the amendment.

Mr. President: The question is that above amendment be adopted.

The motion was adopted.

Mr. President: The second amendment is:

"In sub-clause (2) (a) of clause 4, after the word 'hotels', add the words 'and places of public entertainment'."

The Hon'ble Sardar Vallabhbhai Patel: I accept the amendment. The word 'and' before 'hotels' should be omitted and should be placed after 'hotels'.

Mr. President: The amendment:

"In sub-clause (2) (a) of clause 4, omit the word 'and' before hotels and add the words 'and places of public entertainment' after the word 'hotels'."

The motion was adopted.

Mr. President: The next amendment is in sub-clause (2) (b) of clause 4, for the words 'public funds' substitute the words 'State funds.'

The Hon'ble Sardar Vallabhbhai Patel: I accept the amendment.

Mr. President: The question is:

"In sub-clause (2) (b) of clause 4 for the words 'public funds' substitute the words 'State funds'."

The motion was adopted.

Mr. President: The question is:

"That in sub-clause (1) of clause 4 after the words, 'grounds of' the words 'political creed' be inserted.

The motion was negated.

Mr. President: The question is:

"That in sub-clause (2) of clause 4 after the word 'caste' the word 'creed' be inserted."

The motion was negated.

Mr. H. V. Kamath : Regarding my amendment No. 10, I desire to withdraw so far as it relates to the insertion of the word 'colour'. With great respect I am still not convinced that religion and creed are the same and so I press that portion of the amendment relating to the insertion of the word 'creed'.

Mr. President: A similar amendment in the name of Mr. Lahiri has just been put to the House and negated.

Mr. President: The question is:

"That in sub-clause (2) of clause 4, after the word 'sex' the following words be inserted: 'or of dress worn by any nationality'."

The motion was negated.

Mr. President: The question is:

"That in sub-clause 2 (b) of clause 4, after the word 'roads' the words 'schools, hostels, temples or places of worship' be inserted."

The motion was negated.

Mr. President: Amendment No. 14 covers the same ground and is therefore lost.

The question is:

"That in sub-clause (2) (b) of clause 4, after the word 'roads' the words educational institution, hospital or dispensary' be inserted."

The motion was negated.

Mr. President: The question is :

"That in sub-clause (2) (b) of clause 4, after the word 'resort' the words 'built or' be inserted."

The motion was negated.

(Mr. Diwakar's amendment about public conveyances was withdrawn.)

Mr. President: No. 19 is withdrawn. The question is:

That the following explanation be added at the end of clause 4:—

"Explanation: A place of public resort includes a yard or house attached to any temple where musical and dramatic performances, cinema shows or other entertainments are held for entertainment of general public."

The motion was negated.

Mr. President: The question is that clause 4, as amended, be passed.

The motion was adopted.

CLAUSE 6

The Hon'ble Sardar Vallabhbhai Patel: Sir, I request that clause 5 may be held over because it requires some further consideration and I may be allowed to move clause 6 which runs thus:

“6. ‘Untouchability’ in any form is abolished and the imposition of any disability on that account shall be an offence.”

There can be no difference of opinion on this question. This is now an accepted proposition all over and should be provided for in the fundamental rights, and any one who suffers a disability on this account should have the right to go to a court of law and have redress. I hope there will be no amendment on this.

Mr. H. V. Kamath: Sir, I move that in clause 6, after the word “Untouchability” the word “unapproachability” be inserted, and after the word “any” the words “and every” be inserted.

By this amendment I want to make the clause more comprehensive because in some parts of India the practice of unapproachability besides untouchability used to obtain some years ago, to my own knowledge, in some places like Malabar specially; I do not know what it is now. So I thought that if you include the word “unapproachability” it would make the clause more comprehensive. The other small amendment that I propose is purely verbal. It does not change the meaning but only emphasises the clause.

Sri S. Nagappa (Madras: General): Sir, I move that in clause 6, for the words “imposition of any disability”, the words “observance of any disability” be substituted. My reason is that imposition implies that one party that imposes it on another is guilty but I suggest that if the untouchability is observed by any person it must be an offence. Unless this amendment is made I do not think the provision made here is enough to punish a person. So I request the House to see that by accepting my amendment observance of untouchability is made a punishable offence.

Sri P. Kunhiraman (Madras: General): Sir, I move that in clause 6 after the word “offence” the following words be inserted:

“punishable by law.”

The original clause makes it an offence and implies that it will be punishable; I want to make it more explicit. It is just a verbal amendment and I commend it for acceptance. Moreover, if we only say that it is an offence it may be interpreted later on in the sense that it is not a legal offence. So it is necessary that it should be made explicit.

Mr. President : The motion and the amendments are now under discussion.

The Hon'ble Sardar Vallabhbhai Patel: The first amendment is by Mr. Kamath. He wants the addition of the word ‘unapproachability’. If untouchability is provided for in the fundamental rights as an offence, all necessary adjustments will be made in the law that may be passed by the Legislature. I do not think it is right or wise to provide for such necessary corollaries and, therefore, I do not accept this amendment.

The other amendment is by Mr. Nagappa who has suggested that for the words “imposition of any disability” the words “observance of any disability” may be *substituted*. I cannot understand his point. I can observe one man imposing a disability on another, and I will be guilty

I have observed it. I do not think such extreme things should be provided for. The removal of untouchability is the main idea, and if untouchability is made illegal or an offence, it is quite enough.

The next amendment was moved by Mr. Kunhiraman. He has suggested the insertion of 'punishable by law'. We have provided that imposition of untouchability shall be an offence. Perhaps his idea is that an offence could be excusable, or sometimes an offence may be rewarded. Offence is an offence; it is not necessary to provide that offence should be punishable by law. Sir, I do not accept this amendment either.

Then, it was proposed that for the words 'any form', the words 'all forms' be substituted. Untouchability in any form is a legal phraseology, and no more addition is necessary.

Mr. H. V. Kamath: In view of the explanation given by the Hon'ble Sardar Patel I beg leave of the House to withdraw the amendments moved by me.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That in clause 6, for the words 'imposition of any disability', the words 'observance of any disability' be substituted."

The motion was negatived.

Sri P. Kunhiraman: Sir, in the light of the observations made by the Mover of the Resolution I beg leave of the House to withdraw the amendment moved by me.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is that clause 6 be accepted.

The motion was adopted.

Mr. President: I have received a request from several Members that they should be permitted to give notice of amendments to the clauses which have not yet been considered, and their ground is that yesterday they received the Report rather late and they could not send in their amendments before 5 o'clock. We have already got a large number of amendments, and I do not know if the House would like to extend the time to receive more.

Shri Mahavir Tyagi: It does not matter because your disposal is so fast.

Mr. President: It is not my disposal, but it is done by the House.

If we get the amendments up to 5 o'clock then there is this difficulty. The amendments have to be tabulated, typed and cyclostyled, and there is very little time in the evening because of the Curfew Order. On previous occasions they had to work up to late at night. Now they find it difficult to work at night. If, the Members waive their right of getting copies of these amendments, I might accept their request.

Rai Bahadur Syamanandan Sahaya (Bihar: General): They may be amendments which were received in office after 5 o'clock yesterday....

Mr. President: Those which have already been received will be accepted and even today if notice of amendments is received up to 2 o'clock they will be taken in. But after that it will be very difficult. In any case, amendments to amendments can be handed in until the Session begins tomorrow morning.

As regards the time, we met at half past 8 o'clock today and we have carried on for 4 hours. But I am told that time is not convenient to some Members, and it is still more inconvenient to our office people, some

[Mr. President]

of whom live in distant parts of the city. They have to work from 8 o'clock in the morning to late in the evening. If the House agrees we might meet at 9 o'clock tomorrow morning.

Several Hon'ble Members: Yes, yes.

Mr. President: The House now stands adjourned.

The Assembly then adjourned till Nine of the Clock on Wednesday, the 30th April 1947.

APPENDIX

CONSTITUENT ASSEMBLY OF INDIA

No. CA/24/COM/47

Council House,
New Delhi, the 23rd April, 1947.

FROM

THE HON'BLE SARDAR VALLABHBHAI PATEL,
*Chairman, Advisory Committee on Minorities,
Fundamental Rights, etc.*

To

THE PRESIDENT,
Constituent Assembly of India.

SIR,

On behalf of the members of the Advisory Committee appointed by the Constituent Assembly of India on the 24th January, 1947, I have the honour to submit this interim report on fundamental rights. In coming to its conclusions, the Committee has taken into consideration not merely the report of the Sub-Committee on fundamental rights but also the comments thereon of the Minorities Sub-Committee.

2. The Fundamental Rights Sub-Committee recommended that the list of fundamental rights should be prepared in two parts, the first part consisting of rights enforceable by appropriate legal process and the second consisting of directive principles of social policy which, though not enforceable in Courts, are nevertheless to be regarded as fundamental in the governance of the country. On these latter, we propose to submit a subsequent report; at present, we have confined ourselves to an examination only of the justiciable fundamental rights.

3. We attach great importance to the constitution making these rights justiciable. The right of the citizen to be protected in certain matters is a special feature of the American Constitution and the more recent democratic constitutions. In the portion of the Constitution Act, dealing with the powers and jurisdiction of the Supreme Court, suitable and adequate provision will have to be made to define the scope of the remedies for the enforcement of these fundamental rights. These remedies have been indicated in general terms in clause 22 of the Annexure.

4. Clause 20 of the Statement of May 16, 1946, contemplates the possibility of distributing fundamental rights between the constitutions of the Union, the Groups, if any, and the Units. We are of the opinion that the fundamental rights of the citizens of the Union would have no value if they differed from Group to Group or from Unit to Unit or are not uniformly enforceable. We recommend that the rights set out in the Annexure to

this report be incorporated in the Constitution so as to be binding upon all authorities, whether of the Union or the Units.

5. Clause 10 deals with the freedom, throughout the Union, of trade, commerce and intercourse between the citizens. In dealing with this clause, we have taken into account the fact that several Indian States depend upon internal customs for a considerable part of their revenue and it may not be easy for them to abolish such duties immediately on the coming into force of the Constitution Act. We, therefore, consider that it would be reasonable for the Union to enter into agreements with such States, in the light of their existing rights, with a view to giving them time, up to a maximum period to be prescribed by the Constitution, by which internal customs could be eliminated and complete free trade established within the Union.

6. We have made a special provision in regard to full faith and credit being given to the public Acts, records and judicial proceedings of the Union in every Unit and for the judgments and orders of one Unit being enforced in another Unit. We regard this provision as very important and appropriately falling within the scope of fundamental rights.

7. Clause 2 lays down that all existing laws, regulations, notifications, custom or usage in force within the territories of the Union inconsistent with the fundamental rights shall stand abrogated to the extent of such inconsistency. While in the course of our discussions and proceedings we have kept in view the provisions of existing Statute law, we have not had sufficient time to examine in detail the effect of this clause on the mass of existing legislation. We recommend that such an examination be undertaken before this clause is finally inserted in the Constitution.

8. The Fundamental Rights Sub-Committee was of the opinion that the right of the citizen to have redress against the State in a court of law shall not be fettered by undue restrictions. That Sub-Committee was not able, however, to draft a suitable formula as the matter requires more investigation than was possible in the time at its disposal. It was also suggested during our deliberations that certain additional fundamental rights should be inserted in the constitution. We have not had the time to consider these matters; we shall do so in due course and incorporate any recommendations we may have to make on them in our next report.

9. The Fundamental Rights Sub-Committee and the Minorities Sub-Committee were agreed that the following should be included in the list of Fundamental Rights:—

“Every citizen not below 21 years of age shall have the right to vote at any election to the legislature of the Union and of any Unit thereof, or, where the legislature is bicameral, to the lower chamber of the legislature, subject to such disqualifications on the ground of mental incapacity, corrupt practice or crime as may be imposed, and subject to such qualifications relating to residence within the appropriate constituency, as may be required, by or under the law.

(2) The law shall provide for free and secret voting and for periodical elections to the legislature.

(3) The superintendence, direction and control of all elections to the legislature, whether of the Union or of a Unit, including the appointment of Election Tribunals, shall be vested in an Election Commission for the

Union or the Unit, as the case may be, appointed, in all cases, in accordance with the law of the Union.”

While agreeing in principle with this clause, we recommend that instead of being included in the list of fundamental rights, it should find a place in some other part of the Constitution.

I have the honour to be,

Sir,

Your most obedient servant,
(Sd.) VALLABHBHAI PATEL,

Chairman,

*Advisory Committee on Minorities,
Fundamental Rights, etc.*

ANNEXURE

JUSTICIABLE FUNDAMENTAL RIGHTS

Definitions

1. Unless the context otherwise requires—

(i) “The State” includes the legislatures and the governments of the Union and the Units and all local or other authorities within the territories of the Union.

(ii) “The Union” means the Union of India.

(iii) “The law of the Union” includes any law made by the Union legislature and any existing Indian law as in force within the Union or any part thereof.

Application of Laws

2. All existing laws, notifications, regulations, customs or usages in force within the territories of the Union inconsistent with the rights guaranteed under this part of the Constitution shall stand abrogated to the extent of such inconsistency, nor shall the Union or any unit make any law taking away or abridging any such right.

Citizenship

3. Every person born in the Union or naturalised in the Union according to its laws and subject to the jurisdiction thereof shall be a citizen of the Union.

Rights of Equality

4. (1) The State shall make no discrimination against any citizen on grounds of religion, race, caste or sex.

(2) There shall be no discrimination against any citizen on any ground of religion, race, caste or sex in regard to—

(a) access to trading establishments including public restaurants and hotels,

(b) the use of wells, tanks, roads and places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public:

Provided that nothing contained in this clause shall prevent separate provision being made for women and children.

5. There shall be equality of opportunity for all citizens in matters of public employment and in the exercise of carrying on of any occupation, trade, business or profession.

Nothing here in contained shall prevent the State from making provision for reservations in favour of classes who, in the opinion of the State, are not adequately represented in the public services.

No citizen shall on grounds only of religion, race, caste, sex, descent, place of birth or any of them be ineligible for public office or be prohibited from acquiring, holding or disposing of property or exercising or carrying on any occupation, trade, business, or profession within the Union.

Nothing herein contained shall prevent a law being made prescribing that the incumbent of an office to manage, administer or superintend the affairs of a religious or denominational institution or the member of the Governing Body thereof shall be a member of that particular religion or denomination.

6. "Untouchability" in any form is abolished and the imposition of any disability on that account shall be an offence.

7. No heritable title shall be conferred by the Union.

No citizen of the Union and no person holding any office of profit or trust under the State shall, without the consent of the Union Government, accept any present, emoluments, office, or title of any kind from any foreign State.

Rights of freedom

8. There shall be liberty for the exercise of the following rights subject to public order and morality or to the existence of grave emergency declared to be such by the Government of the Union or the Unit concerned whereby the security of the Union or the Unit, as the case may be, is threatened:—

(a) The right of every citizen to freedom of speech and expression:

□ Provision may be made by law to make the publication or utterance of seditious, obscene, blasphemous, slanderous, libellous or defamatory matter actionable or punishable.

(b) The right of the citizens to assemble peaceably and without arms:

Provision may be made by law to prevent or control meetings which are likely to cause a breach of the peace or are a danger or nuisance to the general public or to prevent or control meetings in the vicinity of any chamber of a Legislature.

(c) The right of citizens to form associations or unions:

□ Provision may be made by law to regulate and control in the public interest the exercise of the foregoing right provided that no such provision shall contain any political, religious or class discrimination.

(d) The right of every citizen to move freely throughout the Union.

(e) The right of every citizen to reside and settle in any part of the Union, to acquire property and to follow any occupation, trade business or profession:

□□□□□□□□ Provision may be made by law to impose such reasonable restrictions as may be necessary in the public interest including the protection of minority groups and tribes.

9. No person shall be deprived of his life, or liberty, without due process of law, nor shall any person be denied the equal treatment of the laws within the territories of the Union:

Provided that nothing herein contained shall detract from the powers of the Union Legislature in respect of foreigners.

10. Subject to regulation by the law of the Union trade, commerce, and intercourse among the units by and between the citizens shall be free:

Provided that any Unit may by law impose reasonable restrictions in the interest of public order, morality or health or in an emergency:

Provided that nothing in this section shall prevent any Unit from imposing on goods imported from other Units the same duties and taxes to which the goods produced in the Unit are subject:

Provided further that no preference shall be given by any regulation of commerce or revenue by a Unit to one Unit over another.

11. (a) Traffic in human beings, and

(b) forced labour in any form including *begar* and involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted;

are hereby prohibited and any contravention of this prohibition shall be an offence.

Explanation.—Nothing in this sub-clause shall prevent the State from imposing compulsory service for public purposes without any discrimination on the ground of race, religion, caste or class.

12. No child below the age of 14 years shall be engaged to work in any factory, mine or any other hazardous employment.

Explanation.—Nothing in this clause shall prejudice any educational programme or activity involving compulsory labour.

Rights relating to religion

13. All persons are equally entitled to freedom of conscience, and the right freely to profess, practise and propagate religion subject to public order, morality or health, and to the other provisions of this Chapter.

Explanation 1.—The wearing and carrying of *Kirpans* shall be deemed to be included in the profession of the Sikh religion.

Explanation 2.—The above rights shall not include any economic, financial, political or other secular activities that may be associated with religious practice.

Explanation 3.—The freedom of religious practice guaranteed in this clause shall not debar the State from enacting laws for the purpose of social welfare and reform.

14. Every religious denomination shall have the right to manage its own affairs in matters of religion and, subject to the general law, to own, acquire and administer property, movable and immovable, and to establish and maintain institutions for religious or charitable purposes.

15. No person may be compelled to pay taxes, the proceeds of which are specifically appropriated to further or maintain any particular religion or denomination.

16. No person attending any school maintained or receiving aid out of public funds shall be compelled to take part in the religious instruction that may be given in the school or to attend religious worship held in the school or in premises attached thereto.

17. Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law.

Cultural and Educational Rights

18. (1) Minorities in every Unit shall be protected in respect of their language, script and culture and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect.

(2) No minority whether based on religion, community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on them.

(3) (a) All minorities whether based on religion, community or language shall be free in any Unit to establish and administer educational institutions of their choice.

(b) The State shall not, while providing State aid to schools, discriminate against schools under the management of minorities whether based on religion, community or language.

Miscellaneous Rights

19. No property, movable or immovable, of any person or corporation including any interest in any commercial or industrial undertaking, shall be taken or acquired for public use unless the law provides for the payment of compensation for the property taken or acquired and specified the principles on which and the manner in which the compensation is to be determined.

20. (1) No person shall be convicted of crime except for violation of a law in force at the time of the commission of that act charged as an offence, nor be subjected to a penalty greater than that applicable at the time of the commission of the offence.

(2) No person shall be tried for the same offence more than once nor be compelled in any criminal case to be a witness against himself.

21. (1) Full faith and credit shall be given throughout the territories of the Union to the public acts, records and judicial proceedings of the Union and every Unit thereof, and the manner in which and the conditions under which such acts, records and proceedings shall be proved and the effect thereof determined shall be prescribed by the law of the Union.

(2) Final civil judgements delivered in any Unit shall be executed throughout the Union subject to such conditions as may be imposed by the law of the Union.

Rights to Constitutional Remedies

22. (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of any of the rights guaranteed by this part is hereby guaranteed.

(2) Without prejudice to the powers that may be vested in this behalf in other courts, the Supreme Court shall have power to issue directions in the nature of the writs of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari* appropriate to the right guaranteed in this part of the Constitution.

(3) The right to enforce these remedies shall not be suspended unless when, in case of rebellion or invasion or other grave emergency, The public safety may require it.

23. The Union Legislature may by law determine to what extent any of the rights guaranteed by this part shall be restricted or abrogated for the members of the armed forces or forces charged with the maintenance of public order so as to ensure fulfilment of their duties and the maintenance of discipline.

24. The Union Legislature shall make laws to give effect to those provisions of this part which require such legislation and to prescribe punishment for those acts which are declared to be offences in this part and are not already punishable.

CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 30th April 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Hon'ble Dr. Rajendra Prasad) in the Chair

Mr. President : We shall now proceed with further consideration of the Interim Report on the subject of Fundamental Rights. We have passed clause 6. We have held over clause 5. Before we go on, I desire to make the following announcement.

ELECTION TO STEERING COMMITTEE

Mr. President: For the two seats to be filled on the Steering Committee from among representatives of Indian States in accordance with the resolution of the House of the 28th April, only two nominations have been received, namely, those of Mr. P. Govinda Menon (Cochin) and Mr. C. S. Venkatachar (Jodhpur). I accordingly declare these two members duly elected to the Steering Committee. (*Cheers*).

INTERIM REPORT ON FUNDAMENTAL RIGHTS—*Contd.*

CLAUSE 5.—RIGHTS OF EQUALITY

Mr. President: Hon'ble Sardar Vallabhbhai Patel.

The Hon'ble Sardar Vallabhbhai Patel (Bombay: General): Yesterday we had held over clause 5*, because we wanted some time to consider it. We have given thought to the matter and now I proposed to move clause 5. We have made some changes, but they are only formal changes. Some portions are dropped and formal amendments for the changes will be moved. Clause 5 will now run as follows:

“There shall be equality of opportunity for all citizens in matters of public employment.”

The words “and in the exercise of carrying on of any occupation, trade, business or profession” have been taken over to some other clause at a later stage. We are dropping those words now. Mr. Munshi will move

*5. There shall be equality of opportunity for all citizens in matters of public employment and in the exercise of carrying on of any occupation, trade, business or profession.

Nothing herein contained shall prevent the State from making provision for reservations in favour of classes who, in the opinion of the State, are not adequately represented in the public service.

No citizen shall on grounds only of religion, race, caste, sex, descent, place of birth or any of them be ineligible for public office or be prohibited from acquiring, holding or disposing of property or exercising or carrying on any occupation, trade, business, or profession within the Union.

Nothing herein contained shall prevent a law being made prescribing that the incumbent of an office to manage, administer or superintend the affairs of a religious or denominational institution or the member of the Governing Body thereof shall be a member of that particular religion or denomination.”

[The Hon'ble Sardar Vallabhbhai Patel]

an amendment for that. Then we put the third sub-clause of the clause as follows :

"No citizen, shall on grounds, only of religion, race, caste, sex, descent, place of birth or any of them be ineligible for public office."

As regards the subsequent words of this sub-clause we have come to the conclusion that they are unnecessary here and they will be taken over to some other place. Therefore, this portion as I have read, remains and as regards that, formal amendments will be moved. Then comes the proviso which is sub-clause 2 of this clause. It runs as follows :

"Nothing herein contained shall prevent the State from making provision for reservations in favour of classes who, in the opinion of the State, are not adequately represented in the public services."

Then the last sub-clause remains:

"Nothing herein contained shall prevent a law being made prescribing that the incumbent of an office to manage, administer or superintend the affairs of a religious or denominational institution or the member of the Governing Body thereof shall be a member of that particular religion or denomination."

This is clause 5 as I move it, and if there are any amendments to be moved, we shall discuss them afterwards. I formally move.

Mr. President: I have got notice of a number of amendments to this clause. Some came to us day before yesterday and others reached us yesterday. I think there are ten or twelve amendments and I propose to take them one after another. Mr. Munshi's amendment will come first.

Mr. K. M. Munshi (Bombay: General): I move:

"1. In clause 5 paragraph 1 may be marked '(a)', and paragraph 3 may be marked '(b)'.

2. Paragraph 3 may be placed immediately after paragraph 1.

3. Delete from paragraph 1 the words 'and in the exercise of carrying on of any occupation, trade, business or profession', and from paragraph 3 the words 'or be prohibited from acquiring, holding or disposing of property or exercising or carrying on any occupation, trade, business, or profession within the Union'."

This amendment is intended to classify the two heads of rights under two different clauses. As the House will be pleased to see, clause 5 deals not only with public employment but also with occupation, trade, business or profession, and the right to acquire, hold and dispose of property. The same right occurs once again in clause 8 and proviso has been put in at the end of clause 8 permitting Government by law to restrict this freedom under certain circumstances. It was felt that these two clauses were overlapping, and for the purpose of having a proper logical division, clause 5 is now being only restricted to public employment, while freedom to carry on occupation, trade, business or profession and freedom to acquire, hold and dispose of property have been transferred to clause 8 (e). The result of all this change is that this clause will stand only with regard to public employment, and the right with regard to trade, occupation, etc., and with regard to property will come under clause 8 (e). Sir, I move.

Mr. B. Das (Orissa : General) : In paragraph (c) of clause 5 it is said :

"No citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, or any of them be ineligible for public office or be prohibited from acquiring, holding or disposing of property or exercising or carrying on any occupation, trade, business, or profession within the Union."

I have got the experience of many Afghan Princes in India. These Afghan Princes were punished by the King of Afghanistan and sent to India as State Prisoners. There are still some prisoners in India, but some of these Princes cannot hold any office in India, and they cannot

carry on any business. In my public career, I have met some of these Afghan Princes, they have come and told me that they were having trouble and they could not get a job even under the old India Government, because the Britishers in league with the Afghan Government, did not allow them to function as free citizens at all. I want to know whether Indian-born Afghan Princes, most of whom are prohibited from going to Afghanistan and have got to live in India,—whether they will be allowed as Indian citizens to hold public office or will be eligible for the same. I want to know whether the draftsman of this clause has envisaged such a contingency.

Some Hon'ble Members: We have not followed what Mr. Das said, we could not hear him.

Mr. President: Mr. Das, the members have not followed what you said. Will you please come to the mike and explain?

Mr. B. Das: What I was saying was this. There are some Afghan Princes in India who are banished by the Afghan Government and in league with the British Government of India they are to remain in India under certain conditions. They are the sons and grandsons of Afghan Princes, but they are not allowed to get any job in British India. Will they be allowed to get jobs in India if the present interpretation of clause 3 of citizenship is accepted and they become citizens of India? Up to now there is a political ban on these people and they cannot hold any office in British India. I have met dozens of them. I would like to know what the intention of the draftsman is in this matter.

Mr. President : I will take up the amendments of which notice was given day before yesterday.

Mr. Rajagopalachariar has come up with an amendment which suggests the re-arrangements of the paragraphs.

The Hon'ble Sri C. Rajagopalachariar: (Madras: General): That amendment has been agreed to by Mr. Munshi.

(Amendment Nos. 23 to 28 of the Supplementary List I were not moved.)

Mr. Somnath Lahiri : (Bengal: General): My amendment (*i.e.*, No. 29 of the Supplementary List I) is on the same grounds as my amendment of yesterday, relating to political creed. So I do not want to labour the point further.

Mr. President: Amendment No. 30.

Mr. H. V. Kamath (C.P. & Berar: General): Sir, after what happened to my amendment yesterday, I do not wish to repeat that amendment today.

(Amendment Nos. 31 to 33 of the Supplementary List I were not moved.)

Mr. President: Shri Mahavir Tyagi.

Shri Mahavir Tyagi (United Provinces: General): *[Mr. President, Sir, my amendment reads as follows:

“That in clause No. 5, after the words, ‘There shall be equality of Opportunity for all citizens in matters of public employment and in the exercise or carrying on of any occupation, trade, business or profession’, the following proviso may be added after the first para.:

‘Provided that a Unit may frame rules where under in the matter of public employment it may give preference over others to such citizens as are *bona fide* or domiciled residents of its own territory.’”

Sir, I have only to submit that for those who are employed at present in the Government offices of different provinces, it is desirable that they

*[English translation of Hindustani speech begins.

[Shri Mahavir Tyagi]

should be residents of that province, so far as possible. I think, to establish self-government in the true sense of the word, it is most essential that in any part of the world, only the residents of that part should be government servants and officials. If there are open chances for the residents of one province to serve in another, it means that the residents of that province shall not be able to enjoy self-government. My real intention is that so far as possible, the administration of a province should be run by officers and employees who are residents of that province. The province and the unit, in which the staff is required, should employ mostly the descendants of the residents of that place. According to the form in which this rule is being framed there is no consideration of the domicile of the candidate, or his place of birth. There shall be freedom to serve anywhere. This may create troubles that in order to secure service the residents of one province will compete with the residents of another. By this the self-sufficiency of an autonomous unit will be destroyed. Now-a-days there are restrictions of domicile and residence in all provinces. In our U.P. in every advertisement of the Public Service Commission, a condition is laid down that only those who are domiciled in U.P. Rampur, Benaras or Tehri States can apply for the posts. If this condition is waived and no preference is given to birth-place, then there may be a danger that people of other parts of the province may compete and capture subordinate and higher posts. This will go against the real spirit of Swaraj. Perhaps the clause as moved by Sardar Vallabhbhai Patel may provide that the provincial Governments can give preference to their residents. If this is so, I will not move my amendment, but I would request Sardar Patel to put it on record in today's proceedings, that:—

“That there shall be no restrictions in giving preference to place of birth for recruitment to Government Service.”

It would mean that provincial Governments will be able to give preference to their residents over others. If, in the proceedings of this House, it is recorded that the right of allowing privileges to its domiciles will vest in every province and in matters of employment it shall be able to allow privileges to its residents over those of other provinces, then I need not move any amendment. I hope that this will be possible. I shall not have to move my amendment if the mover or any other member of this Committee admits that the freedom of the provinces in running their administration through their residents is maintained so far as possible.]*

Mr. R. K. Sidhwa (C. P. & Berar: General): Sir, which is the amendment he is dealing with ?

Mr. President: He is moving his amendment to clause 5, which is amendment No. 2 in the list circulated this morning (Supplementary List II).

Mr. President: Amendment No. 3 of the Supplementary List II by Mr. Munshi.

Mr. K. M. Munshi : That has been incorporated in the one that has been moved.

Mr. President: Rao Bahadur Chaudhri Suraj Mal.

Rao Bahadur Chaudhri Suraj Mal (Punjab: General) : *[Mr. President, with your permission, I wish to move the following amendment:

“That in clause 5, the following be added after the third paragraph:

‘Provision may be made by law to impose such reasonable restrictions as may be necessary in the interest of agriculture.’”

] *English translation of Hindustani speech ends.

*[English translation of Hindustani speech begins.

My object, in moving this amendment is that India is an agricultural country, where We have many proprietors who are commonly known as Bisvadars or petty zamindars. Their number is very large, and larger still in the Punjab. There are many petty zamindars or Bisvadars in Ambala and Jullundur Divisions. In our Punjab, restrictions of this sort exist even now. It appears from para. 5, that these restrictions may be excluded from the operation of law in future. Therefore, my object in moving this amendment is to give such powers to the Units, which in the interest of agriculture will enable them to protect the petty zamindars and Bisvadars from the big Landlords, Capitalists and wealthy people, who do not cultivate the land themselves. In my opinion, such restrictions are very essential for the benefit of the whole country. I hope that such powers will be given to the Units, which will enable them to protect their cultivators. Secondly, I want to point out, in particular, that the petty Zamindars or Bisvadars, who inhabit our area, belong particularly to martial classes and are in the army in large numbers even now. I think, and rightly so, that if they do not possess these lands, they will be reduced to the status of mere peasants. The spirit of self-respect is inherent in them. They can fight with courage and the name which they have earned, they will not be able to earn in future. May I point out to you that you may issue statements, publish messages in papers and deliver speeches; but this is the age of the sword. Only that man will rule, who has power in his hands. Therefore, it is necessary that the children of those who are in the army, should be treated well and should not be allowed to grow weak, because their services shall be required. Their support will be needed to enforce the Constitution, which is being framed for the future. Therefore, I submit that such restrictions should be imposed, which will debar wealthy people from acquiring the lands of the weak. I appeal to Sardar Vallabhbhai Patel, because he is a well wisher of the Zamindars. I hope that he will keep this in view and add some provision in the Constitution, in order to protect them from the operations of the existing laws. Once the peasantry is destroyed, it can not be recouped. As an English poet has said, once a peasant is destroyed, it is very difficult to rehabilitate him. With these words, I move this amendment.]* (Amendment No. 6 of the Supplementary List II was not moved.) Mr. President: *[There is another amendment in your name]*. Rao Bahadur Chaudhri Suraj Mal: *[Sir, the object of the second amendment is also the same. As I have already moved a similar amendment, the second one is unnecessary.]* Mr. President: *[Then you do not move it.]* The clause and the amendments have been placed before the House. They are now open for discussion. Those who wish to speak may do so. Sardar Prithvi Singh Azad (Punjab : General) : *[Mr. President, I stand to oppose the amendment moved by Rao Bahadur Suraj Mal. There is a black law in the Punjab, which is, known as Land Alienation Act. The purpose of this amendment is to preserve this law: It is highly detrimental to our depressed and other non-agricultural classes. It has allowed those who go under the name of Zamindars or label themselves as peasants to permanently enslave a large section of people in the Punjab. If this amendment of R. B. Chaudhri Suraj Mal is accepted, it would mean that those communities, which have been forced to live under the tyranny of Zamindars for centuries. and

] *English translation of Hindustani speech ends.

[*English translation of Hindustani speech.

which by the help of the black law of Land Alienation Act have been kept in the clutches of the Zamindars will not be able to recover for centuries. Hence in this age when we are formulating such a law that all, should be provided with the same facilities and opportunities, and every one should have equal rights, it is not proper that this black law should be maintained. Hence, on behalf of the depressed classes, I oppose Mr. Chaudhari's amendment in strong words and appeal to the House that this amendment should not be accepted in any form, for this amendment will amount to injustice and tyranny for the depressed and other non-agriculturist classes. If you now adopt this amendment, it means that you would be perpetuating that tyranny which we are present here to end. I oppose the amendment with these words.]*The Hon'ble Sardar Vallabhbhai Patel: Sir, almost all the amendments have been withdrawn and there is not much room for debate. I wish to give a reply to one or two points that have been raised by some of the members. Mr. B. Das has some doubts about the Afghan Princes who have, been deported from Afghanistan, and he wants to know whether they and their children will be eligible for office. I do not know that this, is going to create any difficulty for us. If the children of the Afghan Princes propose to stay here, it is quite possible they will get them-selves naturalised if they have been deported from their country. After all, the clause makes provision for eligibility, but it does not restrict the right of provinces to impose restrictions by legislation on the question of employment. It only says that no citizen can be declared ineligible for office on only the following grounds, that is, on the ground of race, religion, sex, descent, etc. Therefore, there is no reason to have any apprehension on that account. Now, Mr. Tyagi also raised a similar point though of a different type—that preference should be given to the residents of the province and provinces should have opportunity to give preference by legislation to the residents of the provinces. This does not deprive the province of its rights to legislate. This simply removes ineligibility of a citizen; that should be so, and therefore it is provided in the Fundamental Rights. So on that score also, there is no difficulty. Mr. Chaudhri Suraj Mal has raised a point in which he is afraid that persons having agricultural holdings may be affected. He has in his mind that the Punjab Land Alienation Act which is working, gives some protection to these persons and he thinks they will be deprived of their protection. Now, in this connection, I can only suggest for his satisfaction that there is an amendment to this clause moved by Mr. Munshi, which I proposed to accept, as I have explained in the beginning. This clause so far as it concerns the acquiring, holding or disposing of property is removed from there and is going to be taken over to another clause that follows, that is clause 8, but in that clause also the provision has been made that this can be done only on grounds of, I think, public interest. Therefore, in this clause even if the principle is there, it is to be restricted, but in this clause this principle is to be removed. In the other clause the principle is discussed and as the principle is restricted only to cases of public interest, I think there is no difficulty and his difficulty is also removed. I, therefore, think that this. clause 5, as amended, should be passed by the House.—

] *English translation of Hindustani speech ends.

Mr. President: Now I take Mr. Munshi's amendment. The clause as amended by Mr. Munshi will read like this:

"(a) There shall be equality of opportunity for all citizens in matter of public employment.

(b) No citizen shall on grounds only of religion, race, caste, sex, descent, place of birth or any of them be ineligible for public office.

(c) Nothing herein contained shall prevent the State from making provision for reservations in favour of classes who, in the opinion of the State, are not adequately represented in the public services.

(d) Nothing herein contained shall prevent a law being made prescribing that the incumbent of an office to manage, administer or superintend the affairs of a religious or denominational institution or the member of the Governing Body thereof shall be a member of that particular religion or denomination."

The question is that the amendment of Mr. Munshi be adopted.

The motion was adopted.

Mr. President: There is only one amendment which has been moved and that amendment is by Rao Bahadur Chaudhri Suraj Mal. His amendment related to holding or disposing of property, etc., and that part of the clause has been deleted. So his amendment does not arise and no vote will be taken on that. Now the clause, as amended, will be put to the vote.

The clause, as amended, was adopted.

CLAUSE 7.—RIGHTS OF EQUALITY

The Hon'ble Sardar Vallabhbhai Patel: Now Sir, I beg to move clause 7. As it stands, it runs thus—

"No heritable title shall be conferred by the Union."

We have discussed this at length in the Committee and there was difference of opinion in the various committees in which this question was discussed and adopted. It was a very controversial matter. The matter was settled after a prolonged debate and we came to this formula. But the word 'heritable' became a matter of controversy and it was agreed after considerable discussion that that word should also be dropped, and there would be a formal amendment for that purpose. So what will remain will be—

"No title shall be conferred by the Union."

This is the general public opinion in the country. Outside also, in many free countries, it is disappearing. The title is often being abused for corrupting the public life of the country, and, therefore, it is better that it should be provided in the Fundamental Rights. I do not know if there will be any objection or any prolonged controversy over this matter. I move this clause.

Mr. President: There are several amendments to this clause, of five or six of which notice was given the day before yesterday and of one or two of which notice was given yesterday.

I think Mr. Masani's amendment is the most comprehensive one. I will ask him to move.

Mr. M. R. Masani (Bombay: General): Mr. President, the amendment of which I have given notice is an amendment to the amendment given notice of by Mr. Santhanam. It reads as follows:

"No title other than one denoting an office or profession shall be conferred by the Union.

No citizen of the Union shall accept any title from any foreign State.

No person holding any office of profit or trust under the State shall, without the consent of the Union Government, accept any present, emoluments, or office of any kind from any foreign State."

[Mr. M.R. Masani]

In sentence 1, paragraph 1, the words "other than, one denoting an office or profession" may be deleted, so that the clause would read "No title shall be conferred by the Union." In paragraph 3 "or title" should be added in the last line of the clause so as to read:

"No person holding any office of profit or trust under the State shall, without the consent of the Union Government, accept any present, emoluments, office or title of any kind from any foreign State."

That is, I understand, the consensus of opinion. If the House would permit this modification to be made, it will perhaps become a non-controversial amendment.

Mr. President: Mr. Masani has given notice of an amendment and he just wants the permission of the House to drop a few words in the amendment as he has suggested, so that his amendment would read like this :

"No title shall be conferred by the Union.

No citizen of the Union shall accept any title from any foreign State.

No person holding any office of profit or trust under the State shall, without the consent of the Union Government, accept any present, emoluments, office or title of any kind from any foreign State."

Mr. M. R. Masani: In commending this amendment to the House, I would point out that changes made in the present clause are in two directions. The first, which is an important one, is that the word "heritable" be dropped. This will mean that the Free Indian State will not confer any titles of any kind, whether heritable or otherwise, that is, for the life of the incumbent. It may be possible for the Union to honour some of its citizens who distinguish themselves in several walks of life like science and the arts, with other kinds of honours not amounting to titles; but the idea of a man putting something before or after his name as a reward for service rendered will not be possible in a Free India. I think, Sir, the House will support this principle, because it has been found not only in subject countries but even in so-called free countries, that titles become dangerous and a source of corruption both to those who bestow them and to those who accept them. Therefore relying on patriotism, self-respect and the motive of service, we shall do without titles of any kind.

The other modification is to distinguish between citizens of the Union and those holding office under the State. Citizens of the Union, in the clause as amended, will not be free to accept any title from any foreign State while persons holding any office of profit or trust under the State would be able to accept emoluments or presents from foreign Governments only when their own Government permits it. That, Sir, would permit diplomats and others who might be permitted by their own Government to accept tokens of respect or appreciation from foreign Governments, I take it, Sir, that the meaning of the amendments has been made clear and I do hope that in the interest of equality between human beings and of democracy, the change which drops the word "heritable" will be accepted as well as the other change which I have indicated.

Shri Sri Prakasa (United Provinces: General): I think, Sir, that my amendment is included in the amendment which was moved by Mr. Masani. There is now no need for my amendment to be moved at all. I am not moving it.

Mr. H. V. Kamath: In view of the change in the clause as indicated, I think there is no point in pursuing my amendment.

Shri K. Santhanam (Madras: General): My amendment has been included in Mr. Masani's amendment.

Mr. R. K. Sidhwa: In view of the amendment moved by Mr. Masani, I do not think any necessity arises for me to move my amendment. I have stated that with the exception of academic degrees, no titles of any kind shall be conferred by the Union. I am told academic degrees will not be considered as titles; these could be given by the Universities or institutions. In view of this, Sir, I do not desire to move my amendment.

Seth Govind Das (C. P. & Berar : General): *[Mr. President, the resolution that has been moved is clear regarding future titles. But nothing has been said about those who already possess titles. It is an accepted fact that most of the title-holders have been so honoured by the foreign Government which has been ruling this country for the last two hundred years. If we look into the history of other countries, we find that after the French and Russian revolutions, all the titles were withdrawn. So far this Government has also been doing the same. If any of its title-holder participated in any political activity, it withdrew his title. Although I am not proposing any amendment in the matter, I wish to ask Sardarji if he does not want to redeem the people from medals of slavery.

I want that even the titles held by people at present should be withdrawn. The present title-holders should live in free India just as other people live.]*

Shri Balkrishna Sharma (U.P.: General) : *[Mr. President, I oppose this sub-section which lays down that no title shall be conferred in free India. I consider this against the tradition of my country and against the psychology of its people.

We have time and again tried to honour the dignitaries of this country in so many ways. We call someone 'Acharya', and Mr. President, we call you 'Deshratna'. We call Mahatma Gandhi by the name of 'Mahatma'. I consider it improper to make a decision against honouring our leaders as this tendency is inherent in our minds, our hearts and our culture. Therefore I oppose it.

Mr. Masani and other friends have expressed a contrary view but there is a reason behind it. The present democratic feeling compelled them to say that there should be no titles in our country. But I think that if in our free India some persons of our country do such work as deserves respect, there is no reason why we should not honour such great men with national titles on behalf of our countrymen. In Russia itself where socialism was first experimented upon, it was felt necessary after some time that the country should honour its generals, its military leaders and its distinguished workers with titles and medals. Therefore, I urge that before passing this resolution this House should seriously consider this matter, and should realise that the resolution is against our psychology and against our tradition. Therefore it should be rejected.]*

Shri Sri Prakasa: Mr. President.....

(At this stage, the Speaker was asked by the President to come to the loud speaker).

[] English translation of Hindustani speech.

[Shri Sri Prakasa]

I think, Sir, the acoustics of this hall are perfect, if only members knew not only what to say but how to say it. Sir, my esteemed friend Pandit Balkrishna Sharma has gone off the rails completely. (*Hear, hear*). He says that it is against the tradition of our country to abolish all titles and that we are very fond of such titles. What he forgets is that we are not claiming it as a fundamental right that no one could be given a title or an honour unofficially. What we object to is the State having the power to grant titles. (*Hear, hear*). You cannot prevent a whole people from paying their spontaneous homage to their liberator by calling Gandhiji, Mahatma Gandhi. While the State refuses to recognize that title, while the State puts him to long terms of imprisonment, the people go on calling him Mahatma Gandhi and cursing the State that puts the great man in prison.

There is this difference between the two titles. The receiver of a spontaneous title from the people feels embarrassed at it. He asks the people not to call him Mahatma or Deshratna or such things, while the person who receives a title from the State is most anxious that he should be called what the State gives him the privilege to call himself. Sir, I was horrified at the last session when you yourself referred to a member from your Province as "Rai Bahadur Sahib". I felt that the parents of the poor dear had forgotten to give him a name, and he had to wait for long years for the State to step in to give him one and ensure his being called "Rai Bahadur" for ever. While one title embarrasses the receiver, the other title makes him feel vain and proper. I think it is necessary in the name of freedom to ask for freedom from the imposition of such titles from the State and freedom from having to curry favour with the authorities in order to get a distinction from them.

Sir, I should like to make it plain that this clause does not prohibit even the State from bestowing a proper honour. We are distinguishing between titles and honours. A title is something that hangs to one's name. I understand it is a British innovation. Other States also honour their citizens for good work but those citizens do not necessarily hang their titles to their names as people in Britain or British-governed parts of the world do. That is all that this clause seeks to do. If the State wants to honour a citizen, if a citizen has done particularly good work, then there are a thousand ways in which that State can honour the citizen. If the people want to honour a leader, then they can also honour him; but we want to abolish this corroding, corrupting practice which makes individuals go about currying favour with authority to get particular distinctions.

We all know that long lists are printed or used to be printed every six months saying so and so is to be so and so, and many anxious people used to scan these list with great anxiety to find if their names were included or not. We want to stop all that practice. It is well known the Government did honour certain very deserving persons. In fact, when Mahatma Gandhi's name was included in the Honours' List, it was definitely stated by one of the leading papers that the Honours' List itself was honoured—that lustre was shed on the Honours' List—by the inclusion of the honoured name of Mahatma Gandhi in it. Later on, Mahatma Gandhi found it necessary to throw away that title in disgust, but the title of Mahatma still adheres to his great name and he has not thrown that away. Pandit Balkrishna Sharma, myself and all of us can go on and will go on calling him by that dear name and no one can prevent

us from doing so. We must distinguish between the title as imposed on an individual by the State and the honour that the people give spontaneously to one of their great men. I hope, Sir, that it would be clear to all sections of the House that it is most essential that the system of bestowing titles by the State should disappear. I also hope, Sir, that, the amendment moved by Mr. Masani will commend itself to the unanimous acceptance of the House. (*Hear, hear*).

Shri R. V. Dhulekar (U.P.: General): *[Mr. President, it is painful to me that my friend Mr. Balkrishna Sharma should have made such criticisms against the tradition of Indian civilisation, which were never to be expected of him. In ancient days our State authorities considered the sages outside their jurisdiction. If Panditji (Balkrishnaji) has looked through our ancient books, he would know that the religious places of the Hindus were outside the jurisdiction of the State.

I beg to submit that such observations and particularly from such a gentleman are not desirable. At a time when India is going to be liberated, it is improper for us to say that we should continue the old slave mentality; it is utterly unbecoming of us to say that since we are doing this for the welfare of the world, we should be rewarded with honour in our life-time. I beg to tell the House that it has always been the tradition of sages in India that they considered God as their guide and with all sincerity and humility did their work. I believe India is the only country in the world where deeds are not actuated by selfish motives. Even religious devotees in India do not pray to God for any selfish purposes. I want to tell the House that Indians want this ancient way of life to be followed in the world. We want to tell the world that we Indians work for the welfare of the whole world and want nothing in return. What Panditji has said will prove that we want some return for the work we do for the benefit of the public. Therefore, I would say that it is not fair on his part to make such an observation. I support the amendment moved by Mr. Masani and appeal to the House to accept it.]*

Mr. H. V. Kamath: Mr. President, Sir, I rise to support my hon'ble friend, Seth Govind Das. The issue raised by him is to my mind an important one inasmuch as, while we are thinking about the future, we have given no consideration as to what we shall do about the titles that have already been conferred by the alien imperialist Government who have been all these years suppressing our freedom movement and who have been conferring titles on these people who have aided them in suppressing our freedom movement. This point is, to my mind, a vital one. I am very well aware that in this House we have got a few title-holders. I do not seek to cast any aspersions or any reflections upon them individually, but today let us remember that we are standing between two worlds, one dead, the other struggling to be born, and we are trying to usher in a FREE INDIA which will redress the balance of the old decrepit world. Our "Quit India" resolution is fast coming to a successful close, and while we are seeing that the British Government is going lock stock and barrel, we are eager, nay, anxious—that all associations, all connections with that foreign Government should also go with it. Therefore I support my hon'ble friend Seth Govind Das and submit that all titles conferred by the alien Government, by the foreign imperialist Government, shall be void at the time of the inauguration of the free Indian Union.

*[English translation of Hindustani speech begins.

] *English translation of Hindustani speech ends.

The Hon'ble Sardar Vallabhbhai Patel: Closure.

Shri Sri Prakasa: If Seth Govind Das's amendment is accepted, will the name of his palace at Jubbulpore also be changed ? (*Laughter.*)

Mr. President: We will settle that later. (*Laughter.*)

Mr. R. K. Sidhwa: On a point of order, Sir, may I ask whether we can give retrospective effect to this clause ?

Mr. President: That question does not arise as no amendment has been moved.

The Hon'ble Sardar Vallabhbhai Patel: Sir, I do not see any point in discussing this matter of giving retrospective effect by people who have no title to surrender. But in the first place, I will read the motion as it runs after the acceptance of some of the amendments that have been moved. The motion is:

"No title shall be conferred by the Union.

No citizen of the Union shall accept any title from any foreign State.

No person holding any office of profit or trust under the State shall, without the consent of the Union Government, accept any present, emoluments, office or title of any kind from any foreign State."

Now, this in effect becomes the motion, and if, it is passed by the House, instead of our discussing what happened in the past, it would work automatically and therefore we need not go into the discussion of past events or try to give retrospective effect. After all, many titles have been surrendered during the last year or two and the titles have lost their value. What we are legislating really is for the future and not for the past. But there are still some people who have got that attitude, that frame of mind; because of what happened in the past they still think of the past. It is unnecessary to dilate on this matter. It may show an attitude which may be resented by some and which may be interpreted as a sign of spiteful feeling. I do not think we should discuss this matter at all: after all, some of the people who have got titles may even carry them after their death. They have spent so much and have worked so hard for it. You do not know—you have no idea—how titles are got. Therefore we cannot put all of them on the same line. Let us leave them alone. Let us forget all about past titles. What we now want to do is to think about the future. One Hon'ble Member from Benares says: "I oppose this Resolution." Another Hon'ble Member from the same city says: "I am in favour of it." I do not understand this. What is this ? Who is going to prevent people from conferring a title or take away a title conferred by the people? They are not titles really. They are attributes of virtues, which people see in them. If Mahatma Gandhi is called "Mahatma Gandhi", it is not because people want to confer any title on him, but they see in him something divine, some virtues they see in him which they admire and respect and therefore the State has nothing to do with it. We are legislating, or trying to legislate, on what the State will do or what the State should do, not on what the people can or should do. There may be sections of people who want to give titles. For instance, which State will prevent the Muslims from conferring the title of "Qaid-e-Azam" on Mr. Jinnah ? It is an absurd idea. We should not think about it. People will do what they think proper to do. But these titles are conferred by the State. There may be party governments; there may be other governments. They should have no authority to give any inducements or to corrupt people in order to build up their party or to obtain or derive strength by unfair means. Therefore there is no need for discussion on this question and I move that the clause as amended—I accept the amendments—be passed.

Mr. President: I will read the amendment first:

“No title shall be conferred by the Union.

No citizen of the Union shall accept any title from any foreign State.

No person holding any office of profit or trust under the State shall, without the consent of the Union Government, accept any present, emoluments, office or title of any kind from any foreign State.”

I now put the amendment to vote.

The amendment was adopted.

Mr. President: This becomes now the amended clause. I put the amended clause to vote.

The clause, as amended, was adopted.

CLAUSE 8—RIGHTS OF FREEDOM.

Mr. President: Then we go on to Clause 8*.

The Hon’ble Sardar Vallabhbhai Patel: I move clause 8 which reads thus:

*8. There shall be liberty for the exercise of the following rights subject to public order and morality or to the existence of grave emergency declared to be such by the Government of the Union or the Unit concerned whereby the security of the Union or the Unit, as the case may be, is threatened:—

(a) the right of every citizen to freedom of speech and expression:”

I do not move the proviso to be found in the Report:

“(b) The right of the citizens to assemble peaceably and without arms:”

Here again I do not propose to move the proviso:

“(c) The right of citizens to form associations or unions:”

The proviso to this sub-clause also I am not moving:

“(d) The right of every citizen to move freely throughout the Union:”

(e) The right of every citizen to reside and settle in any part of the Union, to acquire property and to follow any occupation, trade, business or profession”;

Rights of freedom

*8. There shall be liberty for the exercise of the following rights subject to public order and morality or to the existence of grave emergency declared to be such by the Government of the Union or the Unit concerned whereby the security of the Union or the Unit, as the case may be, is threatened:—

(a) the right of every citizen to freedom of speech and expression:

Provision may be made by law to make the publication or utterance of seditious, obscene, blasphemous, slanderous, libellous or defamatory matter actionable or punishable.

(b) The right of the citizens to assemble peaceably and without arms:

Provision may be made by law to prevent or control meetings which are likely to cause a breach of the peace or are a danger or nuisance to the general public or to prevent or control meetings in the vicinity of any chamber of a Legislature.

(c) The right of citizens to form associations or unions:

Provision may be made by law to regulate and control in the public interest the exercise of the foregoing right provided that no such provision shall contain any political, religious or class discrimination.

(d) The right of every citizen to move freely throughout the Union:

(e) The right of every citizen to reside and settle in any part of the Union, to acquire property and to follow any occupation, trade, business or profession:

Provision may be made by law to impose such reasonable restrictions as may be necessary in the public interest including the protection of minority groups and tribes.

[The Hon'ble Sardar Vallabhbhai Patel]

To the proviso to this sub-clause, there is a small formal amendment to be made which I will move presently. It will be moved later. This proviso is on the lines of clause 5. It reads:

“Provision may be made by law to impose such reasonable restrictions as may be necessary in the public interest including the protection of minority groups and tribes.”

The word ‘reasonable’ may have to be omitted after discussion on an amendment that is expected to be moved.

I see that there are some amendments to this motion. When they are moved I shall give my reply.

Mr. President: I now call upon Shri Ajit Prasad Jain to move his amendment.

Shri Ajit Prasad Jain (U.P. : General) : Sir, I have given notice of an amendment to this clause, but I do not propose to move it. I would, however, request the Hon'ble Mover to make it clear that the declaration of an emergency should be done under authority derived from law. It is not now clear as to who will be the authority that is empowered to declare an emergency. I wish that the Legislature should have the right to declare an emergency and no other body. If the power to declare an emergency is placed in the hands of the executive, it may on occasion, work harshly. It is with this object that I sent up this amendment.

Mr. President: Do you or do you not move the amendment?

Shri Ajit Prasad Jain: I do not move the amendment, Sir.

Rai Bahadur Syamanandan Sahaya (Bihar : General) : Sir, before we proceed with the amendments I should like to make a submission. Actually we are considering the Report at present and the proposition moved was that the Report be taken into consideration. The Hon'ble Mover, in moving Clause 8, suggested dropping all the three provisos and, in fact, did not move their adoption at all. The proper thing to do, it seems to me, is to move for their omission by way of an amendment and not simply to say that they are not being moved. This forms part of our proceedings. If we simply omit the provisos in the manner suggested by the Hon'ble Mover, one may not know how and why they were omitted. I simply want to draw the attention of the Mover to this position.

The Hon'ble Sardar Vallabhbhai Patel : I have no objection to the course suggested. It may be taken that I have formally moved for the omission of the provisos to (a), (b) and (c).

Mr. Somnath Lahiri : Sir, as I have amendments to all the sub-clauses of clause 8, I request you to allow me to move all of them together. Some of them have become redundant now in view of the fact that the Hon'ble Mover has dropped the first three provisos.

Sir, my amendment to the proviso 8(a) to delete the word ‘seditious’ has become unnecessary, because the whole proviso is to be deleted.

My next amendment is to substitute for the whole of clause 8(b) the sentence “The right of the citizen to assemble”. Here also, except two or three words, the rest have already been proposed to be deleted.

My last amendment runs thus:

“After clause 8 the following new clauses be added and existing clause 9 be renumbered as clause 14, and consequential changes be made in the subsequent clauses:—

9. No person shall be detained in custody without trial.

10. (a) Liberty of the press shall be guaranteed subject to such restrictions as may be imposed by law in the interests of public order or morality.

(b) The Press shall not be subject to censorship and shall not be subsidised. No security shall be demanded for the keeping of a Press or the publication of any book or other printed matter.

11. The privacy of correspondence shall be inviolable and may be infringed only in cases provided by law.....”

Mr. Dharendra Nath Datta (Bengal : General) : The Hon'ble Member is suggesting new clauses. We are now dealing with clause 8. He may at best move his amendments to clause 8 and not move new clauses.

Mr. Somnath Lahiri: All these clauses have reference to the subjects' right to freedom and so on. I can move them now or later on. Both mean the same thing,

Mr. R. K. Sidhwa: I rise to a point of order. If Mr. Lahiri is allowed now to move all his amendments, similar opportunities may have to be given to other members also. I submit that the consideration of all these new clauses may be held over till we finish the main business. It will otherwise be doing an injustice to us.

Mr. Somnath Lahiri: Even if you ask me, Sir, not to move this amendment now, as soon as this is over you will have to ask me to move it. So it comes to the same thing.

Mr. K. M. Munshi: May I rise to a point of order ? Clause 8 has been moved. The House is considering a number of amendments to clause No. 8. Now, Mr. Lahiri wants to suggest certain additions. Really speaking, they are independent matters, and as such they require independent consideration. They have nothing to do with clause No. 8, and as such, they should be treated as independent motions. The House is now considering the Report and after the Report is finished, if there are any additional matters, they may be considered by the House. In the Report itself, it has been mentioned that several fundamental rights have not been brought before the House and that the Advisory Committee is considering them. The appropriate procedure would be for all these new matters to be sent to the Advisory Committee for its consideration. This is what clause 20 of the May 16 Statement contemplates.

Mr. Somnath Lahiri: I have already said that, since I have put up these amendments, I have to be called after clause 8 has been finished. The clauses that I have moved also refer to the same subject "Rights of Freedom". Therefore I am quite in order in asking to be allowed to speak now.

Sri K. Santhanam: Many of us have got similar clauses to be added. For the convenience of the House, I propose that all the new clauses be taken up later on after the Report has been considered.

Mr. Somnath Lahiri: If you give a ruling like that, Sir, I have no objection.

Mr. President: There are two view points placed before the House. Mr. Lahiri has a number of fresh proposals which are not exactly amendments, but which are new proposals which he wants to be added to the fundamental rights. There are other members who have got similar proposals to be brought into the fundamental rights. The question is whether they should be taken as independent resolutions at this stage or later on.

Mr. K. M. Munshi: Later on, Sir.

Mr. President: Those who would like these new clauses to be taken up at the end of the discussion with regard to fundamental rights will please say 'Aye'—those against will say 'No'.

The motion was adopted.

Shri Balkrishna Sharma (United Provinces: General): I submit this is a matter for your ruling, Sir, not a matter for voting, Sir.

Mr. Somnath Lahiri: I do not take part in the voting as a protest, Sir, because I think this is not a votable matter.

Mr. President: Your amendments now.

Mr. Somnath Lahiri: My amendments are Nos. 48, 49 and 52 of Supplementary List I.

No. 48—"That in clause 8 for the words 'security or the Union' the words 'defence of the Union' be substituted."

No. 49—"That in clause 8(a) the word 'seditious' be deleted."

No. 52—"That for the whole of clause 8(b) the following be substituted:—

'The right of the citizens to assemble'."

I am glad that the Mover of the Resolution has agreed to the deletion of some of the provisos of this clause. I am especially glad because the Congress Party members did not take the advice of Professor Ranga who thought that democracy and liberty are harmful to India, because democracy and liberty are supposed by him to have helped Nazis to power in Germany. Anybody who knows a little bit of history knows that Nazism was not the result of having too much of democracy. Nazism came into power in Germany because the rights and liberties that were given under the Weimar Constitution were challenged by force by the capitalist classes in Germany with the help of Hitler's Nazi gangsters, and the Social Democratic Party failed to rally the working classes of Germany to challenge that force with force. That was the main reason why Nazism came into power there, not because there was an extra amount of freedom.

I am very glad, Sir, that these provisos against which I fought—may be, very bitterly for which I express my regrets also—have been done away with. That is very good. That means that my amendment No. 49 will not be necessary and No. 52 also will not be necessary. Only 48 will be necessary. The clause reads:

"There shall be liberty for the exercise of the following rights subject to public order and morality or to the existence of grave emergency declared to be such by the Government of the Union or the Unit concerned whereby the security of the Union or the Unit....."

I want it to read, "defence of the Union" instead of "security of the Union". The word 'security' is a very vague term and may mean anything. In the past we have seen the Government taking advantage of the vagueness of this term. Defence of the Union is certainly a thing which should be guarded and for this special power may be needed. It is an important amendment. I have got nothing more to say.

Mr. R. K. Sidhwa : My amendment which is in relation to clause (c) on the agenda reads thus. Sub-clause (c) says:

"The right of citizens to form associations or unions;"

My amendment is to the following effect : Add at the end of the sub-clause the words :

"for the purpose of safeguarding and ameliorating economic condition and the status of workers and employees shall be guaranteed."

As this is considered a new clause, I reserve my right to move it at the appropriate time.

With regard to provisions to (a), (b) and (c) as the motion for deletion of the same stands in my name, with your permission, I would move that these provisos be deleted. My point is that when we are giving

the right to every citizen the freedom of speech, it is certainly desirable that we should not restrict this liberty by these provisos. I do not think that it is necessary, because the clause is otherwise self-explanatory. While we are prepared to give certain rights to every citizen the provisos make those rights nugatory. I therefore propose that they may be deleted.

As regards Mr. Lahiri's amendment regarding the substitution of "defence" instead of "security", I do not understand how defence could be secured without security in the country. Security is essential in the State and in the Union. Therefore security is very necessary and I do feel that the original wording, as it stands, should remain.

Shri Mahavir Tyagi: Sir, I am rather in a fix about my amendment. There is already an amendment before the House which seeks to remove all the three provisos that occur after sub-clauses (a), (b) and (c). If this amendment is carried my amendment would be redundant. But if the House thinks otherwise and remains the said provisos, then I should suggest that the words "or to prevent or control meetings in the vicinity of any Chamber of a Legislature" occurring at the end of the proviso to sub-clause (b) be deleted. Sir, I deem it a privilege of the people to hold meetings even immediately in the vicinity of any Chamber of a Legislature and thus make their legislators feel what their voters want them to do. In short, I beg to request you, Sir, to take into consideration my amendment only if the House decides not to delete the said provisos altogether.

The Hon'ble Rev. J. J. M. Nichols-Roy (Assam: General): Mr. President, Sir, the amendment which stands in my name has two parts, namely,—(1) that in the first line of the proviso to sub-clause (e) of clause 8, the word 'reasonable' be deleted; and (2) that after the word 'tribes' the words 'and tribal areas' be added. I want to move only the first part. I do not want to move the second part. So the proviso as I propose will read thus :

"Provision may be made by law to impose such restrictions as may be necessary in the public interest including the protection of minority groups and tribes."

The word "reasonable" will create a great deal of contention and confusion. If a State or a Unit will impose restrictions some one may go to the Supreme Court as provided in clause 2 and say they are not reasonable. So I consider that protection to be made by law for groups and tribes is not a proper and safe protection. At present there is a great deal of misapprehension in the minds of the people in the tribal areas and in the partially excluded areas of Assam that their coming in with India will partially bring them under the exploitation of the people of other parts of India and that the present protection which they have for their lands will be withdrawn. So many of them are afraid to be brought within the new Constitution of India. When we, the Sub-committee of the Advisory Committee were in the Lushai Hills, some of the Lushai people expressed an idea that it might be better for them to be connected with Burma instead of being connected with the Province of Assam. Though they are now in Assam, yet they are afraid that in the new Constitution all the protection which they have up to the present received from the British Government might be withdrawn. In order to remove this suspicion, it will be very necessary that an authoritative statement be made by the Member of the Interim Government, Pandit Jawahar Lal Nehru, who is in charge of these Tribal Areas, that the protection which the tribes in Assam now have

[The Hon'ble Rev. J. J. M. Nichols-Roy]

for their land will not be withdrawn. I shall indeed be very thankful for such a statement if it will be made in this House or somewhere else. I understand that this provision is purposely put in here in order to safeguard the land and other interests of minorities and tribal people. But this provision will be misunderstood and misinterpreted in some quarters especially on account of the privileges given by the main sub-clause (e) to every citizen in India—and therefore it will create a great deal of confusion in their minds. For that reason I do request again that such an authoritative statement be made by Pandit Jawahar Lal Nehru. This will greatly help the Sub-Committee who will visit these tribal areas, during their course of enquiry.

Prof. K. T. Shah (Bihar: General): I do not move my amendment (No. 18 of Supplementary List II) at this stage.

Mr. Jaipal Singh (Bihar: General): Mr. President, there was hardly an hour between our rising yesterday and the time fixed by you for submission of amendments. I have to apologise to the House for the wording of my amendment No. 19* of Supplementary List II, not being exactly as a draftsman would have put it.

The whole idea behind my amendment is to point out to the House that the Sub-Committees appointed to go round the Excluded and Partially Excluded Areas have not yet submitted their findings and their report has not yet gone to the bigger Advisory Committee. Here we have a clause with a provision which is vital to Adibasi millions and which should depend upon our knowledge of the recommendations of these two Sub-Committees, particularly the Sub-Committee which has to deal with the Tribal Areas of the North East, shall I say, the Bengal-Assam Group. Until we know what their recommendations are, it seems to me unwise, inexpedient and premature that we should be discussing a clause and its provisions at the present moment. I would like to suggest, Mr. President, if I may, that this clause be held over till the reports, particularly of the two Tribal Sub-Committees, are submitted. Then we would know what their recommendations were.

Mr. President, I have said on another occasion previously on the floor of this House that land is the bulwark of aboriginal life. Here we are dealing with a provision which is going to mean the life or death not only of the 34 Tribal areas which are now known as fully Excluded or Partially Excluded Areas, but of many more millions living outside these tracts. Take, for example, Bengal. There you have very nearly 20 lakhs of Adibasis who are in neither the Excluded nor the Partially Excluded Areas. Their problem also will have to be considered by these two Sub-Committees although technically they are supposed to deal only with those tracts that are called Excluded or Partially Excluded Areas. I have no desire at this interim stage to press my amendment. I only want to point out that we are trying to arrive at a decision, even though we may call it an interim decision,—I am told at the present moment all this will come under review,—we are simply multiplying our work, wasting time by trying to come to a decision on an issue that must depend on the recommendations about to be submitted by these two Sub-Committees. This is my humble submission. I am relieved to hear that the mover has no objection to the deletion of the word 'reasonable'. If

*That at the end of Clause 8, the following be inserted:—

“Existing laws for the special protection of Tribes shall continue and further provisions may be made by law to impose such restrictions as may be necessary in the public interest including the protection of Tribes and minorities.”

you read the wording of the amendment I have submitted it falls into two parts. First, I want an unequivocal assurance, either here or somewhere else, which will make it absolutely clear to the nearly 30 million tribal people in India,—this is according to the 1941 Census, and whether it is right or wrong, that is beside the point—a definite assurance that the protection that obtains for Adibasis under the existing laws shall continue. The clause, as it stands, has already created a very very serious fear in the minds of the tribal people. The two Sub-Committees will have to go again to Assam; they have still to go to areas like Chota Nagpur. I want to stress from the Adibasi point of view, that land is and must be the bulwark of aboriginal life. I think the Premier of Assam will bear me out when I say that it will be impossible for him and the Sub-Committees to go about Excluded and Partially Excluded Areas unless this assurance is given that this clause is in no way going to affect their present protection. The Honourable Member preceding me has, in a way, stressed that point. There is already much misunderstanding. I would rather that this clause stood over till the reports of the Sub-Committees were submitted. For example, wherever we have been, it has been urged upon us that for several years to come, the aboriginals' land must be inalienable. If I were to fight for that particular, shall we say, protection, most members would laugh. A friend of mine, only this morning when I was talking to him, said, "Do you want for eternity that aboriginal land should remain inalienable?" That is how some of the demands vital to Adibasis are ridiculed. We have been talking about equality. Equality sounds well; but I do demand discrimination when it comes to holdings of aboriginal land. That is why I urge that this particular clause be held over till the reports of the particular Sub-Committees which have to deal with the people whose rights will be affected are received before we come to any decision however temporary or interim it might be. I appeal to the Mover, Sardar Vallabhbhai Patel, that this clause and its provisos be held over. I have no desire at this stage to press my amendment.

Shri Khurshed Lal (United Provinces: General): In view of what has been said already I do not move my amendment (No. 20 of the Supplementary List II).

Dr. Suresh Chandra Banerjee (Bengal: General): In view of the decision taken just now, I shall move my amendment (No. 21 of the Supplementary List II) at the appropriate time.

Shri Khurshed Lal: I desire to reserve my right to move my amendment at a later stage. It was put in as an independent clause after clause 8. I wish to reserve my right of moving it after the Report has been considered.

Mr. K. M. Munshi: Mr. President, Sir, now that the other provisos to Clause 8 are gone, the only proviso that is left is the proviso to sub-clause (e); but before I refer to it, I should like to move my amendment with reference to sub-clause (e) :

"(1) That the following words be added in Clause 8(e):

'Hold or dispose of' between the words 'acquire' and 'property';

(2) Substitute the words "exercise or carry on" between "to" and 'any occupation'."

With these changes, the sub-clause will run as follows:—

"The right of every citizen to reside and settle in any part of the Union, to acquire, hold or dispose of property and to exercise or carry on any occupation, trade, business or profession."

[Mr. K. M. Munshi]

This is, all those portions which were omitted in clause 5 by reason of this amendment will be carried into this clause. Then I understand there is another amendment moved with regard to the deletion of the word "reasonable". My third amendment is to the same effect. With regard to the last sub-clause, there was a reference to an amendment that "tribal areas"; should be used there instead of "tribes". The word "tribes" has been used in the proviso for this reason that there may be tribes which may not be in tribal areas and it is necessary that the proviso should cover both, viz., tribes 'which are in tribal area as well as those outside it. There is no need of any apprehensions with regard to it. If I may mention, Sir, this proviso fully covers the doubts raised by my friend, Mr. Jaipal Singh. It does not say that all the existing rules would be abrogated. On the contrary, under clause 2 all the existing laws in force in the Union or any part thereof will continue unless they conflict or are inconsistent with the Fundamental Rights.

Dr. P. S. Deshmukh (C.P. & Berar: General): I rise to support the amendment which seeks to delete the word 'reasonable' from the proviso, I also support the suggestion made by my friend, Mr. Jaipal Singh regarding deferment of the whole of the clause for further consideration. I have, however, no objection to retaining the first portion of the sub-clause, that is to say, "the right of every citizen to reside and settle in any part of the Union". The other part of the sub-clause should, however, be held over. In supporting my friend, Mr. Jaipal Singh, in this particular matter, I have some very strong considerations in view. I would like to point out to you, Sir, and to the House that the whole of India and especially the masses of India expect the Indian Constitution to, have a definite socialistic bias. If this clause is retained in the form in which it is put down here, I am sure we will be strengthening the suspicion of the Indian masses that this Constituent Assembly is so inalienably wedded to the vested interests that they have no hope of any socialistic principles being embodied in the Indian Constitution. Here, Sir, we have a very curious provision indeed. I do wish to avoid the use of strong words, but it is strange that we should set out to protect the minority groups, in the matter of acquisition of property. I think it should be a matter of common knowledge that the vast majority of the population of India which consists of agriculturists and labourers has everywhere been exploited by small minority groups. This is so great an evil that the majority is crying for protection against them. In the Fundamental Rights before us we are trying to protect precisely those very minority groups against whom we want protection against whom the labouring classes and the peasants want protection. My submission to this House is that we must give this matter a little more consideration. Although Sardar Vallabhbhai Patel stated that the Interim-Report presented to the House was not haphazard. It was admitted that the Committee did not have time to consider properly every possible point of view. With that statement of the situation, Sir, and with all the things that have been mentioned in the forwarding letter of Sardar Patel it is clear that the Report contained many things which will lend themselves to further consideration. So far as this clause is concerned, it is the labour who requires protection, it is the agriculturists who require protection against unlimited acquisition of property. It is also worth investigating if this matter could not be left to the Provinces to legislate upon; I would certainly welcome this. In my opinion the Centre should not interfere because the effect of this would be that while you are not going to have socialism at the Centre, you will be preventing it from being introduced in the future Indian Provinces also.

Mr. Somnath Lahiri: Sir, I support the suggestion of Mr. Jaipal Singh regarding special protection to the tribal people. These people are down-trodden and backward and need special provisions for their protection. It is not even, as Prof. Shah seems to suggest, a question of socialistic bias, but even in a bourgeois democracy the tribal people should have the existing and future provisions for their protection to bring them up at least to a minimum level. That is why I support Mr. Jaipal Singh's suggestion.

Srijut Rohini Kumar Chaudhury (Assam: General): I oppose the amendment which was moved by my Honourable friend, Mr. Jaipal Singh. I consider that it would be extremely unwise to have that amendment accepted by the House.

Mr. Jadubans Sahay (Bihar: General): On a point of order, Sir. Is it a fact that Mr. Jaipal Singh has not pressed his amendment and that he has made certain general observations only ?

Mr. President : I think he did move an amendment.

Srijut Rohini Kumar Chaudhury: I want to refer to that. I support the main motion as amended by the Hon'ble Mr. Nichols-Roy, but I would like to make some alteration as regards the proposal which was made that special protection of existing laws should be maintained. There is a regulation called Chin-Hill Regulation. I wonder how many Honourable Members of this House know about it. That Chin-Hill Regulation entitles any political officer to evict from its precincts any one who may be considered undesirable. That regulation has now been withdrawn in some places, but it is still in force in most of the places in the Hills. I only desire to point out that such curtailment of liberties in towns and other places where people can be evicted should be looked into.

They were not intended *bona fide* to protect the tribal people, but were meant to isolate them from their brethren in the plans so that there could be greater exploitation by British people.

The Hon'ble Pandit Jawaharlal Nehru (United Provinces: General) Sir, I confess I am a little confused. I do not know where we stand after all this welter of amendments which have been moved and not moved and withdrawn and not withdrawn. I do not know how other Members stand in this matter, but there is utter confusion in my mind as to what is being discussed. As far as I can make out, the present position is this. The clause stands with the first three provisos omitted and with certain other minor changes. In regard to (e) the proviso remains with this difference that the word "reasonable" is sought to be removed, and certain other changes have also been sought to be made. So much has been said which has no reference to the clause. I do not know if I am correct in understanding the position as that. I am supporting the clause, 'that is to say, without those three earlier provisos, with the last proviso to clause (e) being retained and with the removal of the word "reasonable" from that proviso.

It seems to me that there is also confusion in regard to another matter. Honourable Members seem to forget that we are dealing with fundamental rights. We are not legislating at the moment in regard to any matter. Various things have been brought to our notice—very desirable things which should be done or should not be done, but they having nothing to do with fundamental rights in a constitution, we can consider them separately; we can lay them down even as a part of the Constitution, if you like—or much better, a law could be framed accordingly. There is this confusion, this overlapping, and hence I think a great deal of difficulty has been brought into the picture. A fundamental

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right should be looked upon, not from the point of view of any particular difficulty of the moment, but as something that you want to make permanent in the Constitution. The other matter should be looked upon—however important it might be—not from this permanent and fundamental point of view, but from the more temporary point of view.

Now, Mr. Jaipal Singh moved an amendment which I gather he did not press. As far as I am concerned, I entirely agree with him, but I do not see what it has to do with fundamental right. I completely agree that the tribal areas and the tribal people should be protected in every possible way (*Hear; hear*), and the existing laws—I do not know what those laws are, but certainly the existing laws should continue and may be, should be, added to when the time comes. But thinking of this in terms of a fundamental right would be, I submit, entirely wrong. Mr. Nichols-Roy called upon me not once but several times to speak here and make clear my position apparently in some other capacity than I possess here. He referred to the Interim Government and to the External Affairs Department. Well, Sir, I need not remind the House that I am not here as a Member of the Interim Government or as a Member in charge of the External Affairs Department. I am here as representing the people of the United Provinces. But forgetting my representative capacity, I should like to say—and I am quite sure the House will agree with me, and, indeed, the House, in accepting the first Objectives Resolution, made this point clear even then,—that every care should be taken in protecting the tribal areas, those unfortunate brethren of ours who are backward through no fault of theirs, through the fault of social customs, and may be, ourselves or our forefathers or others; that it is our intention and it is our fixed desire to help them as much as possible; in as efficient a way as possible to protect them from possibly their rapacious neighbours occasionally and to make them advance. I can assure Mr. Nichols-Roy that in so far as I have any say in this matter in any Government or otherwise, I shall try to do that. I think, however, that it is not a question of my desire or someone else's desire. I think it is bound to be the policy of any Government of India because that is likely to be an accepted principle of Indian politics today and I do not think any Government even if it was not keen on this issue would very well go against it. So I submit, Sir, that people interested in tribal areas should rest assured completely because, if any person ceases to be vigilant in the defence of any right or freedom, that freedom or right is likely to be swept away. So I want them to be vigilant, but nevertheless, I want them to feel sure that they have the sympathy of the whole of India with them. (*Cheers*).

Mr. K. M. Munshi: May I in the interest of a little more accuracy suggest a change of wording? I find that there is a defective word used in the first Preamble:

“There shall be liberty for the exercise of the following rights subject to public order and morality or to the existence of grave emergency.”

I move this verbal change that instead of the words “to the existence of grave emergency”—that does not sound much sense—we use the words “except in grave emergency”.

The Hon'ble Sardar Vallabhbhai Patel: Now, Sir, I accept Mr. Munshi's verbal amendment in the first paragraph. I also accept that the word “reasonable” be dropped in the last proviso. So the clause is as I moved dropping the proviso to clause (a), proviso to clause (b) and proviso to clause (c) and in clause (e) there is an addition which Mr. Munshi has moved which I accept. Mr. Nichols-Roy said something about the tribal areas. Now, there remains another amendment by Mr. Lahiri about the word “security”. Mr. Lahiri has moved an amendment to substitute for

the words "security of the Union", the words "defence of the Union". I strongly oppose it. Mr. Lahiri has an acute mind. He knows that internal security is more necessary than security outside. However, he puts "defence" instead of "security", so that there will be defence outside and internally there may be chaos. The word 'security' was selected deliberately and it should not be replaced.

The Hon'ble Rev. Nichols-Roy, was concerned about the protection of minority groups and tribes and Mr. Jaipal Singh had some apprehensions about the tribal areas. Now, with regard to the word 'tribes', my own feeling is that it is not an appropriate word. The expression 'protection of tribal areas', similarly, is not a happy one. This expression will convey the meaning that we are now concerned with the protection of certain areas. That is, if some external trouble is expected or if some encroachment is going to be made there, 'the protection of tribal areas', will carry a different meaning.

Mr. Jaipal Singh has apprehensions that the present laws which afford protection and security to the tribal people will be removed. I do not see why there should be any such apprehension. We are not here legislating or doing anything by way of repealing the existing Acts. This clause relates to Fundamental Rights. It does not do away with the existing laws. Existing legislation is left untouched except in so far as it abrogates the fundamental rights for the protection of the Constitution. Therefore there is no reason to entertain any fear about it. But I would like to make one thing clear. Is it the intention of people to defend the cause of the tribals to keep the tribes permanently in their present state? I do not think it is in their interest to do so. I think that it should be our endeavour to bring the tribal people to the level of Mr. Jaipal Singh and not keep them as tribes, so that, 10 years hence, when the Fundamental Rights are reconsidered, the word 'tribes' may be removed altogether, when they would have come up to our level. It is not befitting India's civilization to provide for tribes. What is the meaning of tribes. What is it that the word means, and is it so? It means something and it is there because, for two hundred years, attempts have been made by foreign rulers to keep them in groups apart with their customs and other things in order that the foreigners' rule may be smooth. The rulers did not want that there should be any change. Thus it is that we still have the curse of untouchability, the curse of the tribes, the curse of vested interests and many other curses besides. We are endeavouring to give them all fundamental rights. It should be our endeavour to remove these curses. Therefore, ten years hence, when we reconsider the position, we hope to be in a position to replace the word. All the laws that have been given them protection are there. But have they protected them? It is not our desire to keep the tribes in their present condition. It is not the existing laws that are going to protect them. It is our own work, our own action and our own sincerity that will give them protection. Therefore I would appeal to Mr. Jaipal Singh not to entertain any apprehension. In free India there would be no occasion for fear haunting them as it has done during the last 200 years.

Mr. Jaipal Singh: On a point of order, Mr. President, may I say that I have no apprehensions of the kind regarding the tribal areas attributed to me by the Hon'ble Sardar Patel? He has, I am sorry to say, put his own interpretation on what I said. It may be true that the lot of the tribes might be improved hereafter. They may come to my level. But that does not mean that the policy we are pursuing should not be more protective and sympathetic. I know that we are going to reconsider it after ten years.

Mr. President: I shall now put the amendments first. As most of the amendments have been accepted by the Mover, I take it that the House assents to them. (*Voices: 'Yes'*).

The amendment for the deletion of the provisos to 8(a), (b) and 8(c) was adopted.

The Assembly also accepted the amendment to substitute the words "except in" for the words "to the existence of" occurring in line 2 of clause 8.

Mr. President: I shall now put Mr. Lahiri's amendment to the House. The amendment seeks to substitute the words "defence of the Union" for the words "security of the Union" occurring in the first para. of clause 8. As amended, it will read:

"There shall be liberty for the exercise of the following rights subject to public order and morality or to the existence of grave emergency declared to be such by the Government of the Union or the Unit concerned whereby the defence of the Union or the Unit, as the case may be, is threatened."

The amendment was negatived.

Mr. President: Then I come to amendment to sub-clause (e). As amended it will read:

"The right of every citizen to reside and settle in any part of the Union. to acquire, hold or dispose of property add to exercise or carry on any occupation, trade, business or profession."

The amendment was adopted.

Mr. President: Then I come to the proviso to sub-clause (e). The amendment is to drop the word "reasonable".

The amendment was adopted.

Mr. President: I shall now put the whole clause. I suppose it is not necessary that it should be read out.

Clause 8, as amended, was adopted.

CLAUSE 9—RIGHTS OF FREEDOM

Mr. President: Then we come to Clause 9*.

Mr. K. M. Munshi: I move that for the words "the equal treatment of the laws" the words "equality before the law" be substituted.

The amendment was adopted.

Mr. President: As regards the proviso there is a formal amendment to drop it. Then there are some amendments of which notice has been given.

(Messrs. Diwakar, Mohanlal Saksena and Mahavir Tyagi did not move their amendments.)

Mr. President: Then I come to the amendment saying that the proviso be dropped.

Mr. K. M. Munshi: I move that the proviso be dropped.

The amendment was adopted.

Mr. President: I put Clause 9 as amended.

Clause 9, as amended, was adopted.

*9. No person shall be deprived of his life, or liberty, without due process of law, nor shall person be denied the equal treatment of the laws within the territories of the Union.

Provided that nothing herein contained shall detract from the powers of the Union Legislature in respect of foreigners.

Mr. President: Now, we shall take up the Report of the Order of Business Committee. We shall take up the discussion of the further clauses of the Fundamental Rights tomorrow. Now, Mr. Munshi will move his Resolution.

REPORT OF THE ORDER OF BUSINESS COMMITTEE

Mr. K. M. Munshi: Mr. President, Sir, I beg to move the following motion:

“Resolved that the Constituent Assembly do proceed to take into consideration the report of the committee appointed by the resolution of the Assembly of the 25th January, 1947, to recommend the order of the further business of the Assembly.”

In moving this motion I have a few remarks to make. The report is before the House and I need not trouble the House at this late hour by reading it. The Report, as has been explained, is an interim report. We were expected to make a final report of the order of business, but we found it impossible to make a final report, and are seeking the permission of the House to submit a final report at a subsequent stage. The reason is obvious to all the Members. The political conditions in this country are changing fast and these changes naturally have their repercussions on the programme of this Assembly. Therefore, the Committee found it impossible to submit a final report.

Two factors, as has been already referred to by you, Sir, and also by Panditji have come into the forefront during the last few weeks. The first is the overwhelming insecurity in two of the provinces of India—Bengal and the Punjab—and this brought to the forefront the question about the partition of those unfortunate provinces, already referred to by you in your preliminary remarks. This might entail certain changes in the programme of the Assembly and this was one of the factors which prevented us from submitting our final report. The second factor has been the unfortunate fact that the Muslim League has not seen its way to come into the Constituent Assembly even now, and there does not appear to be any prospect of an immediate change, though every concession has been made and every consideration shown and though even the largest party in the country has given an invitation to it. This requires certain changes of programme on the part of the Constituent Assembly.

The Constituent Assembly as well as the Congress have over and over again said that they do not desire to impose any constitution on unwilling parts of the country, and if any unwilling areas stay out, it is not desirable that the Constituent Assembly should wait for ever for them. Now certain changes in the programme of business have become necessary and therefore it was impossible to set out a programme right to the end. Of course, it does not mean, so far as I understand it, that the Constitution that this House will form will not take into account the whole of India. We do, hope to make the Constitution on the basis that a time might come when even the unwilling areas who are staying out, or who want to stay out, will, within a short distance of time, come into the Union of India. The Constitution that we propose to formulate must be such as to enable the prodigal sons to return and they will be welcomed whenever they choose to come in. In view of these factors the Committee wants time to submit our final report.

The second consideration which has weighed with the Committee in formulating its programme has been the statement that His Majesty's Government made in Parliament on 20th February, 1947. That puts a time-limit. The Committee has, therefore, submitted that the Constituent Assembly must finish its work of framing the Constitution by the 31st October at the latest. This time-limit is essential in order that our

[Mr. K. M. Munshi]

work should be expedited and that the work should be done with promptness. If the House approves of this Report, a resolution will be moved that two Committees may be appointed. These Committees will perform work of an exploratory nature, and will work side by side. One of them will deal with the main principles of the Union Constitution, and the other with the principles of a model Provincial Constitution. It is expected that these two Committees as well as the other Committees, except perhaps the one dealing with tribal areas, will be ready with their reports by the third week of June. The programme that is envisaged in the report therefore is that all these reports not only of the Minorities Committee, the Advisory Committee, but also of these two Committees, should be before the House in its June-July sessions in the shape of, if I may use a well-known expression, a White Paper. Then decisions will be taken on the broad outlines of the Constitution of the Union as well as of the Provinces.

According to the Rules of the Constituent Assembly, we have to circulate our preliminary decisions to the provinces in order that their respective legislatures may consider them and give the House the benefit of their opinions. That will take about a couple of months, and possibly the period between the middle of July and the middle of September will be taken up in Provincial legislatures considering those proposals. Then it is proposed that we should meet somewhere about the middle of September or end of September so that we can complete our task before the 31st October. In the interval, after the House has taken decisions with regard to the main outlines of the Constitution it is intended that the drafting of the Acts should begin side by side so that in the October Session we may have a full and complete draft of the Constitution placed before the House. This is the general sketch of the programme and I hope that it will meet with the approval of the House.

Mr. President : I suppose nothing is to be said about the report. There is nothing more to be done I believe.

Mr. K. M. Munshi: The report has to be adopted.

Mr. President: I put the report to the vote of the House.

Sri K. Santhanam: There is nothing to vote about. The report may be recorded.

The Hon'ble Sri C. Rajagopalachariar: It is a report of another body to us. We record it.

Mr. K. M. Munshi: I beg your pardon. What I moved was consideration by the House because we want the permission of the House to make a subsequent report at a later date. There must be a decision of the House. Therefore, I move formally, if necessary, the adoption of this Report by the House.

Sri K. Santhanam: That means we accept the whole Report. The Honourable Member can move a motion for the appointment of the Committees, but the Report may be recorded. We accept the proposal for the Committees, but about the actual contents of the report, we need not commit ourselves to any particular date or any particular paragraph.

Mr. H. V. Kamath: The motion is for consideration and not adoption. It only says, "proceed to take into consideration the report..." there is no question of adoption.

Mr. R. K. Sidhwa: This report is merely for the information of the House. But if we want a decision of the House, there is one thing to

which I would like to make a reference regarding the date. It is apparently stated that the work should be completed by the end of October. We all wish that it should be done by that date, but there are yet many factors to be taken into consideration. Under the Rules, the Constitution in the draft form has to go to the various provinces, and we do not know whether the Provinces will adhere to the dates we fix. I also wish that the work should be finished as scheduled but our experience has shown that the dates fixed have had to be changed frequently. It will not be proper to consider every time an extension of the date. I submit that we should respect the laws we make ourselves and the rules which we have made and stick to the date, but in view of the existing conditions it is better not to fix a date.

Mr. President: I take it that the Report is to be recorded. Is that the view of the House?

The Assembly agreed.

The Report was recorded.

Mr. President: There are one or two points in the Report which the House will have to consider. One is that the Committee wants permission to submit a subsequent report. I hope the House agrees.

The second is that the Committee recommends that two separate Committees be appointed one to report on the main principles of the Union Constitution and the other to report on the principle of a model Provincial Constitution.

Dr. B. Pattabhi Sitaramayya (Madras: General): That will come up, as a separate resolution.

Mr. President: Shall we take that up now?

Dr. B. Pattabhi Sitaramayya: It will be a fuller resolution because the strength of the Committees has to be mentioned.

Mr. President: Shall we take that up now ?

Mr. R. K. Sidhwa: The motion may be made tomorrow.

An Hon'ble Member: You may take it up now.

Mr. President: I am entirely in the hands of the House.

Some Hon'ble Members: You may take it up now.

Mr. K. M. Munshi: I move:

“This Assembly resolves that in accordance with the recommendations contained in the Report of the Order of Business Committee the following Committees be nominated by the President with instructions to report before the next Session of the Assembly:

1. A Committee consisting of not more than fifteen members to report on the main principles of the Union constitution, and
2. A Committee consisting of not more than twenty-five members to report on the main principles of a model provincial constitution.”

“That carries out the recommendation at page 2 of the Report.

Mr. President: The motion before the House is:

“This Assembly resolves that in accordance with the recommendation contained in the Report of the Order of Business Committee the following Committees be nominated by the President with instructions to report before the next session of the Assembly:

1. A Committee consisting of not more than fifteen members to report on the main principles of the Union constitution, and
2. A Committee consisting of not more than twenty-five members to report on the main principles of a model provincial constitution.”

Mr. C. M. Poonacha (Coorg): Mr. President, Sir, I have a suggestion to make in connection with the terms of reference of the proposed two Committees which we are going to constitute, one for determining the principles of the Union Constitution and the other to prepare a model Provincial constitution. Sir, we have now in India four Chief Commissioners' provinces which are centrally administered. When the future principles of our Union Constitution are going to be determined, it obviously means that the question whether the future Union Government should have under its authority such centrally administered areas or not will have to be incidentally examined. The Cabinet Mission Statement of May 16, 1946, has reserved only defence, foreign affairs and communications for the Union Government. On that basis, I think, the Union Government in future will have nothing to do with the details of administration of any province including the Chief Commissioners' provinces. That being the position, the Committee that we are going to set up naturally will have to go into that question and give its recommendations thereon. Therefore, while determining the principles of the future Union Constitution, this problem will certainly have to be dealt with.

Coming to the functions of the other Committee, *viz.*, that which would draft a model Provincial Constitution, I am of the opinion that the existence and functions of the present Chief Commissioners' provinces will have to be incidentally covered because, while determining the minimum area population and revenue, Judiciary, principles of taxation, representation, administration and such other matters, the case of these small administrations will naturally be affected. Thus, it is clear—and I take it to be so to everyone here,—that the scope of both these Committees will certainly include the problem of the Chief Commissioners' provinces. Therefore, Sir, I would like to suggest that a small sub-committee of three—one from the Union Constitution Committee and two from the Model Provincial Constitution Committee—be constituted to examine the case of the existing Chief Commissioners' provinces by visiting each Chief Commissioner's province and help the above committees: to formulate their report. Such a procedure will also help us to deal with these subjects quickly in our Sectional meetings. We have the Chief Commissioners' Provinces of Delhi, Ajmer-Merwara and Coorg in Section A and the Chief Commissioner's province of Baluchistan in Section B. A detailed examination and suitable recommendations thereon will not only be useful but will also help us to speed up our work in the Sections.

Speaking about my own stand, Sir, I have given an assurance at the time of my election to this Constituent Assembly, stating that before deciding about the future of Coorg one way or the other, the people of Coorg will be consulted. So, the visit of a committee to these areas will also give an occasion to contact public opinion in these provinces while making a study of the various aspects connected therewith.

With these remarks, Sir, I suggest that the question of the Chief Commissioners' provinces be specifically included under the terms of reference of these two Committees and for that purpose a small sub-committee of these two Committees, as explained already be constituted. Sir, I have done.

Dr. B. Pattabhi Sitaramayya: Sir, I welcome, the proposal to appoint these two Committees and I wish to bring to your notice that I have given notice of a proposition relating to the linguistic redistribution of

provinces. That will be discussed in due course. I do not know whether I shall be in order in referring to the proceedings of the Party, but the Party has been good enough to say that the subject would be referred to these two Committees. I think it is opportune now for us to say that these two Committees will not only go into these questions which have been associated with them but that it would also be competent for these Committees to go into the question of the redistribution of provinces on a linguistic basis.

Mr. President: Do you want to reply ? (To Mr. Munshi.)

Mr. K. M. Munshi: This does not require a reply.

Mr. President: There are two points which have been raised one—by Mr. Poonacha that these Committees should go into the Constitution of the Chief Commissioners' provinces and that there should be a sort of sub-committee of these two Committees to deal with the question of the Chief Commissioners' provinces. There is another suggestion by Dr. Pattabhi Sitaramayya that this Committee should be authorised to deal with the question of the creation of linguistic provinces. I take it that these two Committees when constituted will take into consideration all these and other matters so far as they arise and will make their recommendations in due course. It will be remembered that what is wanted is only a sort of model constitution for the provinces and a constitution for the Union. The model provincial constitution might apply equally to any number of linguistic provinces that might be created. The model constitution need not necessarily require linguistic provinces for that purpose. It is just possible this may fall within the purview of the other Committee which will deal with the general principles of the Union Constitution and that Committee may suggest ways and means for the creation of linguistic provinces. I take it that this Committee will take into consideration all these questions and the question of the Chief Commissioners' provinces will also naturally arise before them.

Prof. N. G. Ranga (Madras: General): Does that mean that, supposing these two Committees come to the conclusion that this question need not be discussed at all and that they need make no detailed suggestions, this House will not be able to have any say in the matter ?

Mr. President : Nothing of the sort. The Committees will make their recommendations. It is always open to the House to correct any errors and remove any defects in their recommendations.

Now this motion is put to the House.

The motion was adopted.

Mr. President: I think we shall disperse now and meet tomorrow morning at 9 o'clock.

The Assembly then adjourned till Nine of the Clock, on Thursday, the 1st May 1947.

APPENDIX

CONSTITUENT ASSEMBLY OF INDIA

Report of the Order of Business Committee

We, the undersigned, members of the Committee appointed by the Resolution of the Constituent Assembly dated the 25th January, 1947, to recommend the order of the further business of the Assembly, have the honour to submit this our report.

We met on the 5th March, and on the 21st, 23rd and 27th April, 1947. Pandit Jawaharlal Nehru was, by special invitation, present at all the meetings of the Committee except the one held on the 23rd.

The Statement of His Majesty's Government made in Parliament on the 20th February, 1947, has imported an element of urgency into the work and proceedings of the Assembly and, in our opinion, it is essential that the constitution should be prepared well before the end of this year. The task of arranging the order of business and of framing a time-table is, however, by no means easy. The political situation is developing with great rapidity, and the changes that are taking place inevitably affect the work of the Assembly. We are not, therefore, in a position at this stage to make final recommendations except in regard to the immediate future; and we request that we be permitted to submit a further report at a subsequent stage.

We understand that when the Assembly meets on the 28th April, it will have before it the reports of the following Committees:—

- (1) The States Committee appointed by the Constituent Assembly on 21st December, 1946.
- (2) The Union Powers Committee appointed by the Constituent Assembly on 25th January, 1947.
- (3) The Advisory Committee appointed by the Constituent Assembly on 24th January, 1947, but only on the subject of Fundamental Rights.

After the business connected with these reports has been disposed of by the Assembly, we recommend that two separate committees be appointed one to report on the main principles of the Union Constitution and the other to report on the principles of a model Provincial constitution. We consider that there are many advantages in having two committees, perhaps with an element of common membership, working side by side and considering the interrelated principles of the Union and the Provincial constitutions. The work of the committees will be of an exploratory nature to facilitate and expedite the work of the Union Assembly or the Sections thereof, as the case may be. After the committees have been set up, we recommend that the meeting be adjourned to a date to be fixed by the President at his discretion. We suggest this flexible arrangement partly in order that the Assembly may avoid difficulties likely to arise from the fixation of a date in advance and partly because experience has shown that committees are not always able to work up to a rigid time-table.

The Constitution Assembly should complete its work by the end of October this year. A meeting will be necessary at the end of June or the beginning of July to consider the reports of the various committees and thereafter the matter of going into Sections. A meeting of the Assembly to finalise the constitution should be held in September.

K. M. Munshi,
N. Gopaldaswami,
Biswanath Das.

New Delhi, the 27th April, 1947.

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 1st May, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Hon'ble Dr. Rajendra Prasad) in the Chair.

INTERIM REPORT ON FUNDAMENTAL RIGHTS—*Contd.*

Mr. President: We shall proceed with the discussion of the remaining clauses.

CLAUSE 10—RIGHTS OF FREEDOM*

The Hon'ble Sardar Vallabhbhai Patel (Bombay : General): Clause 10 reads as follows :

“Subject to regulation by the law of the Union trade, commerce, and Intercourse among the Units by and between the citizens shall be free:

Provided that any Unit may by law impose restrictions in the interest of public order, morality or health or in an emergency;”

In paragraph 2 we have dropped the word “reasonable”.

“Provided that nothing in this section shall prevent any Unit from imposing on goods imported from other Units the same duties and taxes to which the goods produced in the Unit are subject;”

After this word “subject” we have decided to add the words, “and under regulations and conditions which are non-discriminatory.”

“Provided further that no preference shall be given by any regulation of commerce or revenue by a Unit to one Unit over another.”

So these are the few changes that are suggested and in order to cut short the discussion and save the time of the House I have mentioned these changes which were reached after certain discussions. I move.

Mr. K. M. Munshi (Bombay : General): Mr. President, Sir, I beg to move the following amendment to clause 10.

“In paragraph 2, clause 10, delete the word ‘reasonable’.”

The word “reasonable” gives a certain amount of vagueness and therefore it is not necessary. The second amendment which I beg to move is :

“That after the word ‘subject’ in the 3rd paragraph of clause 10, add the words ‘and under regulations and conditions which are non-discriminatory’.”

*10. Subject to regulation by the law of the Union trade, commerce, and intercourse among the Units by and between the citizens shall be free:

Provided that any Unit may by law impose reasonable restrictions in the interest of public order, morality or health in or in an emergency:

Provided that nothing in this section shall prevent any Unit from imposing on goods imported from other Units the same duties and taxes to which the goods produced in the Unit are subject:

Provided further that no preference shall be given by any regulation of commerce revenue by a Unit to one Unit over another.

[Mr. K.M. Munshi]

The proviso contemplates that a Unit can impose certain customs duty with a view to bring up the level of the price of goods imported to the level of the price of the goods manufactured in the Unit itself. Otherwise, the goods produced in other Units will flood that particular Unit. With that view only has this proviso been added. Provinces, therefore, can impose certain duties and taxes on goods imported from other units with a view to bring up the value to the level of goods manufactured in the Unit itself. But it was felt, Sir, that this was incomplete. Such regulations and conditions may be made as to favour the goods produced in the Unit and, therefore, the words 'and under regulations and conditions which are non-discriminatory' have to be added, so that conditions must not be such as to force up the price of the goods imported. Therefore, the whole point is that there should not be any regulation or any conditions of such a nature which would favour the goods produced in the Unit as against those produced and imported from outside.

Sri K. Santhanam (Madras : General): Sir, I have given notice of an amendment. It was more or less to meet the point raised in it that Mr. Munshi has moved the present amendment. But, in my opinion, the amendment moved by Mr. Munshi does not fit in with the clause, because the point of my amendment is that when a Unit imposes certain conditions besides duties on goods within its own frontiers, it should be able to insist that the goods coming from other Units should also conform to the same conditions. For example, there may be regulations about packing, labelling, disclosure of the materials used in an article and many other conditions and the goods produced from other Units should not have in these matters any advantage over goods produced in the same Unit. As Mr. Munshi's amendment stands, it will be subject to regulations and conditions which are non-discriminatory, but it does not say that the Unit concerned will have the right to impose these regulations on goods produced from other units. Therefore, either his amendment should be properly integrated with the clause or my amendment which says that in the second proviso to clause 10, for the words 'the same duties and taxes' the words 'the same regulations, duties and taxes' be substituted should be accepted. I am quite willing to accept any amendment which makes it clear that the Unit can impose the same conditions and regulations on goods produced from other Units as on the goods produced in the Unit. Therefore, I move my amendment.

Prof. K. T. Shah (Bombay : General) : I do not propose to move the amendments in my name.

Mr. President: So we have, as a matter of fact, two amendments before us, one moved by Mr. Munshi and the other moved by Mr. Santhanam.

The Hon'ble Sardar Vallabhbhai Patel: There is one thing to which I wanted to draw the attention of the House that is paragraph 5 of the Report which I forgot, which provides for the different conditions prevailing in the States for which provision has to be made. We have mentioned in the Report, para 5:

"We, therefore, consider that it would be reasonable for the Union to enter into agreement with such States, in the light of their existing rights, with a view to giving them time, upto a maximum period to be prescribed by the constitution, by which internal customs could be eliminated and complete free trade established within the Union."

About the amendment of Mr. Santhanam, I think Mr. Munshi's amendment which I propose to accept, satisfies the requirements because it is non-discriminatory. I do not think any further discussion on this is necessary.

I therefore move the clause as amended for the acceptance of the House.

There is a clerical error in the third proviso. The words "by a Unit" are unnecessary. The clause will read:

"Provided further that no preference shall be given by any regulation of commerce or revenue to one Unit over another."

Mr. President: Now, I will put this clause to vote.

"Subject to regulation by the law of the Unit trade, commerce, and intercourse among the Units by and between the citizens shall be free."

There is no amendment to this clause.

The clause was adopted.

Mr. President: First Proviso:

"Provided that any Unit may by law impose reasonable restrictions in the interest of public order, morality or health or in an emergency."

The amendment proposed is that the word "reasonable" should be dropped.

The amendment was adopted.

Mr. President: Second Proviso:

"Provided that nothing in this section shall prevent any Unit from imposing on goods imported from other Units the same duties and taxes to which the goods produced in the Unit are subject."

There are two amendments to this, one by Mr. Santhanam and the other by Mr. Munshi. I shall put Mr. Santhanam's amendment first. As amended, it reads:

"Provided that nothing in this section shall prevent any Unit from imposing on goods imported from other Units the same duties, taxes and restrictions to which the goods produced in the Unit are subject."

He had at first used the word "regulations". He has changed the word "regulations" into "restrictions". The last portion will read—

"the same duties, taxes and restrictions to which the goods produced in the Unit are subject."

The other amendment of Mr. Munshi is:

"Provided that nothing in this section shall prevent any Unit from imposing on goods imported from either Units the same duties and taxes to which the goods produced in the Unit are subject and under regulations and conditions which are non-discriminatory."

Sri M. Ananthasayanam Ayyangar (Madras : General): I would like to add the word "similar". Otherwise, it is meaningless.

Mr. President : I have not got your amendment. (To Mr. Ananthasayanam Ayyangar).

Mr. Santhanam's amendment was negated.

Mr. Munshi's amendment was adopted.

Mr. President: Third Proviso:

"Provided further that no preference shall be given, by any regulation of commerce or revenue by a Unit to one Unit over another."

[Mr. President]

Here there is a verbal change suggested. We are asked to omit the words "by a Unit" because they are unnecessary. The proviso will read like this:

"Provided further that no preference shall be given by any regulation of commerce or revenue to one Unit over another."

As amended the proviso is put to the House.

The proviso, as amended, was adopted.

Mr. President : I shall now put the whole clause as amended. Mr. C. Rajagopalachariar suggests that the first proviso should come last and the other should be changed.

The Hon'ble Sri C. Rajagopalachariar (Madras : General): The reason is this. The restrictions to be imposed in the interests of public health will certainly differ from Unit to Unit. If we say in the second proviso that there shall be no discriminatory restrictions, it will mean that when there is infection, you will have to impose on all Units whatever you impose on one Unit. That will be avoided if you add the special proviso as the last proviso instead of that being the first.

Mr. President: I put the whole clause as amended with the change in the order of provisos.

Sri L. Krishnaswami Bharathi (Madras : General): The word "further" must be added so as to read "Provided further."

Mr. President: The amendment is:

"That the word 'further' be added to the first proviso which becomes the third."

The amendment was adopted.

Mr. K. M. Munshi: It is only a matter of arrangement. I do not want to argue. At the time of drafting the Act, it will be placed here.

Mr. President: The clause, as amended, is put to the House.

The clause, as amended, was adopted.

CLAUSE 11.—RIGHTS OF FREEDOM

The Hon'ble Sardar Vallabhbhai Patel : Clause 11 is as regards forced labour and it reads:

"11. (a) Traffic in human beings, and

(b) forced labour in any form including *begar* and involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted,

are here by prohibited and any contravention of this prohibition shall be an offence."

Explanation—

"Nothing in this sub-clause shall prevent the State from imposing compulsory service for public purposes without any discrimination on the ground of race, religion, caste or class."

Now we have to try to discuss this and abridge it and put it in a comprehensive form instead of separate clauses and put it in one clause "traffic in human beings".

Mr. President: The suggested amendments have not been circulated to the Members and they do not know what changes are suggested. I would request that you move the clause and then the amendments may be moved.

The Hon'ble Sardar Vallabhbhai Patel: Then I move this clause.

Mr. President: I have got notice of a number of amendments to this clause. Mr. Munshi's amendment has not been circulated. I have got this only two minutes ago. Still we have to go on with the work. I will take the other amendments first.

Mr. M. R. Masani (Bombay : General): It is very difficult to decide whether to move the other amendments until Mr. Munshi's amendment is moved. I would suggest that the agreed amendment be moved.

Mr. President: I am not aware of any agreed amendment.

Mr. K. M. Munshi: Mr. President, Sir, the amendment I move is the following—

“That for clause II the following be substituted:

‘Traffic in human beings, and *begar* and other similar forms of forced labour are prohibited, and any contravention of this prohibition shall be an offence.’”

The object is to deal in one sentence with both subjects.

The Explanation has to be dropped because in view of the shortening of the whole sentence, the Explanation is not necessary at all. The object of this is that if there is any sort of forced labour like *begar*, it will be prohibited. Traffic in human beings will be prohibited. But the other forms of labour *e.g.* labour for educational purposes or for any other purpose of public service, will be regulated by legislation.

Mr. P. R. Thakur (Bengal : General): The word ‘*begar*’ should be in italics.

Mr. President: The clause, as amended, if the amendment is accepted, will read thus—

“Traffic in human being and *begar* and other similar forms of forced labour are prohibited and any contravention of this prohibition shall be an offence.”

The Explanation to the sub-clause (b) is dropped, and so the whole thing will be much shorter and more comprehensive.

There are a number of amendments of which notices have been received. I will call the members to move one after another.

The Hon'ble Mr. Jagjivan Ram (Bihar : General): In view of this amendment, I do not want to press my amendments. (Nos. 27 and 28 of the Supplementary List II).

Mr. H. V. Kamath (C.P. and Berar : General): In the event of acceptance by the House of Mr. Munshi's amendment, there is no necessity for my amendment. (No. 29 of the Supplementary List II). If it is not accepted, I will reserve the right to move my amendment later on.

Mr. M. R. Masani: Mr. President, I had given notice of an amendment (No. 36 of the Supplementary List II) in order to safeguard the rights of Conscientious Objectors in view of the very wide powers given to the State by the Explanation.

I am glad to see that the Explanation has been dropped. I do not, therefore, wish to press my amendment at this stage.

Mr. President : Now the motion and the amendment are open for discussion.

Dr. B. R. Ambedkar (Bengal: General) : The point that I want to make is this, that, while I have no objection to the redrafting of sub-clause (a) and (b) in order that they may run in a compact manner, I have a certain amount of doubt as to whether the dropping of the Explanation is in consonance with the desire of the majority of the members of the Advisory Committee that the State should not have power in any way for introducing compulsory service. Mr. Munshi suggests that, if the clause stands as redrafted and if the Explanation is omitted, none-the-less, the State will have the right to introduce compulsory military service. I have not had sufficient time to apply my mind to the consequences of the proposed change, *i.e.*, the dropping of the Explanation but I fear that the dropping of the Explanation and retaining the clause in the form in which it is stated may have opposite and serious consequences. Because 'begar' is also something which is imposed by the State. So far as I know, in Bombay, 'begar' is demanded by the State for certain public purposes, and if the State is prohibited from having 'begar' it is perfectly possible for anybody to argue that even compulsory military service is *begar*. I am, therefore, not quite satisfied that the dropping of the Explanation is something which is advisable at this stage. I am not in a position to suggest any definite course of action in this matter, but I think I shall be sufficiently discharging my duties if I draw the attention of the House to the doubt which I have in mind about the effect which the dropping of the Explanation may have on the right of the State in regard to compulsory service either for military purposes or for social purposes for the State. My suggestion would be that at this state we should not drop the Explanation, but leave it as it is and have the whole matter reconsidered when the Provincial Constitution and the Federal Constitution are drafted in their final form.

Shrimati Dakshayani Velayudan (Madras : General) Mr. President, I have great pleasure in commending Clause 11 because it is a clause which mostly relates to a community, a vast regiment of people who are subjected to untold miseries for so many centuries. Sir, even now-a-days we find traffic in human beings in some parts of India and this clause will have a great effect on the underdogs of this land who will have a voice when India gets her independence. This clause will bring about an economic revolution in the fascist social structure existing in India. All the disabilities of the underdogs of this land are mainly due to the economic backwardness of the unfortunate brethren of the neglected community. It is unfortunate that a section of the people of this land will have to work without getting any remuneration whatsoever, even for their daily maintenance and the people who work in the fields or in other places will have to go back to their homes even without getting a single pie. They have not got the right to demand the wages even though they will work for day and night. If the people are called upon to work and if they do not go for that work they will get punishments. That is what we find in certain Provinces of India like the United Provinces. Even if there is not the system of 'begar' in other parts of India, almost a similar sort of compulsion exists throughout India and the majority of the people are subjected to exploitation economically and in all sorts of ways. The underdogs of this land are deprived of all the facilities that make life happy. This System ought to have been, abolished even before the Provinces got self-government. Even if there are rules and regulations regarding this in certain provinces, the system still prevails and the people who are subjected to the system have no voice whatsoever in deciding their fate. So, this clause when it comes

into existence will give great relief to a great number of people who are subjected to economic exploitation. When this sort of economic exploitation is eliminated from this land, the underdogs also will rise up and will be in a position to assert their rights and keep up their self respect and dignity and they too will have a right to enjoy like the people belonging to the upper class and upper caste. I have great pleasure in supporting this clause.

Mr. B. Das (Orissa: General): I have great pleasure in supporting Mr. Munshi's amendment to Clause 11. I accept the new draft of the clause. Sir, I have studied a good deal of forced labour problems since 1929. I was a member of the Forced Labour Convention in Geneva in 1929. India accepted the Forced Labour Convention in 1930, but the Indian States, with certain exceptions, did not accept it. That practice does not exist among the major States whose representatives I find today in this House. Sir, in my part of the country forced labour has been taken advantage of by most of the small Indian States. They receive grants from the Government of India for the construction of roads and utilise the money for their own purposes and by means of forced labour they construct roads and other civil works. Therefore, Sir, I do not apprehend the trouble which my friend Dr. Ambedkar has just now voiced. In case of national emergency the State must come forward and everybody must compulsorily work for the country, be it war or famine or drought. But I do not want any lacuna left over which will allow some of the Indian Princes to use forced labour for their own gains.

Sir, one point I am not satisfied with is whether traffic in human beings includes women traffic. Sir, some of us have studied this problem about women's traffic for the last ten years or more. Unfortunately, every year thousands of women of Orissa and the Province of Bengal, where there are surplus women, are carried away to other parts of India. There is a regular traffic going on by crooks and gangsters who carry away these women to some outside Provinces. I do not know whether they are regular house-wives or whether they lead the life of shame. We do know that in provinces like the Punjab and the Frontier the number of women is less than the population of men.

Sir, we had the painful experience during the Bengal famine when lakhs of women were spirited away. Whether these women were taken to the provinces where there are less women or whether they were used to supply women to the huge British army that was then in the eastern part of India, that is a problem that social workers must work out. But I would have been happy to see "traffic in women" being specifically mentioned in the clause. Those of us who belong to the eastern part of India still apprehend that in spite of this provision in the Fundamental Rights, traffic in women will be carried on by unscrupulous money makers. I, therefore, want Sardar Patel to assure me whether he has in contemplation some kind of legislation by which this traffic in women may be stopped for ever.

Sir, I want a further assurance from the representatives of the Indian States here whether they will persuade their colleagues in the less advanced States to abolish forced labour which is a source of profit and gain to many small principalities in India.

Dr. P. K. Sen (Bihar: General): Sir, might I be permitted to point out some of the difficulties that would present themselves if we put the clause in the truncated form suggested? First of all, there can be no question, nobody can doubt for a moment that forced labour in any form

[Dr. P.K. Sen]

must go. But there were certain qualifying explanations in the original form of the clause which have now been omitted. Those are—

“involuntary servitude except as punishment for crime whereof the party shall have been duly convicted.”

Now, it is well known that it is not only from children in the reformatory schools or from adolescents in the Borstal institutions, but also from adults—grown up people who may be regarded as under State tutelage, during their incarceration—it is right and legitimate, in fact, necessary, to exact labour according to the rules of the prisons. All that may really become very difficult if we put the clause in the form, that *begar* or forced labour shall be prohibited and any contravention of this rule would be regarded as an offence. I quite agree with my friend, Dr. Ambedkar, that the only way of getting out of this difficulty would be to retain the Explanation and then such cases would come under the expression “for public purposes”, because even in jails and prisons or any other organisations where people are under State tutelage, forced labour can legitimately be exacted for the good of the inmates and also for the good of the State. If there is still any doubt, we can add the words “in the case of those under the State tutelage” or some such expression as that. But the amendment as it has been put, *i.e.*, Traffic in human beings, and *begar* and forced labour in any form are hereby prohibited.....”

Mr. K. M. Munshi : There are also the words “other similar forms.”

Dr. P. K. Sen: ‘Similar’ is a very vague word. I really cannot imagine what difficulty or objection there can be in the way of retaining the Explanation. The Explanation is quite innocuous, and it only says that for certain public purposes as in all civilized countries, it is necessary to get compulsory service from the citizens, for their own good and for the good of the State. I, therefore, submit that the Explanation either in the form as it stands or with any requisite modification may be accepted. Otherwise, all sorts of complications might arise.

Dewan Bahadur Sir Alladi Krishnaswami Ayyar (Madras: General): Mr. President, going into the question as to whether there is necessity for the retention of the Explanation or not, I am quite clear in my mind. So far as the first sub-clause is concerned, it will not preclude military conscription. In the Committee, there was a special clause inserted by Mr. Masani to the effect that there shall not be military conscription; but that has been omitted. In spite of the existence of the slavery and anti-slavery clause in the United States Constitution, the Supreme Court of the United States has held that there is nothing to prevent military conscription being introduced. The learned Judges referred to various writers on international law and they pointed out that the very existence of the State depends upon military force, and the slavery and antislavery or servitude clause cannot be construed as precluding the United States of America from introducing conscription. Therefore, the words ‘*begar* and similar forms of forced labour’ cannot possibly be interpreted as excluding conscription. That is my view and I do not think that the future legislatures will be precluded from introducing conscription by reason of a clause like this. The word “similar” occurring in the clause makes it quite clear that it cannot have in view a military conscription law. Therefore, under those circumstances, there need not be any apprehension. That does not, however, mean that I am opposed to the retention of the Explanation. The retention, it was pointed out yesterday in the Committee, might give rise to considerable difficulties is the working of the village economy and village institutions, and no

harm would result by the omission of the Explanation, and therefore, yesterday, in the course of the discussions in the Committee, it was omitted. I do not think there is any danger of military conscription being ruled out as a power inherent in the Union by reason of the forced labour clause as it stands.

Sri M. Ananthasayanam Ayyangar: I was also of the same opinion as Sir Alladi Krishnaswami Ayyar, when in the party meeting I consented to the change of the present clause, but I find on reconsideration that the original clause might stand. I shall presently give the reasons. The reasons are these. Two points referred to in the clause are, one, traffic in human beings is prohibited, and, secondly, forced labour ought not to be allowed. Both these are already provided for in the Penal Code. Section 370 of the Indian Penal Code prohibits traffic in human beings, and section 374 makes it an offence to compel any person to labour against his will, but the word "unlawful" is used there. "Unlawful" means, it is lawful for any legislature to pass a law that for particular purposes labour may be enforced, as when a person is convicted of a crime and he is sentenced to penal servitude. Or in the interests of village administration when there are floods, the villagers may be obliged or forced to repair breaches in tanks, etc. it also allows compulsory military service. Now, that these two provisions which are already in the general law under sections 370 and 374 of the Indian Penal Code are raised to the status of fundamental rights, we have to be a little careful. When we are giving the status of fundamental rights, unless we add other explanations allowing the State to make an exception to these two fundamental rights which are now being given, it might appear, and courts may also interpret that by taking these out of the ordinary law and placing them in the Statute Book as fundamental rights—that the States jurisdiction to legislate for such purposes, for forced labour even under an emergency has been taken away. If Mr. Munshi who has moved this amendment has at the back of his mind that the State ought not to be prevented from introducing conscription whenever or wherever necessary, let the matter be cleared here and now. I do not see any objection to having an Explanation or even having the original clause as it stands. There is no need to make the amendment. Let us be clear in our minds. Otherwise, it will mean that we have given up, irrespective of any considerations requiring conscription, or irrespective of other considerations requiring any local legislature or any particular unit to compel persons to come and help by way of forced labour—irrespective of all these considerations the fundamental right has been given, and that means that the right of the State has been abrogated once and for all. There is much force in the argument of Dr. Ambedkar, and I am not in favour of this amendment. The original clause as it stands may stand. Let us be clear in our minds whether we want conscription here and now or not. Let us not leave it to the judges to decide. Sir Alladi Krishnaswami Ayyar said that it has been interpreted by the American Court. The American Law was framed so long ago, and therefore, it is necessary to interpret it from time to time to enlarge its scope. We know too well that the Justinian Code running into 150 volumes has been developed by interpretation of the Twelve Tables. People are not in favour of modifying the statute from time to time, but lawyers have introduced various things as interpretations and have been evolving new law out of that. Now, that we are making a statute, why should we rely upon the future interpretation and leave it to the judges to decide? I oppose the amendment and I am in favour of retaining the original clause.

Dr. B. R. Ambedkar: May I make a suggestion? We have heard the arguments of Sir Alladi Krishnaswami Ayyar who has said that

[Dr. B.R. Ambedkar]

according to his reading of the rulings of the Supreme Court of the United States, even if the Explanation was not there, the State would be permitted to have compulsory military service. Fortunately, for me I also happened to look into the very same cases which I am sure Sir Alladi has in mind. I think he will agree with me, if he looks at the reasoning of the judgment given by the Supreme Court, he will find that they proceeded on the hypothesis that in a political Organisation the free citizen has a duty to support the Government and as every citizen has a duty to support the Government therefore compulsory military law was doing nothing more than calling upon the citizen to do the duty which he already owes to the State. I submit that that is a very precarious foundation for so important a subject as the necessity of compulsory military service for the defence of the State.

I submit that we ought not to rest content with that kind of reasoning which the Supreme Court in India may adopt or may not adopt. Therefore, my suggestion is this, that, just as in the case of the other clause dealing with citizenship you were good enough to remit the matter to a small committee to have it further examined. It will be desirable that this question as to whether the Explanation should be retained or not may also be remitted to a small committee which should report to this House. It will then be possible for the House to take a correct decision in the matter.

Mr. President: I think it is not necessary to have any further discussion if the suggestion which has been made by Dr. Ambedkar is acceptable to the House.

Mr. R.K. Sidhwa (C.P. and Berar: General) : The question regarding compulsory military service may be discussed here.

Mr. President: We are not deciding here whether we ought to have conscription or not. The question is whether under fundamental rights conscription is prohibited. I think it is best to refer it to the same committee to which the other clause has been remitted.

An Hon'ble Member: The whole clause 11.

Mr. President: Yes, the whole clause 11.

The clause was remitted.

CLAUSE 12.—RIGHTS OF FREEDOM.

Mr. President: Clause 12.*

The Hon'ble Sardar Vallabhbhai Patel: I move clause 12. Clause 12 says :

“No child below the age of 14 years shall be engaged to work in any factory, mine or any other hazardous employment.”

It is proposed to delete the Explanation. But I move the clause as it is, and deletion of the Explanation may be moved as an amendment.

Mr. K. M. Munshi: I move that the Explanation be deleted. The Explanation says:

“Nothing in this shall prejudice any educational programme or activity involving compulsory labour.”

That has nothing to do with this clause and I submit it should be deleted.

Mr. President: Amendment No. 37—Mr. Kamath.

*No Child below the age of 14 years shall be engaged to work in any factory, mine or any other hazardous employment.

Explanation: Nothing in this shall prejudice any educational programme or activity involving compulsory labour.

Mr. H. V. Kamath: I am told that this clause deals only with children below 14, and that, therefore, expectant mothers and old people are out of place. I shall reserve my right to move my amendment at a later stage. I do not move it now.

Mr. R. K. Sidhwa: As regards amendment No. 43, they are all new clauses, and as decided by the Honourable House yesterday, I will take them at the end of all these clauses.

Mr. President: These are the amendments. I will put the amendment of Mr. Munshi for deletion of the Explanation, to the House.

The amendment was adopted.

Clause 12, as amended, was adopted

CLAUSE 13—RIGHTS RELATING TO RELIGION

The Hon'ble Sardar Vallabhbhai Patel: Sir, I move the adoption of clause 13, viz.,

"All persons are equally entitled to freedom of conscience, and the right freely to profess, practise and propagate religion, subject to public order, morality or health, and to the other provisions of this Part.

Explanation 1.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation 2.—The above rights shall not include any economic, financial, political or other secular activities that may be associated with religious practice.

Explanation 3.—The freedom of religious practice guaranteed in this clause shall not debar the State from enacting laws for the purpose of social welfare and reform."

I see that there are a number of amendments on the Order Paper. I shall speak on them when they are moved and, if there is any that could be accepted, I shall accept.

Mr. K. M. Munshi: Sir, I move an amendment to the effect that, after the last Explanation, the following words be added:—

"and for throwing open Hindu religious institutions of a public character to any class of section of Hindus."

After the Explanation above was drafted it was thought that the practice of religion referred to should not be of such a character as will interfere with the right of the Legislature to legislate on social questions. The question arose with regard to the throwing open of all temples to all classes of Hindus, whether it would be religious practice. In order to prevent any such construction of clause, it was decided that the throwing open of Hindu religious institutions shall not be held to contravene the practice of Hindu religion.

Mr. President: I shall now call upon Members who have given notice of amendments to this clause, to move them(after a pause.....) As I find that there is no amendment moved to the clause I shall put it to the vote of the House.

Mr. H. J. Khandekar (C. P. and Berar): Sir, in case Mr. Munshi's amendment to this clause is accepted, it may be necessary to have a definition for "places of public worship". Unless this is done it may be difficult for people to know which is a place of public worship. Even where admission to people of all classes is given, depressed classes are not allowed. Even when there is a written record that a certain temple is open to worship by depressed classes, the *pujaris* obstruct and say that that temple is a private one and, therefore, not open to depressed classes. So, Sir, if there is definition of "places of public worship" there will be no difficulty. I suggest, therefore, that there should be a definition for "places of public worship".

Mr. President: May I know in which clause that expression occurs?

Mr. H. J. Khandekar: Explanation 3.

Mr. President: I do not find this expression there. There is no mention of any place of public worship there.

Mr. H. J. Khandekar: I want a definition for "religious institutions of a public character".

Mr. President: Mr. Khandekar wants some explanation of the term "religious institutions of a public character" so that it may be clear what religious institutions are referred to.

Shri L. Krishnaswami Bharathi: Sir, the clause reads: "other provisions of this Chapter". It should read "other provisions of this Part".

The Hon'ble Sardar Vallabhbhai Patel: The word "Chapter" has been substituted by the word "Part".

I accept Mr. Munshi's amendment and I congratulate the House on agreeing to pass this very controversial matter which has taken several days in the Committees and gone through several Committees. There might be differences of opinion, but on the whole we have tried our best to accommodate all sections of the people. I move that this clause as amended be passed.

Mr. President: I am putting to the vote first the amendment to Explanation No. 3. The amendment is:

"That the words 'and for throwing open Hindu religious institutions of a public character to any class or section of Hindus' be added at the end of Explanation No. 3".

The amendment was adopted.

Mr. President: Now I put the clause as amended to the House.

Clause 13, as amended, was adopted.

Mr. President: Now we go to clause.

CLAUSE 14.

The Hon'ble Sardar Vallabhbhai Patel: Now I move clause 14.

"Every religious denomination shall have the right to manage its own affairs in matter of religion and, subject to the general law, to own, acquire and administer property movable and immovable, and to establish and maintain institutions for religious or charitable purposes."

There is a little addition by way of an amendment which Mr. Munshi will move. I move this clause for the acceptance of the House.

Mr. K. M. Munshi: Sir, I move an amendment that in clause 14 the words "or a section thereof" be added between the word "denomination" and the word "shall". It was felt that the use of the term "religious denomination" may prevent a section of a denomination from being protected.

Sri K. Santhanam: What is meant by "general law".

Mr. K. M. Munshi: There is a general law of the country as apart from any special legislation. When the word 'law' is used, it means the law of either the Unit or the Union according to the power which is being exercised. If it is a Union subject, it is Union law. If it is a Unit subject, it is Unit law.

Mr. President: Has the word “general” any special significance here, Law is law.

Mr. K. M. Munshi: The intention was that any specific legislation was to be excluded. There are certain legislations specifically intended for certain classes of people. If the desire of the House is that it should be ‘law’, I have no objection.

Some Hon’ble Members: “.....subject to ‘law’.”

Mr. President: Mr. Santhanam, there is an amendment to be moved by you, amendment No. 63.

Sri K. Santhanam: No, Sir. I am not moving it.

Mr. President: Mr. Rajagopalachariar, you have an amendment.

The Hon’ble Sri C. Rajagopalachariar: No, Sir. I am not moving it.

Mr. President: The clause and the amendment are now open for discussion.

Sri M. Ananthasayanam Ayyangar: I oppose the omission of the word ‘general’ which is opposed to special or local laws which are defined in the Indian Penal Code as relating to a particular subject or a particular part of British India. There ought to be no restriction on the acquisition of rights and property by any religious institution under any special law. The same definition relating to special and local laws will be found in the General Clauses Act also. I, therefore, want the retention of the word ‘general’. I think the framers of the clause were right in including it.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar : The General Clauses Act and the Penal Code will not apply to the interpretation of our Constitution. We must have an interpretation clause in our Constitution when the Constitution is finally framed.

Mr. H. V. Kamath: I could not hear a word of what Sir Alladi said.

Mr. President: Sir Alladi’s view was that the General Clauses Act and the Penal Code will not apply to our Constitution and, therefore, we need not attach any importance to them.

Mr. D. N. Datta (Bengal: General): If the words “existing Indian law” are there, the General Clauses Act will apply.

Mr. President: You are at liberty to differ from Sir Alladi.

The Hon’ble Sri C. Rajagopalachariar: Apart from the question of how words should be interpreted, it is very necessary that this special right that we are giving to religious denominations should be subject to all the laws that will be enacted and, therefore, the expression should be only ‘law’ and not any particular portion of the law.

Sri M. Ananthasayanam Ayyangar: We are trying to get these on the statute book. What is the meaning of taking these technical objections?

Mr. President: As a matter of fact, the point has been discussed, and if there is anything else, then the Drafting Committee will attend to them.

Now I will put the various amendments. The first amendment I will put is that the words “or a section thereof” be added between “denomination” and “shall”. That part of the clause will read as follows:

“Every religious denomination or a section thereof shall have the right to manage its own affairs.....”

and so on.

The amendment was adopted.

Mr. President: The next amendment is that the words "the general" be omitted.

The amendment was adopted.

Mr. President: The clause as amended will read:

"Every religious denomination or a section thereof shall have the right to manage its own affairs in matters of religion and, subject to law, to own, acquire and administer property movable and immovable, and to establish and maintain institutions for religious or charitable purposes."

I put the clause, as amended, to the House.

Clause 14, as amended, was adopted.

CLAUSE 15

The Hon'ble Sardar Vallabhbhai Patel: Clause 15.

"No person may be compelled to pay taxes, the proceeds of which are specifically appropriated to further or maintain any particular religion or denomination."

I do not think that there is any amendment to this clause and I move this clause for the acceptance of the House.

Mr. President: As there is no amendment to this clause, I put it to the vote of the House.

Clause 15 was adopted.

CLAUSE 16

The Hon'ble Sardar Vallabhbhai Patel: Clause 16. This clause was passed in the Advisory Committee, but I think that it may be referred back to the Advisory Committee, because there are some difficulties and it has been suggested that it may be referred back. The House agrees that this clause may be referred back to the Advisory Committee.

Mr. President: Then you formally move it.

The Hon'ble Sardar Vallabhbhai Patel: I formally move:

"No person attending any school maintained or receiving aid out of public funds shall be compelled to take parts in the religious instruction that may be given in the school or to attend religious worship held in the school or in premises attached thereto."

Mr. President: On the vote of the House this clause is referred back to the Advisory Committee.

CLAUSE 17

The Hon'ble Sardar Vallabhbhai Patel: Sir, I move Clause 17.

"Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law."

Mr. K. M. Munshi: Sir, I beg to move the following amendment,

"That for clause 17 substitute the following clause:

'Any conversion from one religion to another of any person brought about by fraud, coercion or undue influence or of a minor under the age of 18 shall not be recognised by law.'

The additions that are made to the clause as it is originally moved are these. First of all, the word 'fraud' is added to the words, 'coercion and undue influence'. The second matter is with regard to the conversion

of a minor. As a matter of fact, it was proposed by one of the other Committees in some form or other, and it is the general feeling that this clause should be restored in this form,—any conversion of a minor under the age of 18 shall not be recognised by law. The only effect of non-recognition by law would mean that even though a person is converted by fraud or coercion or undue influence or be converted during his minority he will still in law be deemed to continue to belong to the old religion and his legal rights will remain unaffected by reason of his conversion. The idea behind this proposal is that very often, if there are conversions by fraud or undue influence or during minority, certain changes in the legal status take place, certain rights are lost. This will have only this effect that the rights will remain exactly the same as at the moment a person was converted by fraud or coercion or undue influence and in the case of a minor at the moment of conversion.

If Hon'ble Members desire I will read the whole clause. The whole clause is put in this form.

“Any conversion from one religion to another of any person brought about by fraud, coercion or undue influence or of a minor under the age of 18 shall not be recognised by law.”

Srijut Rohini Kumar Chaudhury (Assam: General): May I ask you to explain as to what is meant by the words “undue influence”? Is it used in the sense laid down in the Contract Act or in the general sense?

Mr. K. M. Munshi: It is difficult for me to say, but I am sure “fraud” is fraud all the world over and in all systems of jurisprudence. There is no difference between the two words coercion and undue influence as understood in India and in other countries. There may be little shades of difference but the free India will form its definitions and it may not be different from the Oxford dictionary meaning so far as I can see.

Shri Phool Singh (United Provinces: General): In view of the amendment moved by Mr. Munshi, my amendment will not fit in. But I suggest, Sir, that conversion by coercion should be made an offence. I would suggest he might move an amendment to this effect.

The Hon'ble Mr. Jagjivan Ram: I am not moving my amendment (No. 72 of the Supplementary List II).

Mr. President: Amendment No. 73 of the Supplementary List II.

Mr. R. K. Sidhwa: This is a new clause. It may be taken up later.

Mr. F. R. Anthony (Bengal: General): Mr. President, my amendment, is with specific reference to Mr. Munshi's amendment, “or of a minor under the age of 18”. To this part of the clause I want to add these words: “except when the parents or surviving parents have been converted and the child does not choose to adhere to its original faith”. This was more or less the form in which the particular clause was accepted by the Minorities Sub-Committee. We discussed it at length and it was felt that in the form, I have sought to re-introduce, it would best serve the interests that we were considering there.

I agree that conversion under undue influence, conversion by coercion or conversion by fraud should not be recognised by law. I am only interested in this question, Sir, on principle. My community does not propagate. We do not convert, nor are we converted. But I do appreciate how deeply, how passionately millions of Christians feel on this right to propagate their religion. I want to congratulate the major party for having, in spite of its contentious character, retained the words “right to practise and propagate their religion”. Having done that, I say that after

[Mr. F.R. Anthony]

giving with one hand this principal fundamental right a right which is regarded as perhaps the most fundamental of Christian rights, do not take it away by this proviso, "or of a minor under the age of 18". I say that if you have this particular provision, or if you place an absolute embargo on the conversion of a minor, you will place an embargo absolutely on the right of conversion. You will virtually take away the right to convert. Because, what will happen? Not a single adult who is a parent, however deeply he may feel, however deeply he may be convinced, will ever adopt Christianity, because, by this clause you will be cutting off that parent from his children. By this clause you will say, although the parents may be converted to Christianity, the children shall not be brought up by these parents in the faith of the parents. You will be cutting at the root of family life. I say it is contrary to the ordinary concepts of natural law and justice. You may have your prejudices against conversion; you may have your prejudices against propagation. But once having allowed it, I plead with you not to cut at the root of family life. This is a right which is conceded in every part of the world, the right of parents to bring up their children in the faith that the parents want them to pursue. You have your safeguards. You have provided that conversion by undue influence, conversion by fraud, conversion by coercion shall not be recognised by law. I have gone further, and unlike the position in other parts of the world, I have even given discretion to the child provided it has attained the age of discretion, to adhere to its original faith. The wording is "and the child does not choose to adhere to its original faith". If both the parents are converted and if they want their children to be brought up as Christians, if these children have reached the age of discretion and say that in spite of the conversion of their parents, they do not want to be brought up as Christians, under the restriction which I have introduced, they will not be brought up in the Christian faith.

I have also added the word "surviving parent". for this reason, I say that if you restrict it to both the parents,—What will happen? If a widow, let us assume, adopts Christianity, do you mean to say that if she wants to bring up her children in the Christian faith, and if those children themselves want to be brought up in the Christian faith, you are placing an embargo on this? If you do not use the word "surviving parents", if the father who happens to be a widower adopts the Christian faith, and the children wish to be brought up as Christians, it may be said that since both the parents are not alive, the father cannot bring up the children in his faith. He will automatically be cut off from his children.

I realise how deeply certain sections of this House feel on this question of conversion. But I do ask you, having once conceded the right to propagate, to concede this in consonance with the principles of family law and in consonance with the principles of natural law and justice.

Mr. P. R. Thakur: Sir, I am a member of the Depressed classes. This clause of the Fundamental Rights is very important from the standpoint of my community. You know well, Sir, that the victims of these religious conversions are ordinarily from the Depressed Classes. The preachers of other religions approach these classes of people, take advantage of their ignorance, extend all sorts of temptations and ultimately convert them. I want to know from Mr. Munshi whether "fraud" covers all these things. If it does not cover, I should ask Mr. Munshi to re-draft this clause so

that fraud of this nature might not be practised on these depressed classes. I should certainly call these "fraud".

The Hon'ble Rev. J.J.M. Nichols-Roy (Assam: General):
Mr. President, Sir, it appears to me that the clause as it came out of the Advisory Committee is sufficient and should not be amended at all. The amendment seeks to prevent a minor, who is of twelve years of age, or thirteen years of age, up to eighteen years of age from exercising his own conscience. The age limit may be quite right in law. But to think that a youth under the age of eighteen does not have a conscience before God and, therefore, he cannot express his belief is wrong. That side of the question must be appropriately considered. There is a spiritual side in conversion which ought to be taken notice of by this House. Conversion does not mean only that a man changes his form of religion from one religion to another, or adopts a different name of religion, such as, a Hindu becomes a Christian. But there is the spiritual aspects of conversion, that is, the connection of the soul of man with God, which must not be overlooked by this House. I know there are those who change their religion being influenced by material considerations, but there are others who are converted being under the influence of spiritual power. When a boy feels that he is called by God to adopt a different faith, no law should prevent him from doing that. The consciences of those youths who want to change their religion and adopt another religion from a spiritual standpoint should not be prevented from allowing these youths to exercise their right to change their legal status and change their religion. We know, Sir, in the history of Christianity, there have been youths, and I know personally, there have been many youths, who, have been converted to Christianity, who are ready to die for their conviction and who are ready to lose everything. I myself was converted when I was about fifteen years old when I heard the voice of God calling me. I was ready to lose anything on earth. I was ready to suffer death even. I did not care for anything save to obey and follow the voice of God in my soul. Why should a youth who has such a call of God be prevented by law from changing his religion and calling himself by another name when he feels before God that he is influenced by the Spirit of God to do that end is ready even to sacrifice his life for that. This part of the amendment about minors is absolutely wrong when we consider it from the spiritual standpoint. From the standpoint of conscience I consider that it is altogether wrong not to allow a youth from the age of twelve to eighteen to exercise his own conscience before God. It will oppress the consciences of the youths who want to exercise their religious faiths before God. Therefore, I am against this amendment as it is. The clause should be left as it was before. The legal and other aspects have been discussed by Mr. Anthony regarding the conversion of the children of the converted parents. Certain minors should be allowed to follow their own conviction if they have any, and should not be forced to do anything against their own conviction. Why should the law not allow them if they themselves do not care for their former legal status? Why should they be prevented from changing their religion? Why should their consciences be oppressed? That is a very important point, Sir, to be considered by this House. This freedom I consider to be a Fundamental Right of the Youths. No law should be made which will work against good spiritual forces. India, especially, is a country of religions, a country where there is religious freedom. If this amendment is carried in this House, it will only mean that in making a law to prevent the evil forces our minds lose sight of the real religious freedom which the youths of this land ought to have. Therefore, I am against this very principle of forcing the youths

[The Hon'ble Rev. J.J.M. Nichols-Roy]

by not allowing them to exercise their religious conviction according to their consciences. I would suggest, Sir, that if in the amendment moved by Mr. Anthony the words 'or save when the minor himself wants to change his religion' are included, then I do not object to this amendment. I am against any conversion by undue influence or by fraud or coercion. When we make a law against all these evils we should be careful to see that that law does not oppress the consciences of the youths who also need freedom.

The Hon'ble Shri Purushottamdas Tandon (United Provinces: General):
 *[Mr. President, I am greatly surprised at the speeches delivered here by our Christian brethren. Some of them have said that in this Assembly we have admitted the right of every one to propagate his religion and to convert from one religion to another. We Congressmen deem it very improper to convert from one to another religion or to take part in such activities and we are not in favour of this. In our opinion it is absolutely futile to be keen on converting others to one's faith. But it is only at the request of some persons, whom we want to keep with us in our national endeavour that we accepted this. Now it is said that they have a right to convert young children to their faith. What is this? Really this surprises me very much. You can convert a child below eighteen by convincing and persuading him but he is a child of immature sense and legally and morally speaking this conversion can never be considered valid. If a boy of eighteen executes a transfer deed in favour of a man for his hut worth only Rs. 100, the transaction is considered unlawful. But our brethren come forward and say that the boy has enough sense to change his religion. That the value of religion is even less than that of a hut worth one hundred rupees. It is proper that a boy should be allowed to formally change his religion only when he attains maturity.

One of my brethren has said that we are taking away with the left hand what we gave the Christians with our right hand. Had we not given them the right to convert the young ones along with the conversion of their parents they would have been justified in their statement. What we gave them with our right hand is that they have a right to convert others by an appeal to reason and after honestly changing their views and outlook. The three words, 'coercion', 'fraud' and 'undue influence' are included as provisos and are meant to cover the cases of adult converts. These words are not applicable to converts of immature age. Their conversion is coercion and undue influence under all circumstances. How can the young ones change their religion? They have not the sense to understand the teachings of your scriptures. If they change their religion it is only under some influence and this influence is not fair. If a Christian keeps a young Hindu boy with him and treats him kindly the boy may like to live with him. We are not preventing this. But the boy can change his religion, legally only on attaining maturity. If parents are converted why should it be necessary that their children should also change their religion? If they are under the influence of their parents they can change their religion on maturity. This is my submission.

With your permission, Mr. President, I would like to address a few words in English that such of my friends who do not know Hindi may follow me.]*

*[English translation of Hindustani speech begins.

] *English translation of Hindustani speech ends.

Sir, I am astonished at the manner in which some Christian friends have advanced the claim to convert minors. We have agreed to the right of conversion. Generally, we, Congressmen do not think it at all right—I say so frankly—that people should strenuously go about trying to convert peoples of other faith into their own, but we want to carry our Christian friends with us—friends who feel that they should have the right to make conversions—and we have agreed on their insistence to retain this formula about “propagation”. They know that we are opposed to it, yet we have agreed.

Mr. C. E. Gibbon (C.P. & Berar : General): It is quite wrong.

The Hon’ble Shri Purushottamdas Tandon: I am speaking, Sir, as a Congressman. I say that the majority of Congressmen do not like this process of making converts (interruption), but in order to carry our Christian friends with us.....

Mr. C. E. Gibbon: On a point of order, Sir.

The Hon’ble Shri Purushottamdas Tandon: There can be no point of order. There may be a point of opinion.

Mr. C. E. Gibbon: I do not think, Sir, that the Speaker is competent to speak for all Congressmen.

Some Hon’ble Members: Why not?

Mr. President: That is no point of order.

Shri Balkrishna Sharma (United Provinces : General): The Speaker has every right to speak on behalf of most of the Congressmen. He is most certainly entitled to do so.

The Hon’ble Shri Purushottamdas Tandon: I know Congressmen more than my friend over there. I know their feelings more intimately than probably he has ever had an opportunity of doing, and I know that most Congressmen are opposed to this idea of “propagation”. But We agreed to keep the word “propagate” out of regard for our Christian friends. But now to ask us to agree to minors also being converted is, I think, Sir, going too far. It is possible that parents having a number of children are converted into some other faith but why should it be necessary that all these children who do not understand religion should be treated as converts? I submit it is not at all necessary. The law of guardianship will see about it. Guardians can be appointed to look after these children, and when they grow up, if they feel that Christianity is a form of religion which appeals to their minds they will be at liberty to embrace it. That much to my Christian friends.

I understand, Sir, that it is possible that difficulties may be raised by some lawyers. What is the legal difficulty about this matter? The ordinary law of guardianship will see about this. When we say that minors cannot be converted, that implies that when parents go to another faith and they have a number of children to look after, the law of the country will take care of those children. You can always enact a law of guardianship and you can, if necessary, add to the laws which at present exist on the subject so that in such cases the minors should be taken care of. I do not, Sir, therefore, see that there is any legal difficulty in the way of the amendment which Mr. Munshi has proposed being accepted. I heartily support Mr. Munshi’s amendment.

(Mr. Dharendra Nath Datta rose to speak).

Sri Ramnath Goenka (Madras : General): Mr. President, I rise on a point of order.

Mr. President: But Mr. Datta has risen before you on a point of order.

Mr. D. N. Datta: Mr. President, I would not have risen but for the speech of the previous speaker.....

Mr. President: I thought you were raising a point of order.

Mr. D. N. Datta: No, Sir. I do not raise a point of order.

Mr. President: Then, please wait. Yes, Mr. Goenka.

Sri Ramnath Goenka: My point of order is, Sir, that under clause 13 which we have passed, all persons are equally entitled to freedom of conscience. "All persons" must necessarily include at least those persons who have attained the age of discretion. It is not necessary that they must attain the age of 18 before developing conscience, it may be at the age of twelve, fifteen, sixteen or seventeen. If we pass clause 17 and prescribe the age of 18, then it will be inconsistent with clause 13. We have said in clause 13 "all persons". They must, I think, attain freedom of conscience any time before 18. So if we pass this clause 17 and prescribe the age of 18, it will be inconsistent with clause 13 which we have just now passed.

Mr. President: But what is the point of order ? (*Laughter*)

Sri Ramnath Goenka: It is that it will be inconsistent with clause 13 which we have passed.

Mr. President: That is on the merits of the thing. You do not say that the House cannot take it up because it is inconsistent.

Sri Ramnath Goenka: I say the amendment is out of order.

Mr. President: Which amendment?

Sri Ramnath Goenka: The amendment moved by Mr. Munshi. It is out of order if you agree with me that the age of discretion will be any time before eighteen years. Sir, my point of order is that the amendment of Mr. Munshi will be out of order.

Shri Mahavir Tyagi (United Provinces : General): But Mr. Munshi is above that age.

Sri Ramnath Goenka: It is not a question of Mr. Munshi being over eighteen. (*Laughter*).

Mr. President: I take it that the point of order raised by Mr. Goenka is that we have already taken a decision with regard to clause 13 and, therefore, the House is not entitled to take-up this amendment moved by Mr. Munshi. But I believe the House is always free to revise its own decision

Sri Ramnath Goenka : Certain, Sir. But as long as clause 13 stands as it is, this amendment will be out of order.

Mr. K. M. Munshi: May I reply to this, Sir?

Mr. President: Yes.

Mr. K. M. Munshi: Sir, my friend, Mr. Goenka, I think should not have ventured in the region of construction. If you look at clause 13, you will see that it says—

"All persons are equally entitled to freedom of conscience, and the right freely to profess-practise and propagate religion subject to public order, morality or health and to the other provisions of this Part."

This provision is generally subject to the other provisions of this Part and if the House passes this clause, that freedom will be subject to this particular clause. The matter is as plain as a pikestaff.

Sri Ananthasayanam Ayyangar: Sir, I want to oppose this point of order raised by Mr. Goenka in a different way. The mover of this point of order said he has no objection to persons who are of the age of discretion being converted. But the age of discretion has not been defined anywhere. It is open to this Assembly to say that the age of discretion is eighteen. Therefore, there is really no point of order, or there is no point in this point of order.

Mr. President: I think this amendment is in order. Now we can discuss the motion as well as the amendment.

Mr. D. N. Datta : Mr. President, Sir, I feel that the whole of this clause 17 should go into the Fundamental Rights Committee and I would be glad if the whole clause could be deleted. I know the reasons for enumerating this under Fundamental Rights, because we are now working under the present setting. But as it is going to be enumerated in the fundamental rights, it has to be seen, Sir, whether the amendment of Mr. Munshi is to be accepted or the amendment of Mr. Anthony should be accented. Mr. Anthony wants that the option of the minors to join the religion they like on attaining majority, should be retained, just as the choice is given to Mohammadan children given in marriage during minority to repudiate the marriage on attaining majority,—What we call the option of puberty. A similar right he intends to be given to the children of the parents who have been converted. On attaining majority the child shall have the right of declaring whether he adheres to his original faith or whether he will join the faith of his parents who were converted. I for myself, do not see any reason, why that right should not be given to the child on attaining majority. On attaining, he may declare, if he was a Hindu, that he will adhere to Hinduism or if his parents have taken to Christianity, whether he will become a Christian. I think this right should not be taken away. It should be given and how it is to be given, it is for the Drafting Committee to determine. For that, Sir, I suggest that the whole clause should go to the Drafting Committee, or, better still, that it should go to the Fundamental Rights Committee to determine whether this clause should remain or how it should remain.

And before I go, I must say that the remark of Mr. Tandon that the majority of the Congress members are not in favour of introducing the word 'propagate' in clause 13 is not correct. This matter was discussed yesterday and the majority were in favour of keeping the word 'propagate'. Therefore, the contention of Mr. Tandon is not correct.

Sri Lakshminarayan Sahu (Orissa : General): Mr. President; Sir, I welcome this clause in the Fundamental Rights, but I have a little doubt to start with, as to what should be called a minority. I think that doubt may be cleared afterwards. As the conditions are today, I would like to point out to the House how in the Midnapore District, half of which is Oriya speaking, the language has been killed there from 1891 to 1931. I will give the census figures for that. In 1891, the number of Oriyas in the District of Midnapore was 6 lakhs. Ten years after, in 1901 it was less than 3 lakhs. From 6 lakhs it went down to about 3 lakhs. And in 1911.....

Mr. President: Mr. Sahu we are not on the question of language now, we are dealing with clause 17, about religion, and not clause 18.

Sri Lakshminarayan Sahu: I am sorry.

Rev. Jerome D'Souza (Madras : General): Mr. President; I regret, Sir, that this discussion should have taken a turn which makes it look as if it is almost exclusively a minority problem, and as a result of that, a degree of heat has been imported into it which most of us regret very much indeed. Sir, when this matter was discussed at the committee stage, quite independently from the question of minorities, legal difficulties with which this question bristles were brought home to us by men of the highest authority like Sir Alladi. As far as the minority rights, are concerned, I can only say this, that the way in which clause 13 has been handled by this House is so reassuring and so encouraging to the minorities that we have no reason at all to quarrel or to ask for stronger assurances. That attitude must provoke on the part of the minorities an equally trustful attitude which I hope will inspire future relations and future discussions. I appreciate Mr. Anthony's stand that this is a question of a wider nature of principle and family authority. I assure you I am speaking from that point of view. This question of conversion of minors may affect not only majorities in relation to minorities but the minorities among themselves,—one Christian group in relation to another Christian group, as Catholics and Protestants, and so on. But among all sections, in regard to the authority of a man over his family, I think certain rights should be assured and must be part of fundamental rights. We have nothing in these fundamental rights that safeguards or encourages or strengthens the family in an explicit way, and indeed I do not think this is necessary at this stage, because that is not a justiciable right. There are certain constitutions where the wish of the State to protect and encourage the family is explicitly declared. I hope in the second part, among these fundamental rights which are not justiciable, some such declaration or approbation of the institution and rights and privileges associated with family life will be introduced. It may perhaps be thought that in our country such a declaration is not necessary because among us the strongest family feeling is universal; we have not merely individual or unitary families but we have also joint families. I believe the discussion on this point has been partly influenced by that background of the joint family system. I am sure that Tandonji, if I may be permitted to refer to him by name, when he was speaking of the minor child of converted parents, was thinking really in terms of the joint family where there are people ready to take over and bring up such children. But we are legislating for all sections of our people, for those also who are not in joint families but in unitary families. We are legislating for them, and, therefore, some provisions must be made which, in the last analysis, will safeguard the authority of the parent, both parents or the surviving parent, in particular, as Mr. Anthony has said in regard to babies in the arms of their mothers. To take them away from the mother or father who are one with them, practically identified physically and juridically with them, is to introduce into our legislation an element which certainly weakens the concept of the authority and sanctity of the family. On this ground, as well as on the legal implications to which attention has been drawn. I mean difficulties in connection with the death, the marriage, the succession rights, of these minors, I oppose Mr. Munshi's amendment as it stands. Take the question of marriage. Marriage is permitted before 18 years. Now Mr. Munshi has carefully explained that his amendment

does not prevent the minor children from going with the parents. But if they are to be married, under what law, by the ceremonies of which religion will they be married? If they follow their conscience and the religion they have adopted, whether they be Hindus, Muslims, or Christians, the question of the validity of that marriage will come in. All this is bristling with legal and juridical difficulties, quite apart from those other considerations into which, as I said, I regret we have entered with undue warmth. While I want to support Mr. Anthony's motion, I am more inclined to support the suggestion of the speaker who immediately preceded me, and ask the House to refer the entire clause back to the Advisory Committee so that the wording of it may be most carefully weighed. It can be brought back to this House just as we have decided, to bring back three or four other controversial matters. That is my suggestion and I would request.....

The Hon'ble Mr. B. G. Kher (Bombay : General): You may refer it to the other Committee which the President has appointed.

Rev. Jerome D'Souza: I accept it. I want it to be discussed in a very much calmer manner. I suggest that it may go back to the Committee which the President has already appointed.

Mr. R. K. Sidhwa: I do not want it to be sent back to the Committee.

Mr. President: I have got a list of a number of names of members who wish to speak on this amendment. I take it that my eye catches members in the order in which I have received the requests. So, I call upon Shri Algu Rai Shastri.

Shri Algu Rai Shastri (U.P. : General): *[Mr. President I stand here to support the amendment moved by Mr. Munshi. I believe that by accepting the amendment we shall be doing justice to those minors who have perforce to enter the fold of the religion which their parents embrace out of their greed. This practice is like the one prevailing in the transactions of transfer of land and which is that 'trees go with the land'. It is on some such basis that the minor children who do not understand what change of religion or coercion or religious practices mean, have to leave their old faith along with their parents. This evil practice has a very bad effect, on the strength of our population. It is proper for us that we, who are framing the charts of Fundamental Rights, should safeguard their interests and save them from such automatic conversion. The dynamic conditions of our society make it more important than ever that we should incorporate such a provision in our Constitution as will prevent such practices. Such minors on attaining majority often regret that they were made to change their religion, improperly. Wherever the Europeans or the white races of Europe, who rule practically over the whole world, have gone, they have, as Missionaries. A study of the 'Prosperous India' by Digby shows that 'cross was followed by the sword'. The missionary was followed by the batons, the swords and the guns, It was in this way that they employed coercion for spreading their religions and for extending their Empire. At the same time, they put economic and political pressure on the indigenous tribes and consolidated the foundations of their dominion. We want such an amendment in this clause of Fundamental Rights that a person who wants to change his religion should be able to do so only after he is convinced through cool deliberation that the new religion is more satisfactory to him than the old one. For example it is only when I am convinced that Sikkism is preferable to Hinduism, that I should be able to change my religion

*[English translation of Hindustani speech begins.

[Shri Algu Rai Shastri]

This right I believe we have. But no one should change religion out of greed and temptation. When the followers of one religion employ, sword and guns to attack a family consisting of a few members, the latter have no option but to accept the religion of the aggressors in order to save their lives. Such a conversion should be considered void and ineffective because it has been brought about through coercion and undue influence. In view of such conditions which exist today, conversion brought about through temptation and allurements is, in fact, not a conversion in the real sense of the term. I have a personal experience extending over a period of 24 years as to how the elders of the family are induced through prospects of financial gain to change their religion and also with them the children are taken over to the fold of the new religion. It appears as if some are taking the land physically in his possession and the helpless trees go with it to the new master.

One particular part of the country has been declared as an "Excluded Area" so that a particular sect alone may carry on its propaganda therein. Another area has been reserved for the "Criminal tribes". Similarly, other areas have also been reserved wherein missionaries alone can carry on their activities. In Chattisgarh and other similar forest areas there are tribes which follow primitive faiths. There the Hindu missionaries cannot carry on their activities. These are called "Excluded and partially Excluded Areas", and no religious propaganda can be carried on in these areas except by the missionaries. This was the baneful policy of the Government. We should now be delivered from this policy of religious discrimination. In his book "Census of India-1930" Dewton writes that the Christian population of Assam has increased 300 times and attributes this increase to certain evils in Hindu Society. It is these evils which gave other missionaries opportunities to make conversions. In his book "Census of India-1911" Mr. S. Kamath has said that the missionaries of one particular religion are reducing the numbers of another by exploiting the evils of that group. They convert some influential persons by inducement and persuasion. The bitterness of the present is due to such activities. I am conversant with what Christian missions have done for the backward classes and I have also seen their work among such classes of people. I bow to them with respect for the way in which they (missionaries), have done their work. How gracious it would have been had they done it only for social service I found that the dispute, if and when it occurs, between members of such castes as the sweepers or the *chamars* on the one side and the land-lords or some other influential persons on the other have been exploited to create bitterness between them. No effort has been made to effect a compromise. This crooked policy has been adopted to bring about the conversion of the former. Similarly, people of other faiths have intensified and exploited our differences in order to increase their own numbers. The consequence is that the grown-up people in such castes as *Bhangies* and *chamars* are converted, and with them their children also go into the fold of the new religion. They should be affectionately asked to live as brothers. This is what has been taught by prophets, angels and leaders. But this is not being practised, today. We are in search of opportunities to indulge in underhand dealings. We go to people and tell them "you are in darkness; this is not the way for your salvation". Thus every body can realise how all possible unfair means have been adopted to trample the majority community under feet. It is in this way that the Foreign bureaucracy has been working here, and has been creating vested interests in order to maintain its political strangle-hold over the people. If we cannot remove this

foundation whom are we going to give the Fundamental Rights? To these minors who are in the lap of their parents? If we permit minors to be transferred like trees on land with the newly embraced religion of their parents, we would be doing an injustice. Many fallacious arguments are offered to permit this. We must not be misled by these. We know that our failure to stop conversion under coercion would result in grave injustice. I have a right to change my religion. I believe in God. If I realise tomorrow that God is a farce and an aberration of human mind then I can become an atheist. If I think that the Hindu faith is false, I, with my grey hair, my fallen teeth and ripe age, and my mature discretion can change my religion. But if my minor child repeats what I say, are you going to allow him also a right to change his religion (at that age)? Revered Purushottam Das Tandon has said in a very appealing manner that if a child transfers his immovable property worth Rs. 100 the transaction is void. How unjust it is that if a minor changes his religion when his parents do so, his act is not void? It has an adverse effect on innocent children. This attempt to increase population has increased religious bitterness. The communal proportion has been changed so that the British bureaucracy may retain its hold by a variation in the numbers of the different communities. I am saying all these things deliberately but I am not attacking any one community in particular. The sole interest of the government in the illusory web of the census lies in seeing a balance in the population of the communities so that these may continue to quarrel among themselves and thereby strengthen its own rule. This amendment of Mr. Munshi is directed against such motives. Nothing can be better than that, and, therefore, I support it.

In my opinion this majority community should not oppress the minority. We respect and honour all and we give an opportunity to everybody to propagate his religion. Those who agree with you may be converted. But convert only those who can be legitimately converted. Improper conversions would not be right. You tempt the innocent little ones whom you take in your lap, by a suit of clothes, a piece of bread and a little toy and thus you ruin their lives. Later, they repent that they did not get an opportunity to have a religion of their choice. I, myself, am prepared to change my religion. But some one should argue with me and change my views and then convert me. Surely, I should have no right to change the religion of my children with me—specially children below a certain age. Those children are considered to be minors who are under teens, *i.e.*, below eighteen.]*

Mr. H. V. Kamath: *[Under teens includes nineteen.]*

Shri Algu Rai Shastri: *[However if it is nineteen, it is all the better. Even if it is not possible they should extend minority by a year of grace. The age limit fixed for minors and majors should be adopted in religious matter as well. They say that there would be no incentive for conversion if people have to forego their children. I hear that in Japan the father has one religion and the child another. What does religion mean? Does the mother feed her baby so that the child's religion might change? If the mother's love is true she will surely feed her baby. Does the mother's milk change the religion? We do not wish to snatch away the child from the mother's lap, but we wish to give to the baby a right to record his (natal) religion in the report of the Census and any other

] *English translation of Hindustani speech ends.

*[] * English translation of Hindustani speech.

*[English translation of Hindustani speech begins.

[Shri Algu Rai Shastri]

government records, till he attains majority and declares his (new) religion. We give him this right in this amendment. Parents need the company of their children. If they have changed their religion discreetly, let them educate their children. But the change in the religion of the children may be considered (only) on their declaration at reaching majority. This is the purpose of this amendment and I support it, and I strongly oppose the view that this right should not be given to children.]*

Mr. Jagat Narain Lal (Bihar: General): *[Mr. President, I was expecting that after the acceptance of clause 13, no representative of any minority in this House will have any ground for any objection. Clause 13 lays down that—

“All persons are equally entitled to freedom of conscious, and the right freely to profess, practice and propagate religion subject to public order, morality or health or to the other provisions of this Chapter.”

This goes to the “farthest limit”. If you look to any of the best of “modern” world Constitutions, you will find that nowhere has this right to propagate been conceded. If you look at Article 50 of the Swiss Confederation, it lays down that “the free exercise of religion is guaranteed within limits compatible with public order and morality.” It ends there. If you look at Article 44 sub-clause (2) 1 of the Irish Free State, you will find there—

“Freedom of conscience and the free profession and practice of religion are subject to public order and morality, guaranteed to every citizen.”

If you refer to Article 124 of the Constitution of the Union of the Soviet Socialist Republics you will find—

“In order to ensure to citizens freedom of conscience, the Church in the U.S.S.R. is separated from the State and the school from the Church. Freedom of religious worship and freedom of anti-religious propaganda is recognised for all citizens.”

If I place before you all the clauses pertaining to “Freedom of professing religion,” it will tax your patience. I do not want to waste more of your time in this connection. My submission is that this House has gone to the farthest limit possible with regard to the minorities, knowing well the fact that there are a few minorities in this country whose right to carry on propaganda extends to the point of creating various difficulties. I do not want to go into its details. The previous speaker had referred to certain things in this connection. I submit that that should be sufficient. Hon’ble Tandonji by his observation that on reading the mind of most of the Congress members of this House he did not want to keep “right to do propaganda” (on the statute), has rightly interpreted the mind of most of us. The fact is that we desire to make the minorities feel that the rights which they had been enjoying till now shall be allowed to continue within reasonable limits by the majority. We have no desire to curtail them in any way. But we do not concede the right to do propaganda. I want to appeal to those who profess to speak for the minorities not to press for too much. They must be satisfied with this much. It will be too much to press for more. That would be taking undue advantage of the generosity of the majority. That will be very regrettable. It is difficult, rather impossible, for us to go to that limit. I think that the amendment tabled by Mr. Munshi becomes essential if the right to propagate is conceded. The House should, therefore, accept it. Various arguments have been advanced in the House, and so

*[English translation of Hindustani speech ends.

*[English translation of Hindustani speech begins.

I do not want to comment upon them again. With these words I support Mr. Munshi]*

Dr. B. R. Ambedkar: Mr. President, Sir, I am sorry to say that I do not find myself in agreement with the amendment which had been moved by Mr. Munshi relating to the question of the conversion of minor children. The clause, as it stands, probably gives the impression to the House that this question relating to the conversion of minors was not considered by the Fundamental Rights Committee or by the Minorities Sub-Committee or by the Advisory Committee. I should like to assure the House that a good deal of consideration was bestowed on this question and every aspect was examined. It was, after examining the whole question in all its aspects, and seeing the difficulties, which came up, that the Advisory Committee came to the conclusion that they should adhere to the clause as it now stands.

Sir, the difficulty is so clear to my mind that I find no other course but to request Mr. Munshi to drop his amendment.

With regard to children, there are three possible cases which can be visualised. First of all, there is the case of children with parents and guardians. There is the case of children who are orphans, who have no parents and no guardians in the legal sense of the word. Supposing you have this clause prohibiting the conversion of children below 18, what is going to be the position of children who are orphans? Are they not going to have any kind of religion? Are they not to have any religious instruction given to them by some one who happens to take a kindly interest in them? It seems to me that, if the clause as worded by Mr. Munshi was adopted, *viz.*, that no child below the age of 18 shall be converted it would follow that children who are orphans, who have no legal guardians, cannot have any kind of religious instruction. I am sure that this is not the result which this House would be happy to contemplate. Therefore, such a class of subjects shall have to be excepted from the operation of the amendment proposed by Mr. Munshi.

Then, I come to the other class, *viz.*, children with parents and guardians. They may fall into two categories. For the sake of clarity it might be desirable to consider their cases separately; the first is this: where children are converted with the knowledge and consent of their guardians and parents. The second case is that of children of parents who have become converts.

It does seem to me that there ought to be a prohibition upon the conversion of minor children with legal guardians, where the conversion takes place without the consent and knowledge of the legal guardians. That, I think, is a very legitimate proposition. No missionary who wants to convert a child which is under the lawful Guardianship of some person, who according to the law of guardianship is entitled to regulate and control the religious faith of that particular child, ought to deprive that person or guardian of the right of having notice and having knowledge that the child is being converted to another faith. That, I think, is a simple proposition to which there can be no objection.

But when we come to the other case, *viz.*, where parents are converted and we have to consider the case of their children, then I think we

*English translation of Hindustani speech ends.

[Dr. B.R. Ambedkar]

come across what I might say a very hard rock. If you are going to say that, although parents may be converted because they are majors and above the age of 18, minors below the age of 18, although they are their children, are not to be converted with the parent, the question that we have to consider is, what arrangement are we going to make with regard to the children? Suppose, a parent is converted to Christianity. Suppose a child of such a parent dies. The parent, having been brought up in the Christian faith, gives the Christian burial to the dead child. Is that act on the part of the parent in giving a Christian burial to the child, to be regarded as an offence in law? Take another case. Suppose a parent who has become converted has a daughter. He marries that daughter according to Christian rites. What is to be the consequence of that marriage? What is to be the effect of that marriage? Is that marriage legal or not legal?

If you do not want that the children should be converted, you have to make some other kind of law with regard to guardianship in order to prevent the parents from exercising their rights to influence and shape the religious life of their children. Sir, I would like to ask whether it would be possible for this House to accept that a child of five, for instance, ought to be separated from his parents merely because the parents have adopted Christianity, or some religion which was not originally theirs. I refer to these difficulties in order to show that it is those difficulties which faced the Fundamental Rights Committee, the Minorities Committee and the Advisory Committee and which led them to reject this proposition. It was, because we realised, that the acceptance of the proposition, namely, that a person shall not be converted below the age of 18, would lead to many disruptions, to so many evil consequences, that we thought it would be better to drop the whole thing altogether. (*Hear, hear*). The mere fact that we have made no such reference in clause 17 of the Fundamental Rights does not in my judgment prevent the legislature when it becomes operative from making any law in order to regulate this matter. My submission, therefore, is that the reference back of this clause to a committee for further consideration is not going to produce any better result. I have no objection to the matter being further examined by persons who feel differently about it, but I do like to say that all the three Committees have given their best attention to the subject. I have therefore, come to the conclusion that having regard to all the circumstances of the case, the best way would be to drop the clause altogether. I have no objection to a provision being made that children who have, legal and lawful guardians should not be converted without the knowledge and notice of the parents. That, I think, ought to suffice in the case.

The Hon'ble Sardar Vallabhbhai Patel: Sir, this is not a matter free from difficulties. There is no point in introducing any element of heat in this controversy. It is well known in this country that there are mass conversions, conversions by force, conversions by coercion and undue influence, and we cannot disguise the fact that children also have been converted, that children with parents have been converted and that orphans have been converted. Now, we need not go into all the reasons or the forces that led to these conversions, but if the facts are recognised, we who have to live in this country and find a solution to build up a nation,—we need not introduce any heat into this controversy to find a solution. What is the best thing to do under the circumstances? There may be different points of view. There are bound to be differences in the view points of the different communities, but, as Dr. Ambedkar

has said, this question has been considered in three Committees and yet we have not been able to find a solution acceptable to all. Let us make one more effort and not carry on this discussion, which will not satisfy everybody. Let this be therefore referred to the Advisory Committee. We shall give one more chance.

Mr. President: Do I take it that it is the wish of the House that this clause be referred back to the Advisory Committee for further consideration?

The clause was referred back to the Advisory Committee.

CLAUSE 18—CULTURAL AND EDUCATIONAL RIGHTS

The Hon'ble Sardar Vallabhbhai Patel: I move clause 18 now.

“(1) Minorities in every Unit shall be protected in respect of their languages, script and culture, and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect.

(2) No minority whether based on religion, community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsory imposed on them.

(3) (a) All minorities whether based on religion, community or language shall be free in any Unit to establish and administer educational institutions of their choice.

(b) The State shall not, while providing State aid to schools, discriminate against schools under the management of minorities whether based on religion, community or language.”

I move this clause for the acceptance of the House.

Shri Mohanlal Saksena (United Provinces: General): Sir, with your permission, I would like to move that this clause be referred back to the Advisory Committee for reconsideration. There are certain aspects which require reconsideration, and, on the whole, I think it would be much better that this whole clause be referred to the Advisory Committee for their reconsideration.

Mr. President: Mr. Mohanlal Saksena has moved that this clause also be referred back to the Advisory Committee for further consideration.

Mr. D. N. Datta: Mr. President, with regard to sub-clause (1) of clause 18, it has been stated that—

“Minorities in every unit shall be protected in respect of their language, script and culture, and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect.”

I want to illustrate my point. If in a particular Unit....

Mr. President: You are going into the merits of the clause.

Mr. D. N. Datta: I am not going into the merits. I want clarification.

Mr. K. M. Munshi: I have got an amendment to move.

Mr. President: There is a motion by Mr. Mohanlal Saksena. He wants that the clause be referred back to the Committee. If that is accepted, no amendment need be moved.

Mr. D. N. Datta: I do not know if my request for clarification will be fulfilled even if the clause be referred back to the Committee. If you would allow me to speak....

Mr. President: If the House wants to refer back the Clause to the Committee the discussion will not be of much help.

Mr. D. N. Datta : If the House intends that this clause shall be referred back, I need not speak. I am not moving any amendment.

Mr. K. M. Munshi: Is it worth while moving any amendment if Mr. Mohanlal Saksena's suggestion is carried ? If that is accepted no amendment need be moved.

Acharya J. B. Kripalani (United Provinces: General): If after discussing we find there are any serious difficulties, then we may send the clause back to the Advisory Committee. If there are no serious difficulties and the House is practically united, then we may proceed with this.

Many Hon'ble Members: That is right.

Mr. President: I take it that the House wishes to discuss this clause. The amendments will be moved. We may take up the suggestion of Mr. Mohanlal Saksena at a later stage.

Mr. K. M. Munshi: I move that sub-clause (2) of clause 18 be referred back to the Advisory Committee. It was the general sense of many of the members that this clause should be reconsidered in the light of discussion that took place.

Mr. President: There are other amendments of which I have got notice. I shall ask the Hon'ble members to move the amendments.

Sri V. C. Kesava Rao (Madras: General): I do not move my amendment. (No. 76 of the Supplementary List No. II).

Dr. Suresh Chandra Banerjee (Bengal: General): In view of the amendment that sub-clause (2) be referred back to the Advisory Committee, I do not see any object in moving my amendment, and I do not propose to move it.

Sri K. Santhanam: I am not moving my amendment. (No. 78 of the Supplementary List No. II).

Shri Phool Singh: I am not moving amendment. (No. 80 of the Supplementary List No. II).

Shri Algu Rai Shastri: *[I do not want to move my amendment.]*

Dr. Suresh Chandra Banerjee: In view of the assurance given by Mr. Munshi, I am not moving amendment No. 72 in the List.

The Hon'ble Shri Jagjivan Ram: I am not moving my amendment (No. 83 of the Supplementary List No. II).

Mr. R. K. Sidhwa: My amendment, *i.e.*, No. 84, is a new clause. It may be taken afterwards.

Mr. D. N. Datta: Amendment No. 85 seeks to introduce new clauses. It may be taken up later.

Mr. President: All the amendments of which I have got notice have been disposed of; they are not moved.

Mr. Munshi's amendment and the clause are now both open for discussion. There is a suggestion that the whole clause be referred back and the amendment is that only sub-clause (2) be referred back.

[] English translation of Hindustani speech.

Shri Mahavir Tyagi: Sir, I rise to support the motion of Mr. Mohanlal Saksena. He has only proposed that this clause be referred back to the Advisory Committee. I think, Sir, we are taking this document lightly. It may be that in matters like these, *i.e.*, cultural and educational rights, they could be defined only as far as they appertain to individuals and the question of minorities had better be left for the future Governments. I think we are binding the hands of our future Governments too much. We should leave them free to do according to the times and the situations they face.

Now, Sir, the question of guaranteeing the rights of minorities with regard to culture and education privileges, I would suggest that in future occasions may arise when the Governments belonging to the Union may have to negotiate with other units and may have to know from them as to what is happening to the minorities that reside in the areas which have not chosen to join the Union. Now, supposing the Governments of the Units which belong to the Union are committed by means of this clause 18 to a certain policy towards the minorities, the people here may feel the necessity of knowing as to what is happening to the minorities who reside in those units which have refused to join the Union and belong to Pakistan or any other parts of India which may organise themselves separately. My suggestion is that on the question of minorities we may not be committed here and this question be left over for the time when we may definitely know as to whether the whole of India is going to be one Unit or is going to be partitioned into two. If there is to be a partition, we must know what is happening to the minorities on the other side, in the other units. Therefore, the question is not so easy to solve just now. I submit that the whole House will support me when I say that this question had better be hanging fire till we definitely know as to what is going to be the final shape of India and how the Units are going to treat the minorities. I therefore support the motion of Mr. Mohanlal Saksena that the consideration of this clause be put off.

Seth Govind Das (C.P. & Berar: General): *[Sir, I think the motion before us contains no such clause which can be considered controversial. Mr. Mahavir Tyagi has said that we do not know till now whether India is to remain one or is to be partitioned. For reasons which lead him to think that this should be sent to the Advisory Committee, I feel that it should be passed by us today. Whether there is one Hindustan or Pakistan, undivided or divided India—the phantom of this thought sticks to us and we look at all problems when they come up, obsessed with that view.

While supporting the resolution of Pandit Jawaharlal Nehru I said that we should not care whether our Muslim League brothers enter the Assembly or not. On the same grounds I again wish to say that we should not care whether India is to remain undivided or is to be divided. We want one India. We want that India should remain one. We are not to stop any of our efforts. I am even against Mr. Munshi's amendment, for I cannot see anything in this whole clause against any caste or community. As I have said that without looking—to what is going to happen to India in future, we should pass this resolution keeping in view as to what our duties are and what should be done in this Assembly.]*

[]*English translation of Hindustani speech.

Mr. D. N. Datta: Mr. President, Sir, clause 18, sub-clause (1) says—

“Minorities in every unit shall be protected in respect of their language, script and culture, and no laws or regulations may be enacted that may operate oppressively or prejudicially in this-respect.”

I shall illustrate my point. Suppose in a certain unit there are different communities residing, using different scripts, and that unit intends to make a law that there should be one script instead of different scripts now prevailing. I feel that there may be necessity for the unit to promulgate a law that there should be one script for that particular unit for the benefit of the unit itself, and if that is not allowed by the Fundamental Rights, I think the interests of the Unit will suffer. I cannot suggest what should be the language of the clause under which such laws can be promulgated so that there should be one script for the benefit of the whole Unit. I suggest that this matter may also be referred to the Drafting Committee of the Fundamental Rights Sub-Committee because it is a very fundamental matter. The minority must have a right, but at the same time the Unit itself should also have a right to promulgate such a law—that there should be one script for the whole Unit or province. So, I consider that this matter should be considered by the Fundamental Rights Sub-Committee or by Sardarji.

Srijut Rohini Kumar Chaudhury: Mr. President, Sir, I wish to draw attention to sub-clause (2) of clause 18:—

“No minority whether based on religion community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on them.”

It refers to the compulsory imparting of religious instruction Clause 16 which also refers to compulsory participation in religious instruction in school has already been referred by this Hon'ble House to the Advisory Committee. So it is only reasonable that we should agree to refer this clause to the same Advisory Committee which will consider clause 16.

I submit, Sir, that other sub-clause of this clause are not inoffensive or free from difficulty as they may seem on surface.

Take for instance, sub-clause (1) which speaks of scripts. Most of the tribal people in our Province have lost their original script. Some have taken to Assamese language and script, but Roman scripts have been recently imposed on them and now most of them are willing to take Hindi scripts which they would not be able to adopt if the sub-clause stands as it is.

Then turning to sub-clause (3) (b), if the clause stands as it is, it will seriously interfere with proper distribution of grants. So, on the whole, I think, instead of remitting sub-clauses piece-meal. It will be wise to refer the whole clause 18 to the Advisory Committee.

Sri Rajkrushna Bose (Orissa: General): I suggest, Sir, that clause 18 as moved by Sardar Patel and the amendment of Mr. Munshi, should be taken up for consideration now and the House should come to a decision in the matter. It seems that there is a move to refer clauses like this back to the Advisory Committee and it has become a little too catching and therefore we are not in a position to do anything here but refer back to the Advisory Committee. Let us not forget that before these clauses passed through the Committee, they had passed through two other Committees, *viz.*, the Minorities Rights Sub-Committee and the Fundamental Rights Sub-Committee. Clause 18 which we are now

considering is so very simple and innocuous that it really needs no referring back to the Advisory Committee again. Three sub-clauses are attached to it, one is that the language, script and culture should be preserved and no laws or regulation may be enacted that may operate oppressively or prejudicially in this respect. If we are going to have one script in India as was suggested by Mr. Datta, it may create difficulties and any unit which wants to have a common script for the whole unit will have difficulties if this sub-clause is kept.

Well, my contention is that the sub-clause should be retained as it is, just because, if today we raise the question of wiping out languages or scripts when we are framing our first independent constitution, there may be any number of complications and difficulties and misunderstandings and at a time when we are having a lot of other difficulties we should not invite any more now. Therefore, we ought to keep the first sub-clause as it has been kept in the original. Then sub-clause (3) (a) reads:

“All minorities whether based on religion community or language, shall be free in any Unit to establish and administer educational institutions of their choice.”

This is a right, Sir, which I think no country can take away and ought to take away and all constitutions should concede this right to the minorities. It is such a simple thing that it needs no reference back to the Advisory Committee again. Now, sub-clause (3) (b) reads:

“The State shall not, while providing State aid to schools discriminate against schools under the management of minorities whether based on religion, community or language.”

This again is such a simple question. If any minority wants to start a school of its own in any unit or in any part of the Union, certainly you are not going to forbid them from doing so, or pass laws whereby they cannot have this ordinary right. If you are going to do that, all your claim to give protection to the minorities will be reduced to a farce. Therefore, I do not see why this simple clause, namely clause 18, with all its sub-clauses should be referred back to the Advisory Committee. Of course, a point has been raised by one of the members that the consideration of matters relating to minorities should be put off till we know the mind of the Pakistanists in the matter and the rights they are going to concede to the minorities in their areas. Well, Sir, if, knowing fully well that those who oppose India's independence today like the Muslim League are adopting dilatory tactics to delay our freedom we put off our business till Doomsday or wait till they have made some decisions, we shall have to wait indefinitely. If, say for instance, they go beyond June 1948 to reach a decision with regard to these matters, are we to postpone our decisions on matters so simple and ordinary. I think, Sir, that it will be foolish on our part to delay decisions on matters like these, and therefore clause 18 as moved by Sardar Patel and amended by Mr. Munshi should be adopted by the House.

Dr. B. R. Ambedkar: Mr. President, Sir, I confess that I am considerably surprised at these amendments—both by Mr. Munshi as well as Mr. Tyagi, They have, I submit, given no reason why this clause 18 should be referred back to the Committee. The only reason in support of this proposal—one can sense—is that the rights of minorities should be relative, that is to say, we must wait and see what rights the minorities are given by the Pakistan Assembly before we determine the rights we want to give to the minorities in the Hindustan area. Now, Sir, with all deference. I must deprecate any such idea. Rights of minorities should be absolute rights. They should not be subject to any consideration as to

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what another party may like to do to minorities within its jurisdiction. If we find that certain minorities in which we are interested and which are within the jurisdiction of another State have not got the same rights which we have given to minorities in our territory, it would be open, for the State to take up the matter in a diplomatic manner and see that the wrongs are rectified. But no matter what others do, I think we ought to do what is right in our own judgment and personally I think that the rights which are indicated in clause 18 are rights which every minority, irrespective of any other consideration is entitled to claim. The first right that we have given is the right to use their language, their script and their culture. We have stated that "there shall be no discrimination on the ground of religion, language, etc." in the matter of admission into State educational institutions. We have said that "no minority shall be precluded from establishing any educational institution which such minority may wish to establish". It is also stated there that whenever a State decides to provide aid to schools or other educational institutions maintained by the minority, they shall not discriminate in the matter of giving grant on the basis of religion, community or language. Sir, I cannot understand how there can be any objection to these rights which have been indicated in clause 18. At any rate, nobody who has supported the motion that this may be referred back to the Committee has advanced any argument that either these rights are in excess of what a minority ought to have or are such that a minority ought not to have them. Therefore, it seems to me a great pity that the labours of three Committees which have evolved these provisions should be so brusquely set aside simply because for some reasons people want that this matter should be referred back to the Committee. I do not know what objection my friend Mr. Munshi has to sub-clause (2) as it stands, but if it is necessary that this sub-clause may be referred back to the Committee I certainly would raise no objection. That sub-clause may be referred back because I understand that we have limited this matter to State educational institutions and we have said nothing about those which are only State-aided. If that point needs to be further clarified the matter may be referred back, but, because there may be something to be said in favour of the reference back of sub-clause (2) I do not see that the same logic could be extended to the whole of the clause. I submit therefore that the clause as it stands, should be passed, barring sub-clause (2) which may, if necessary, be referred back to the Committee for consideration.

Shri Lakshminarayan Sahu: Mr. President, Sir, while I was speaking some time before, I was just telling that I welcomed this clause 18 in the Fundamental Rights, because this is the first time that minorities will feel happy that they have got some definite rights. I was referring to the question of who should be called a minority about which I have my doubts. But I hope they will be cleared by further discussions. But as it is, I welcome this clause. I want to show that in Midnapore district the population of Oriyas has been mutilated to a very great extent so much so that today we do not find in the census figures any Oriya as such. In 1891 the census number of Oriyas was 6 lakhs. In 1901 it was reduced to 3 lakhs and in 1911 it was reduced to less than 2 lakhs. In 1921 it was 1,40,000 and in 1931 the figure is only 45,000.

Now, the same thing has happened in the southern portion of Orissa. The Utkal Union Conference for over 40 years agitated to get a separate province for Orissa only in order to get their minority rights, because as minorities they were not safe in any of the provinces, and when they got a separate province they were very happy. Now the question has come about the language. Referring to only one district there, out of the six

districts of Orissa,—to Ganjam,—there is great language difficulty there. The Vizagapatnam, District Gazetteer of 1906 writes:

“The language of the district forms a veritable bable. In Gunjam 940 out of a 1,000 speak Telugu in their houses, 14 talk Oriya, 9 Khond, 7 Gadaba, 5 Hindusthani. But among the same number in the Agency, 451 speak Orya, 204 Khond, 180 Telugu, 56 Savara, 30 Poroja, 23 Gadaba, 11 Koya, 3 Hindustani, 3 Gondi and 5 other vernaculars such as Labadi, Bastari, Hindi, Chhatiskari, etc.”

This difficulty about language has been felt in our province because a section of the people are Andhras and they are claiming that their children should be educated right up to the college stage through the medium of their own mother-tongue. And this should be decided clearly. I hope that by a clause like this these difficulties will be removed and our culture will be intact in those places where the Oriyas will be left outside their province; and so also the culture of other people who will be left in the province of Orissa will be properly safeguarded. But I would like to know what should be the language of the province and also the language of the different aboriginal people who are in the province of Orissa. As I have already said, there are any number of aboriginals speaking any number of different languages. Some of the aboriginal workers who are coming up claim that their language must be respected. In Orissa, if we respect every language it will be very difficult for the provincial Government to run the administration.

Quite apart from all the above difficulties which may be solved by the Units, I welcome this clause 18 which safeguards our cultural and educational rights.

Mr. President: We have two amendments. One is from Mr. Mohanlal Saksena.

Shri Mohanlal Saksena: Sir, I beg leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Then the other is from Mr. Munshi to refer back sub-clause (2) to the Committee.

The Hon'ble Sardar Vallabhbhai Patel: I accept it.

The amendment of Mr. Munshi was adopted.

Mr. President: Then I put the amended clause to the House now leaving out sub-clause (2) and retaining sub-clause (1) and sub-clause (3) (a) and (b).

Clause 18, as amended, was, accepted.

Mr. President: I think we have just come nearly to 12-30. So we shall stop today and take up the work again at 9 o'clock tomorrow.

The Assembly then adjourned till Nine of the Clock on Friday, the 2nd May, 1947.

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CONSTITUENT ASSEMBLY OF INDIA

Friday, the 2nd May, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Hon'ble Dr. Rajendra Prasad) in the Chair.

INTERIM REPORT ON FUNDAMENTAL RIGHTS—*contd.*

Mr. President : We shall resume further discussion on the remaining clauses of the Fundamental Rights. Clause 19.

Clause 19.—Miscellaneous Rights.

The Hon'ble Sardar Vallabhbhai Patel (Bombay: General): I beg to move clause 19. The clause runs thus:

“No property, movable or immovable, of any person or corporation including any interest in any commercial or industrial undertaking, shall be taken or acquired for public use unless the law provides for the payment of compensation for the property taken or acquired and specified the principles on which and the manner in which the compensation is to be determined.”

I do not expect any amendments to this motion, but if there are any, we shall consider them in time.

(Amendment Nos. 86 and 87 were not moved.)

Raja Jagannath Bakhsh Singh (United Provinces: General): I do not move amendment No. 88. Sir, I shall, with your permission, move amendment No. 89. I move:

“That in clause 19, after the words ‘the payment of’ the word ‘just’ be inserted.”

I congratulate the Advisory Committee on the labour they have devoted to the difficult and complicated question of framing the fundamental rights. Clause 19 provides:

“No property, movable or immovable, of any person or corporation, including any interest in any commercial or industrial Undertaking, shall be taken or acquired for public use unless the law provides for the payment of compensation.”

I have no doubt that the Advisory Committee had in their mind that, whenever an occasion arises to take property, movable or immovable, it should be after payment of compensation which is just compensation. But I think that without the insertion of the word “just” which I am moving, the meaning of the clause may be left a little vague.

Then, Sir, there are a number of precedents in support of my contention. I believe the Advisory Committee had in their view the American constitution in framing the fundamental rights. In paragraph 3 of the Report of the Advisory Committee it is stated:

“We attach great importance to the constitution making these rights justiciable. The right of the citizen to the protection in certain matters is a special feature of the American Constitution and the more recent democratic constitutions.”

If you look at Article V of the American Constitution, 1791, the, last two lines read thus:

“... nor shall private property be taken for public use without just compensation.”

[Raja Jagannath Bakhsh Singh]

This makes it clear that the American Constitution lays particular emphasis on this word "just" in qualifying the word "compensation". Next, Sir, if we look at the Constitution of Danzig—I am referring to the Third Series of Constitutional Precedents, page 69, you will find:

"The right of property shall be secured Expropriation may only be effected in accordance with the provisions of the law and for the benefit of the whole, community, and in return for due compensation, in case of dispute with regard to the amount of compensation, recourse may be had to the law-courts."

Further, if I have your permission to quote one more constitution, namely, that of Australia, it will be found that in section 51 of the Constitution of the Commonwealth of Australia the following provision is incorporated:

"The acquisition of property on just terms from any State or person in respect of which the Parliament has power to make laws."

I do not wish to take the time of the House in reading the Constitutions of other countries, but I may add that the House will find in the Constitutions of Belgium, Bulgaria, Denmark, Finland, Albania, and Yugoslavia—in a number of these countries the word "just" qualifies "compensation" in others a similar expression has been used. I, therefore, submit that so far as precedents are concerned, I am well supported in my motion. I think it is unnecessary for me to put before the House all the arguments in support of this amendment, as I know the House is pressed for time. Therefore, Sir, with these words I commend my amendment for the acceptance of the House.

Prof. K. T. Shah (Bihar: General): Mr. President, I have given notice of an amendment to add the following proviso to clause 19:

"Provided that no rights of individual private property shall be recognised in forms of natural wealth, like rivers or flowing waters, coastal waters, mines and minerals, or forests."

But as this raises many complicated issues, I do not move it but suggest that this should go back to the Advisory Committee.

Mr. President: Do you move the amendment?

Prof. K. T. Shah: No, Sir.

Mr. President: There is only one amendment to this clause. The clause and the amendment are both for discussion.

Shri S. Nagappa (Madras: General): Mr. President, I rise to offer my support to this clause proposed by the Hon'ble Mover of this Report. This is a clause that gives some hope to the poor tiller of the soil. This clause gives a promise to the people of the country that the Union Government or the Unit Governments are going to acquire property, landed or other sort of property, from either individuals or corporations or from industrialists or commercial concern, in the public interest and that, when they do so, they are going to compensate them. Now, Sir, what sort of compensation is to be paid? There are difficulties in the way of settling this matter. I want that in paying compensation we must be reasonable. Now the question arises as to what is reasonable compensation. It seems to me, Sir, that when we are acquiring landed property from a zamindar, we need not pay as much as he wants. We need pay only what is reasonably required to enable him to maintain himself and his family for one or two generations. That is the only thing necessary to do to fulfil the kind of assurance which the Congress has given to these zamindars and jagirdars in their election manifesto. My humble request that the

Government should accept my interpretation of what reasonable compensation is. For instance, if a poor man's property is acquired for a particular purpose, then, in giving him compensation, care must be taken to see that it is reasonable in the particular case. In such a case the Government must pay him the cost of the land and something more even. But when the Government acquire lands from a zamindar, they need not pay the actual market rate or the local rate to make the compensation paid reasonable. You have to fix the compensation keeping in view the manner in which the zamindar acquired that property. That is my contention, Sir.

Then, Sir, I submit that when once you acquire land, you must see that the tiller of the soil is made the owner of the soil. Then alone we will be able to give a kind of encouragement to the toilers and make them increase the produce and the national wealth for the maintenance of the country. I hope this clause will not stand in the way of the provinces pushing forward land legislation which they have in some cases already undertaken. For instance, my respected leader of Andhradesa, Sri T. Prakasam, has already done a lot for the abolition of the zamindari system in Madras and the Madras Government are pushing forward legislation for the abolition of zamindaris. Once the zamindaris are abolished and the Government acquire their properties, it must be their endeavour to make the best use of such properties. The Government must see to it that collective farms are formed and that, through them, the maximum is produced and the tiller is given sufficient for what he does. These are the hopes which the particular clause gives to the poor tillers of the soil.

Now, Sir, so far as the industries are concerned, I have been day in and day out asking in the Madras Legislative Assembly, for their nationalisation. That does not mean that we need not encourage private bodies to take to industrialisation. We have to go forward in this respect. Our country is very backward industrially. If we are to move quickly forward, we must go to the extent of granting subsidies to our industries and nationalise them as soon as possible. When private enterprise has fully developed and when the country thinks that particular industries should be taken over by the Government for public benefit, reasonable compensation must be paid. In these cases it would be reasonable compensation if we offer the persons who started those industries ample funds to fall back upon. That is my interpretation of the word 'reasonable' in this respect.

Sir, these are two main points that should be borne in mind when legislation is undertaken for the abolition of zamindaris and nationalisation of industries.

Once again, I offer my thanks to the Hon'ble Mover for bearing in mind this particular class of tillers of the soil who would be getting their due share of the results of their labours. I also thank you, Mr. President, for giving me this opportunity to speak on this motion.

Dr. Suresh Chandra Banerjee (Bengal: General): Mr. President, Sir, I had naturally hoped that we would make some progress towards socialisation at least when we gained our independence within a few months, but in these fundamental rights nothing has been put in regard to socialisation. I would have been really happy, had the amendment of Prof. K. T. Shah been accepted, because there is an element of socialisation there. I feel that in a country like India where poverty is so acute, where general condition of the workers and peasants is so miserable, nothing but socialisation can give some hope of improvement in the future. So, I would have been happy if the House had accepted the amendment of

[Dr. Suresh Chandra Banerjee]

Prof. Shah. But I know, Sir, the difficulties with which we are faced at present. We know, Sir, how many interests are represented here. Here, we have to consider the case of the Indian Princes, we have to consider the case of the Anglo-Indians, of the Christians and so many other people. As a matter of fact, it is a matter of great consolation to us that we have been able to find out a solution for reconciling so many interests. So, in the present context, we cannot press for any amendment like this, but still I do hope that in the near future when India gets her independence, it will be possible to have some kind of socialisation. With these words, Sir, I support the clause as it stands.

Shri Ajit Prasad Jain (United Provinces: General): I rise to make a few observations on this clause. I had given an amendment for the total deletion of this clause, but it became unnecessary to move that amendment for I could express my ideas during the course of general discussion. This clause reproduces a part of Section 299 of the Government of India Act, 1935, with a certain amount of amplitude. It says that no property, whether movable or immovable, shall be acquired for public use unless the law provides for the payment of compensation. We have some experience of the working of Section 299 of the Government of India Act. The House must be aware that in several Congress Provinces measures for the abolition of zamindari system are under consideration. In the United Provinces we passed a resolution for the abolition of zamindari system on payment of equitable compensation. That resolution follows the line laid down in the Congress Election Manifesto. In working out how the compensation should be calculated, we were faced with great difficulties. There was the question of the financial capacity of the State. If we fix compensation at a figure which the State could not pay, it would mean that the zamindari should continue to exist. We had also to see how much profits the landlords have made in the past from the zamindari. The question of the origin of zamindari also became relevant. Some of the zamindaris in our provinces have been acquired for helping the British by acts of treachery during the first war of independence in 1857. We could not ignore the market price of the zamindari either. After a careful consideration of these various factors we are trying to fix compensation for the zamindaris. On the other hand, the landlords have been interpreting the word 'compensation' to mean full compensation, *i.e.*, the market price of the land. Some of them have threatened that they will go to the Federal Court for interpretation of the word 'compensation'. We have no manner of doubt that it is impossible for the State to pay full compensation. Then the choice before us is to leave the zamindari as it is. Sir, land acquisition may take either of two shapes. It may be acquisition of a specified property for a specified purpose. In that case the State may pay not only its full value but something more for the compulsory acquisition as is provided in the Land Acquisition Act. There may be other cases in which property may not be acquired as a solitary thing. It may take the shape of a measure of social or economic reform for the welfare of the society. For instance, we may have to acquire factories, mines and industries for nationalisation. In such cases the acquisition of the property will be for social use for the upliftment and betterment of the society. The property is being acquired in the interest of the large masses of the people. And in such cases considerations which may prevail in the cases of isolated acquisition will not apply. The State may not be in a position to pay full compensation. In fact, there may be only a nominal compensation or no compensation at all. This clause, if accepted as it stands, will stand

in the way of large scale social and economic reforms. It will cover all the cases where property is being acquired for social or economic improvements. It is none of my intentions that the State should act as a robber or a bandit and arbitrarily seize properties of the people, but measures of social reforms stand on quite a different level. That is the reason why a number of amendments, which were not moved, had been tabled in the direction pointed out by me. Fundamental Rights in my opinion are embodied in the Constitution with a view to protect the weak and the helpless. The present clause will have just the contrary effect. It will protect the microscopic minority of propertied class and deny rights of social justice to the masses. I am, therefore, totally opposed to this clause and I do hope that the Hon'ble Mover will keep this in mind and refer the clause back to the Advisory Committee so that any provision which we pass today may not stand in the way of social and economic reforms which are necessary to bring prosperity and plenty to the country. With these few remarks, I commend my point of view for the consideration of the House.

Mr. R. K. Sidhwa (C.P. and Berar: General): Mr. President, Sir, one would have expected that under the present economic conditions prevailing in the country, there would be a clause for acquiring property in a different manner. It is very deplorable that at the present moment when various legislatures are out to abolish the jagirdari and zamindari systems by payment of a small compensation or no compensation under this clause we are asked to pay compensation for any property that is going to be acquired. In free India where we should expect the property clause to be more liberal and beneficial to the people, we find that we are helping the upper class people by passing this clause.

Sir, the word 'property' is very vague. "Property" includes public utility concerns like electric corporations, transport organisations etc. We are well aware that in many provinces these public utility concerns are being nationalised and I am sure that in a very short time to come almost all the public utility concerns will be nationalised. In fact, under the bureaucratic system of Government, all the railways have been nationalised by payment of any 'goodwill' that may have been specified under the agreement. I know, Sir, that the agreements with local bodies under which some electric concerns are working, provide for acquiring such concerns without any compensation being given. If you pass this clause, it would mean that although the agreements do not provide for it, we have to pay compensation to these public utility concerns when we acquire them. Is it fair, may I ask, that the public utility concerns which are for the benefit of consumers and the people, and which in all countries eventually may become the property of the people, are to be taken over by paying the actual invested capital plus compensation even if there is no clause as to the payment of compensation? I do feel, Sir, that this clause requires amendment at least as far as the public utility concerns are concerned. But, Sir, I am helpless as I could not move an amendment I would have been desired that this clause should have been amended or have gone back to the Advisory Committee under the circumstances I mentioned. If it is not going, I hope that this will receive the consideration of the Mover, because it will be really doing great injustice to the consumers,—that though in the agreement there is no clause of compensation we shall be bound to give it and in a small province they would have to take over concerns by paying them the actual amount invested plus compensation.

Mr. President: Do you mean to say that an agreement will be affected by this clause?

Mr. R. K. Sidhwa: Yes, Sir, No property shall be taken or acquired for public use unless the law provides for the payment of compensation, says the clause. Now, Sir, the law will be made certainly in accordance with this clause and a demand for compensation will be made even if there is nothing in the agreement.

Mr. President: The acquisition itself will be provided for in the agreement.

Mr. R. K. Sidhwa: If the law provides that a compensation is to be paid and if in the agreement there is no clause, then we will be bound down. I, as a common sense man, feel—of course, the legal luminaries may say, if they enlighten me I shall welcome it, but, as a common sense man, I feel that, if there is an agreement in which there is no clause for compensation and if you are enacting an Act for giving the compensation, they will claim from us the compensation. And owner of the property in that event will go to the Supreme Court and get his demand fulfilled under the clause.

Shri Vishwambhar Dayal Tripathi: *[Mr. President, I stand here to oppose the amendment moved by my friend, Raja Jagannath Bakhsh Singh. His amendment says that the word “just” should be added before the word ‘compensation’ here. I oppose this most emphatically. So far as this clause is concerned, not only I but most of my friends apprehend, that its wordings are such that their effect, particularly the legal effect, would not be to the good of the country to the same extent as it ought to be. I want that the words in the clause be changed so that it may not go against the interests of the country as apprehended by us. I would appeal to the gentlemen who drafted this clause to reconsider it and put before us a new “formula”.

It is proper and I accept it that when we acquire property of any one it is necessary to give compensation for it. This too I accept that in most cases compensation should correspond to the value of the property. But at the same time I also believe that we must also see as to how the property was originally acquired by the person concerned. If it was acquired justly, compensation ought to be given according to its value. If the property was not acquired justly or if the holder has earned sufficient profit from the same it is wrong to give him full compensation or to pay its full price. If we want to change the existing social order, if we want to change the present order of zamindari and capitalism and at the same time say that full compensation should be given for the property taken by the State, it would mean that we would not be able completely to do away with the present social order. If we have really to change this order, if we really want to implement the resolution passed by A.I.C.C. on 8th August, 1942, which promised to frame a constitution wherein the real power is vested in the workers in farms and factories, we have to reconsider these clauses. If this clause is left as it is, undoubtedly various obstacles will come up in our way of fulfilling the promises and declarations made by us before the country from time to time. Therefore, I again request the framers of this clause to reconsider it.

We have before us the question of ending zamindari in several provinces. We have also before us the question of payment of compensation to the Zamindars. There are all kinds of difficulties before us. I am a member of the U.P. Zamindari Abolition Committee which has to deal with such questions. I can say with all the authority at my command that if we have to pay the compensation for zamindari according to its market value, I have no doubt that it will be almost impossible for us to

*[English translation of Hindustani speech begins.]

end zamindari: and even if it could be made possible, it would result in the peasantry remaining burdened for another 20 or 25 years to the same extent as they are today. After all from what source the compensation will be paid ? It will be taken from the pockets of the poor. Under these circumstances for another 20 or 25 years the peasants will have to remain under the same financial burden which they have to bear today. They will not benefit in any way for this period of 20 or 25 years. Besides the statement of Raja Sahib that "just" compensation should be paid is rather extremely odd. Is Raja Sahib prepared that a general examination of the titles of the Zamindars in respect of their landed property be undertaken to verify as to how many of these titles can be termed just ? If he agrees to this his amendment may be considered. There are many estates in the country and particularly in Oudh, to which province Raja Sahib belongs, which were acquired by the present holders as rewards for their traitorous support to the English during the Mutiny of 1857. The recipients of these estates had no estate previously. The Englishmen gave them these estates for their treachery against India. Raja Jagannath Bakhsh Singh claims that the Zamindar participated in the war of liberation of 1857. I welcome those who had fought for freedom and I do recommend that they should be given the maximum concessions. Raja Sahib knows that there are instances of many who betrayed their countrymen and in return for their treachery received big estates. Such people have no right to demand compensation. Many of them enjoy exemption from payment of revenue, and have been continuously enjoying the profits of these estates for the last 90 years. They have been realising rent from the tenants for the last 90 years without having had to pay even a pie of land revenue. If any body had even paid the price for it, he has already received five times its value. Those who acquired these estates as a reward for their betrayal of the country now demand compensation! The question of 'just' compensation does not arise so long as we have not examined the validity of the titles to these estates. Even if the word 'just' is not added here the clause as it stands, can be widely interpreted to include compensation to those who were never entitled to receive these estates, who have been receiving the profits of the estates for nearly 90 years and many of whom had not even to pay any land revenue to the Government. It would be improper to pay any compensation to these people. There is a 'saving grace' in this clause that the Government would consider the principles and basis on which compensation should be given.

It is my frank opinion that they should be given something as maintenance allowance for some years so that they may be able to live in, and adjust themselves to, the new and changed circumstances. I have no objection to this. I do not like, and nobody would like, that many of these people should be reduced to destitution and starvation. Therefore, if compensation can be supported it can be only on the basis that zamindars and capitalists should be given some amount for maintenance for a few years so that they may keep themselves alive without difficulties in the new economic set-up. If we want that the existing order of zamindari and capitalism should be done away with, it is desirable that compensation should be given on the basis of maintenance for a few years. But what I fear and suspect is that the clause in question may be legally so interpreted that our economic progress may be retarded, and the Congress and other important public organisations may not freely advance in the direction they intend to. Therefore, I oppose the amendment moved by Raja Sahib and at the same time request my respected friends, who have framed this clause, to reconsider it. If it is accepted

[Shri Vishwambhar Dayal Tripathi]

as it is, disastrous consequences may follow. Therefore I beg to put these two requests of mine before you and hope that the Hon'ble President and my other friends would accept them]*

Shri V. C. Kesava Rao (Madras: General): Mr. President, Sir, I stand to support the clause, but I want to make some observations on that.

This clause provides compensation to the citizen whose property will be acquired for the use of the public. When the State acquires any person's property, it is only for the benefit of the public and not of any individual. If such acquiring deprives a citizen of his livelihood, it is necessary to pay compensation equivalent to the property one loses. And I think nobody disputes such a compensation.

We are framing a constitution for free India. We are asking the British to quit India though they came here 200 years ago. We know that the British acquired India by foul means and not by hard labour. As the owners of this country, we have the right to ask them to leave the country, and in response to our demand, they are quitting India by June, 1948. In free India nobody wishes to be exploited by another. The big landlords and the Zamindars did not get their land and property by hard labour. In this respect there is no difference between the Zamindar and the British imperialist. The British acquired Empires and the Zamindars acquired large fortunes—both by means of exploitation.

In Free India it is necessary to keep all the citizens on the same footing. This may not be possible for some time to come due to the system prevalent in this country. The common cry of the tenant is that the whole produce collected by him is taken away by the landlord even though he requires some of it for the maintenance of his family. There is no other way for him except starvation. Is the State prepared to give him any livelihood or a compensation for the loss of his energy and for his labour? But if a Zamindar who exploits the poor and amasses wealth is deprived of a portion of his property for the benefit of the public, the State thinks of giving compensation for the loss, though it is not a loss to him actually. The present day request of a tenant is the reduction of rent for his land. But this request will lead to the snatching away of the little land he has been cultivating and maintaining his family with. The Zamindar is prepared to keep the land waste and not to reduce the rent. Thus he allows his tenant to starve.

Lastly, I wish to point out that the Indian National Congress has been fighting for the abolition of the system of Zamindari and even in the last election, it gave an undertaking to the masses that the Zamindari system will be abolished as soon as the Congress comes into power. And accordingly, the Congress Provincial Governments have prepared their Bills for the abolition of it. Now, when we are asked to frame the Constitution for Free India, we want to compensate them in the manner in which the law fixes. The law will be always in their favour and they get more than what is necessary.

In view of the above facts, I request the House to consider and amend the clause in such a way that only a nominal compensation may be payable for acquisition of the property of a citizen or a Corporation.

Rai Bahadur Syamanandan Sahaya (Bihar: General): Sir, I would like to make a few submissions in connection with the amendment which

] *English translation of Hindustani speech ends.

has been moved by my hon'ble friend, Raja Jagannath Bakhsh Singh, his amendment only suggests the addition of the word "just" before the word "compensation". I have been anxiously and carefully listening to the debate and I must say, I have heard nothing so far that there should be no justice exercised in the matter of the payment of compensation. No one has suggested, and I dare say, no one will suggest, that once we accede to the principle that acquisition of private property must be preceded by the payment of compensation, such compensation should be an unjust one. This, I submit, cannot be the contention of anybody in an august assembly like this. After all, the future of this country depends on the justice and fair-play that we exercise in dealing with the different problems confronting us here and in the tact and ability that we display in dealing with the affairs of international policy. I submit, Sir, whatever may be said about those who own lands at present, it cannot be denied that at one time they were the pioneers in building up the economic structure of this country a couple of centuries ago. They have earned and they have made money, but is that a ground for now taking away the property from them and paying them no compensation and even going to the extent of incorporating in the fundamental rights that they should get compensation and then arguing that it should be an unjust compensation. I do not think that any such proposition can be placed before this House, and even if it is placed, I do not think it will find acceptance in this House.

Well, Sir, what is the demand that the amendment puts forward ? It says the word "compensation" should be qualified. The Hon'ble Mover has referred to other constitutions in the world where the word "compensation" has been qualified by the word "just". This is not the only word which has been used. If we refer to the constitutional series on Fundamental Rights which was circulated to us by Sir B. N. Rau, it will be found that even in the German Constitution the words used are "due compensation". It is said there—

"Expropriation may be effected only for the benefit of the general community and upon the basis of law. It shall be accompanied by due compensation."

I therefore submit, Sir, that the use of the word "just" could only indicate the real purpose behind what is embodied in the Report of the Fundamental Rights Sub-Committee, unless some members are prepared to argue that you might as well put the word "compensation" there but be prepared to face the fact that it might be unjust compensation in certain circumstances. I contend, Sir, that that cannot be a correct and a proper approach to the problem nor a valid argument.

Then, Sir, the whole argument of all those who have opposed the amendment has centred round the question of the acquisition of the Zamindari. These friends unfortunately have either ignored knowingly or failed to appreciate that this compensation clause does not cover Zamindari alone. It covers the whole field of movable and immovable property in the country,—in the Union or in the Units. It may be necessary in the larger interest of the country at a later stage even to acquire "Kashtakari", *i.e.*, tenants' lands. If you want to introduce cooperative farming or communal farming, it may be necessary to acquire even the tenants' lands. Would you deny them a just compensation? A proposition therefore like this which covers such a wide field—not merely Zamindari but even commercial interests and so many other interests—must, I submit, be placed beyond all doubts and suspicions. If I may submit, Sir, the right to private property and the protection of private property are the acceptance of the principle of right over might. You may choose to do away with it if you like, but we shall then all slowly

[Rai Bahadur Syamanandan Sahaya]

drift towards jungle laws rather than good laws meant to keep society together. Some friends have also referred to the fact that certain zamindars got all their property for anti-national work during 1857 Revolution. The Hon'ble Mover of the amendment has questioned this remark. I will go a little further and submit that these hon'ble friends have probably incomplete knowledge of the Zamindari system and therefore it is that they have come to the conclusions that many or most of the Zamindars acquired their property as a gift after the 1857 Revolution. They forget that in certain parts of the country the Permanent Settlement Act was enacted as early as 1793 much before the 1857 Revolution. It cannot be said of them that they got their Zamindari because of certain anti-national work. There may have been some people, whose conduct may not have been such as one would like, but you are dealing with a community and not individuals. You are dealing with the whole land problem, and when you are doing that, it is essential that the whole question and the entire picture must be within your consideration. There are also a large number of people who have paid good money and purchased Zamindari—not a hundred years before as some think. Zamindaris have been bought and sold every day. People have bought Zamindari only this year by paying good money, earned money which they have accumulated as their life's savings. Who does not know that until only a few years ago our main investment out of our savings was only in lands? It will certainly be unfair not to give them compensation—and a compensation which is just and fair. My suggestion, Sir, to the Hon'ble the Mover of the main clause and to the Mover of the amendment will be that the word "compensation" itself means "just and fair compensation". Compensation cannot be, in my opinion, unjust and unfair, and I submit that if the Hon'ble Mover of the main clause feels precisely as I do, that compensation means just and fair compensation, then my advice to the Hon'ble the Mover of the amendment would be that he need not press his amendment.

Raja Jagannath Bakhsh Singh: In view of the discussion that has taken place, Sir, I would not like to press my amendment. I beg leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Now, the discussion will only be about the whole clause.

Sri Lakshminarayan Sahu (Orissa: General): Mr. President, Sir, while I approve of the clause as it stands now, I want to make certain observations especially with regard to Orissa Zamindaris. In Orissa the state of tenants is very bad and that is due to the people of Orissa receiving English education a little later than the people of Bengal and elsewhere. What happened was the Zamindaris that were in Orissa were transferred to the hands of absentee landlords in Bengal and the result has been that two-thirds of North Orissa—as it is called now—*i.e.*, the districts of Balasore, Cuttack, Puri and Sambalpur—two-thirds of the land in these districts are in the hands of absentee landlords and the result has been extremely disastrous. When they bought these Zamindaris they did not purchase them for a fair price. In fact, the Government records say that there was broad day-light robbery and that is how these Zamindaris were purchased, I, therefore, do not see why we should give any compensation to such Zamindars who bought these lands by a fluke or acquired them by broad day-light robbery.

Secondly, I want to draw the attention of the House to another Zamindar, the Zamindar of Jeypore. Now Jeypore Zamindari constitutes the whole of the Koraput District, which is one of the six districts of Orissa. It is a great pity that the Zamindari gives 16,000 rupees per annum to the Government but enjoys an income of Rs. 16 lakhs per annum. This state of things is extremely bad and it must be cured. It is very difficult to run the administration in the presence of such Zamindars. I, therefore, say that while giving compensation—and I also say while giving just compensation—we should be very just to these absentee landlords of Bengal and also to such landlords as the landlord of Jeypore Zamindari in Orissa. These are the things that I wanted to say, in particular, about Orissa.

Another thing I want to say is that in future when trying to build up a democratic State, we cannot bear that such a state of things as the existence of these Zamindars, which is very galling, should be allowed to continue for some time more to come. The sooner the Zamindars are paid off the better. I have nothing more to say except to add that out of 100 zamindars at least 99 today have a very bad name and the duties that have been imposed on them are not performed by them. Take, for instance, one duty of the Zamindar. It is a part of their duty laid down by Government that they should look after the interests of the cultivators. They never look to the interests of the cultivators. On the other hand, the cultivators are rack-rented too much. There are so many illegal cesses which they take. If I were to narrate them one after another, it would make a very long list. In fact, there has been great agitation in one of the Zamindaris in Orissa—*i.e.*, the estate of Kanika where 64 different kinds of illegal cesses, were taken. Now, in spite of agitation the same situation exists even today. The tenants are harassed in many ways. Therefore, when we are promised a democratic republic and that too very soon, I say we cannot bear the oppression of Zamindars. The sooner the Zamindars are paid off the better.

Mr. Satyanarayan Sinha (Bihar: General): I move: Sir, that the question be now put. The matter has been sufficiently discussed.

Mr. President: I have got some more names. Mr. Phool Singh.

Shri Phool Singh (United Provinces: General): *[Mr. President, Sir, several speeches have been made from the floor of the House, which go to show that some compensation is proposed to be given in lieu of the abolition of Zamindari. It is true, as Bishwambhar Dayal Tripathi has said, that many people acquired their zamindari by being traitors to the country. In reply to that a Raja Sahib has said that some of them have also helped in the freedom-struggle of the country. I submit that no reward has been given to men who helped the country. In that war, lands were forfeited. It would be an unusual case if one was granted an estate for fighting against the Government. Anyway, the question just now is one of compensation. One of the reasons that is constantly advanced in favour of granting compensation is the Government of India Act of 1935, and whenever any person raises the point that no compensation should be paid then he is told that it can only be done after the repeal of the Government of India Act of 1935. But today the very same clause is being passed by the Constituent Assembly, and I think, by putting it, not in the country's Constitution but in the list of its Fundamental Rights, the question is being closed once for all. Many people have spoken on the question of zamindari, but there is a much bigger problem than zamindari. It is industry. Who does not know that during

*[English translation of Hindustani speech begins.

[Shri Phool Singh]

the last five or six years of the war, many Mill-owners have earned profits several times more than their invested capital? Take the Textile Industry in which, on the paid-up capital of nearly fifty crore rupees; some hundred crores of rupees have accrued as profits. It would not be very proper to compare this country with others. During this war capitalists of no other country have reaped as much profits as Indian capitalists. Therefore, what I want to say is that by passing the clause in its present form we would be running the risk of permanently obstructing the possibility of reform in this country for ever. I appeal to my elders and others, who guide the thinking of this House, to ponder again over this clause and to re-shape it in a way so as not to make it impossible for the coming generations to introduce reforms if they choose. Section 16 in its present form, as it has been placed before the House, if passed, will make nationalisation of industry very difficult, if not impossible. I do not want to take any more time of this House, but I request you to refer this clause back for further consideration.]*

Sri Rajkrushna Bose (Orissa: General): Sir, I move that the question be now put.

Mr. President: There is a motion that the question be now put. I think we have had enough discussion and I would like to take the sense of the House. The question is:

“That the question be now put.”

The motion was adopted.

Mr. President: Sardar Patel will give his reply.

The Hon'ble Sardar Vallabhbhai Patel: Sir, the discussion on this question has gone on a wrong track. An amendment was moved by somebody, which has been subsequently withdrawn, but those who took part in the debate assumed that this clause was intended for the purpose of acquiring Zamindaris. That is, to say the least, not understanding the real meaning of the clause. Land will be required for many public purposes, not only and but so many other things may have to be acquired. And the State will acquire them after paying compensation and not expropriate them. That is the real meaning of the clause. But the Zamindars or some of their representatives thought that their interests must be safeguarded by moving an amendment or by making a speech here. But they are not going to safeguard these interests in this way. They must recognise the times and move with the times. This clause here will not become the law tomorrow or the day after; it will take at least a year more, and before that, most of the Zamindaris will be liquidated. Even under the present Acts or laws in the different provinces legislation is being brought in to liquidate Zamindaris either by paying just compensation or adequate compensation or whatever the legislatures there think fit. Therefore, it is wrong to think that this clause is intended really for them. It is not so. The process of acquisition is already there and the legislatures are already taking steps to liquidate the Zamindaris. Therefore, we must not or need not go into the question whether the Zamindars have in the past been patriotic or a nuisance or anything of that kind. It is all irrelevant and we need not go into the past.

There is no amendment to this clause and, therefore, I do not have to say anything by way of answer. I move that the clause as moved by me be passed.

Mr. President: I put clause No. 19 to the House.

Clause 19 was adopted.

] *English translation of Hindustani speech ends.

Mr. President: We now come to Clause 20.

CLAUSE 20

The Hon'ble Sardar Vallabhbhai Patel: I move clause No. 20.

“(1) No person shall be convicted of crime except for violation of a law in force at the time of the commission of that act charged as an offence, nor be subjected to a penalty greater than that applicable at the time of the commission of the offence.

(2) No person shall be tried for the same offence more than once nor be compelled in any criminal case to be a witness against himself.”

I do not suppose there will be any amendment to this clause, and I move that this clause be accepted.

Mr. President: I have got notice of several amendments to this clause also. I will ask the movers if they want to move them. Mr. Kamath.

Mr. H. V. Kamath (C.P. & Berar: General): Sir, as regards amendment No. 95 subsequent scrutiny shows that my point comes under clause 9 and therefore there is no necessity to move my amendment. As regards my amendment No. 96, I would like to reserve my right to move it later.

Mr. President: Shri Rohini Kumar Chaudhury, No. 97.

Srijut Rohini Kumar Chaudhury (Assam: General): I may move my amendment now if you would permit. This relates to the important question of possession of fire-arms and abolition of death sentences. But if this is treated as a new clause, it would be better to move it with other new clauses.

Mr. President: It will be a new clause.

Srijut Rohini Kumar Chaudhury: Then I do not move.

Mr. President: That means there are no amendments to this clause. I put the clause to the House.

Clause 20 was adopted.

Mr. President: Then we come to clause 21.

CLAUSE 21

The Hon'ble Sardar Vallabhbhai Patel: Sir, I move clause 21:

“(1) Full faith and credit shall be given throughout the territories of the Union to the public acts, records and judicial proceedings of the Union and every Unit thereof and the manner in which and the conditions under which such acts, records and proceedings shall be proved and the effect thereof determined shall be prescribed by the law of the Union.

(2) Final civil judgements delivered in any Unit shall be executed throughout the Union subject to such conditions as may be imposed by the law of the Union.”

I move this formally for consideration of the House.

Mr. President: I have got no notice of any amendments to this clause. So I shall put the clause.

Clause 21 was adopted.

Mr. President: Clause 22.

CLAUSE 22—RIGHT TO CONSTITUTIONAL REMEDIES

The Hon'ble Sardar Vallabhbhai Patel: Sir, I move clause 22:

“(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights guaranteed by this part is hereby guaranteed.

(2) Without prejudice to the powers that may be vested in this behalf in other courts, the Supreme Court shall have power to issue directions in the nature of the writs of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari* appropriate to the right guaranteed in this part of the Constitution.

(3) The right to enforce these remedies shall not be suspended unless when, in cases of rebellion or invasion or other grave emergency, the public safety may require it.”

There may be some amendments to this clause, Sir.

Mr. President: There are several amendments of which I have got notice. There is one from Sir B. L. Mitter.

Sir B. L. Mitter (Baroda): I am assured that this matter will be considered when the Judiciary Report comes up. In view of this assurance I do not move my amendment.

(Amendment Nos. 99 to 101 were not moved.)

Sri K. Santhanam (Madras: General): I move:

“That in sub-clause (3) of clause 22, after the word ‘emergency’, the following words be inserted:

‘declared to be such by the Government of the Union or of the unit concerned.’”

This is an obvious slip and I think it is acceptable to the mover. I do not want to say anything more. I move the amendment.

(Amendments Nos. 103 to 106 were not moved.)

Mr. President: There is only one amendment which has been moved.

Mr. K. M. Munshi (Bombay: General): There is one amendment of which I have given notice this morning. That is a purely verbal amendment, just re-arranging the wording. The amendment that I am moving is only to remove a little inelegance of language in sub-clause (1) of clause 22. The sub-clause says:

“The right to move the Supreme Court by appropriate proceedings for the enforcement of any of the rights guaranteed by this part is hereby guaranteed.”

The word “guaranteed” appears twice, and it is felt that it is not an elegant phraseology. I therefore move the following amendment:

“In clause 22(1), for the words ‘any of the rights guaranteed by this part is hereby guaranteed’ substitute the words ‘any of the rights provided for in this part is hereby guaranteed.’”

Mr. President: The two amendments and the clause are open now for discussion.

Sri K. Santhanam: I am afraid that the clause, as has been framed, is very defective, and it is one of those clauses which require careful consideration and revision. I understand that this is one of those things which will be considered by the Committee which is dealing with the judiciary. I wish this clause had also been left to them. As it stands, it is liable to serious misinterpretation. For instance, sub-clause (1) says :

“The right to move the Supreme Court by appropriate proceedings for the enforcement of any of the rights guaranteed by this part is hereby guaranteed.”

It might possibly imply that the Supreme Court is to be vested with exclusive original jurisdiction on all the matters governed by the fundamental rights, or it may mean that it is invested with concurrent original jurisdiction with another court. I would like to ask Dr. Ambedkar what it means—“the right to move the Supreme Court is guaranteed”. I can come at any time to the Supreme Court and move the Court on any of the matters connected with this. It may be by way of original jurisdiction, it may be by way of appellate jurisdiction. The matter is not clear, and therefore it is one of those things which ought to be made clear. Then in paragraph (2) of the clause, we have:

“Without prejudice to the powers that may be vested in this behalf in other courts.”

Which is the authority to vest it? Is it the Union legislature or the Unit legislature? I think in matters of interpretation of the Constitution or enforcement of fundamental rights the vesting of powers in the courts should be purely a Union matter and it ought not to be given to the units, because the units may practically defeat the exercise of these fundamental rights in two may different ways. For instance, if they say, all

original jurisdiction shall be in the Supreme Court, the ordinary citizen will not be able to go up every time to the Supreme Court. Or if they vest it in the magistracy, then he will have to get redress only by way of appeal, which is always dilatory and inconvenient. Therefore, the vesting of jurisdiction is an important matter for the citizen. I think all original jurisdiction in the matter of enforcement of fundamental rights should be vested only in the High Court of the Unit. It should not be given either to inferior courts, or to the Supreme Court except in matters concerning the Unit and the Union of inter-Unit matters. Therefore the High Courts in the Units should be the lynch-pin for the enforcement of these rights. I think this matter must have been made clear. I hope it will be made clear. As it stands, it is very defective and I reserve my right to ask for a review of this clause when the matter comes up again.

The Hon'ble Sardar Vallabhbhai Patel: This is a clause which provides a judicial remedy. If we provide for fundamental rights, it is necessary that we must provide also for a remedy. But it does not mean that this excludes or appropriates the jurisdiction of other courts or High Courts. It has nothing to do with that. When the whole judicial set-up will be considered, everything will be considered in proper order and in an appropriate manner, and, therefore, Mr. Santhanam's apprehensions are unnecessary. He reserves his right; everybody has reserved his own right, but reservations are unnecessary because the whole thing will have to be incorporated in the Constitution, and the final clause will have been considered several times before they are inserted in the Constitution. There is no reason to apprehend anything of that kind. I, therefore, move that the clause be accepted with the amendments which have been moved. I accept the two amendments.

Mr. President: The Mover is prepared to accept the two amendments—one moved by Mr. Santhanam and the other by Mr. Munshi.

The two amendments were separately put and adopted.

Clause 22, as amended, was adopted.

Mr. President: Clause 23.

CLAUSE 23

The Hon'ble Sardar Vallabhbhai Patel: I move clause 23:

"The Union Legislature may by law determine to what extent any of the rights guaranteed by this part shall be restricted or abrogated for the members of the armed forces or forces charged with the maintenance of public order so as to ensure fulfilment of their duties and the maintenance of discipline."

This is a clause on which there can be no controversy and I hope there will be no amendment. I move.

Clause 23 was adopted.

Mr. President: Clause 24.

CLAUSE 24

The Hon'ble Sardar Vallabhbhai Patel: Sir, I move clause 24:

"The Union Legislature shall make laws to give effect to those provisions of this part which require such legislation and to prescribe punishment for those acts which are declared to be offences in this part and are not already punishable."

This is a consequential clause and therefore there will be no amendments to it. I commend it for the acceptance of the House.

Clause 24 was adopted.

Mr. President: Now there are two clauses that had been referred to a committee of five. We may now take them up one by one. The new clause 3 may now be moved.

Mr. K. M. Munshi: I move that the following clause be substituted for the original clause:—

“Every person both in the Union and subject to its jurisdiction, every person either of whose parents was at the time of such person’s birth, a citizen of the Union, and every person naturalised in the Union shall be a citizen of the Union.

Further provision regarding the acquisition and termination of Union citizenship may be made by the law of the Union.”

The reasons have already been given fully in the Report of the *Ad Hoc* Committee. I have nothing to add to it.

Sri K. Santhanam; Sir, I move that the following be added at the end of the first paragraph of this clause:

“Every person born or naturalised in India before the commencement of the Union and subject to its jurisdiction shall be a citizen of the Union.”

The necessity for this amendment is simply this: You are conferring citizenship on people who are to be born hereafter and on those who are born citizens on the date the Union comes into existence. That means that unless any of us are born within the territories of the Union, we shall not be citizens. I have consulted Sir Alladi Krishnaswami Ayyar. This clause only covers the cases of persons who are born citizens on the day the Union comes into existence. Under the Cabinet Mission Plans, Union territories were expected to be co-extensive with the territories within the frontiers of India. In that case my amendment may not be necessary. But there is the possibility that the Union territory will be much smaller than the present territories. Supposing there is a man in the Union born in Sind. According to this definition he will not be a Union citizen. He will become an alien. Do you want that consequence to happen? I want to say that, at the beginning of the Union, anybody who has been born in India and who is subject to the jurisdiction of the Union, shall be a Union citizen. After the Union has come into existence I have no objection to this clause. Therefore it is a fundamental point. I hope it will be fully considered and, either in this form or in some other form, provision will be made to see that those who are citizens of India at the time of the commencement of the Union are treated as citizens and not deprived of citizenship simply because they are born outside territories of the proposed Union.

The Hon’ble Sardar Vallabhbhai Patel: It is not necessary to consider such questions at this stage. We are at present providing for citizenship for people residing in the Union. Nobody can now say what will be the situation when the Constitution is finally drafted. Nobody can now say whether any part of India is going to be separated from the rest. When finality is reached in regard to these matters we can consider what should be the adjustment to be made between the parts if there are to be parts. It is unnecessary to consider it at this stage. I hope the Mover will withdraw his amendment.

Sri M. Ananthasayanam Ayyangar (Madras: General): What about persons born in the Union?

The Hon’ble Sardar Vallabhbhai Patel: You will be considered to have been born in the Union when the Constitution is passed.

The Hon’ble Sri C. Rajagopalachariar (Madras: General): The point to be covered is not a ridiculous or simple thing as has been imagined.

The Union will consist of defined areas. It may not consist of the whole of India, but of certain parts of India only. Let us admit that. Now I will cite a concrete case. Suppose I am born in Mysore. I am a man who was born in Mysore. Mysore does not join the Union. Let us take it like that. Then, I shall not have been born in the Union according to the clause by any process of legal construction which is to be provided for legally. Therefore it is that it is suggested that any person who is born in any part of India at the time of the commencement of the Union shall be deemed, when by long previous residence he becomes subject to the jurisdiction of the Union, to be a citizen.

This is a very substantial question. Probably under this category will come a considerable section of the present population who should automatically be taken to be citizens of the Union so soon as it is formed. It does not depend merely on a process of interpretation or explanation. It has to be definitely provided for. This has to be considered and included.

Mr. R. K. Sidhwa: Sir, as stated by Mr. Santhanam, if the position is left as it is, this clause will deprive many persons who are born in the Union, which is going to be defined later on,—I hope it will comprise all parts of India—of their rights of citizenship of the Union. What will be their position? I am born in Sind. Supposing Sind is not going to be part of the Union, what will be my position? Am I to lose my citizenship of the Union? That is a point which has to be considered later on. As I said the other day, citizenship right is a fundamental right. Why should a law hereafter provide for that? The right of citizenship has a first place in the Fundamental Rights. Foreigners who come to India for their own personal interest and gain can make an application for citizenship and can get it immediately, whereas those who are born in India will be under a disadvantage. For the foreigners a period of ten years must be mentioned. If the State is satisfied that after ten years they have their stake in India they can have the right of citizenship. This matter was discussed for a number of hours in this Chamber yesterday. We did not like to treat this matter lightly. We wanted to give this matter very serious consideration and you, Sir, were good enough to impress upon those who differed from us the need for giving this matter sufficient consideration and warned us against ignoring it in view of the fact that every person should have the right to become a citizen of this country. After all, we want to be in the Union. We cannot forget that we are Indians, that we were born here. If India is to be divided into parts, what kind of rules are we going to make for citizenship? I consider, Sir, that those who were born here before the Union should be given full guarantee that they are citizens of the Union and that they would not be deprived of their citizenship.

Then, about naturalisation. Any man who comes here from a foreign country for his personal gain, for his personal benefit, has only to say, "I want to be naturalised" to become a citizen of the Union. I am born in India but I am to be deprived of my citizenship. A foreigner by simply giving a declaration that he wants to become naturalised, gets all the rights of citizenship.

With due deference to the framers of this clause, I do not think this matter has been given due consideration although it has been stated that:

"Further provision regarding the acquisition and termination of Union citizenship may be made by the law of the Union."

[Mr. R.K. Sidhwa]

I do not want any law to provide for my citizenship. Therefore, this matter should be discussed here, Sir.

Dewan Bahadur Sir Alladi Krishnaswami Ayyar: (Madras: General): I think, Sir, there is some force in Mr. Santhanam's argument. We did not, it must be admitted, consider in the Committee this particular question now before the House, but it may not be wise to put in an amendment on the spur of the moment. If a person was a resident of India, and makes the Union his home after the Union comes into existence, in such a case he might get citizenship. The mere accident that he was born in India or British India but not in the Union cannot give him the right of citizenship. We might have to add a further condition to this clause saying that they must make the Union of India their permanent residence.

So far as the term "born in the Union" is concerned, I do not think there need be any difficulty. Union: there is a geographical concept. It is not a political concept. No man can be born in a political concept. "Born in the Union" only means "born in the territories comprising the Union".

There is certainly some force in the objection raised by Mr. Santhanam. We do not want suddenly to disenfranchise any persons, possibly very distinguished people born in a Native State but today permanent residents of British India. Therefore, so far as that particular class is concerned, we might consider an appropriate formula. We may not be in a position to give the right of citizenship to every person born in any part of India. Suppose some of the States keep out of the Union, we may have to consider whether we should give the rights of citizenship to the people of those States. Therefore, we will carefully consider this aspect and put in an appropriate clause. In the Committee—I am a member of the Committee and Dr. Ambedkar is a member—we did not consider this particular complication that might arise. I think we should not push through an amendment on the spur of the moment.

But so far as the general principle is concerned, there cannot be any exception. "Every person born in the Union and subject to the jurisdiction; every person either of whose parents was, at the time of such person's birth, a citizen of the Union, and every person naturalised in the Union", so far as that part is concerned, there can be no exception. That was considered by the Committee in all its aspects. This particular class of people which Mr. Santhanam mentioned will have to be separately dealt with and provided for. On the understanding that this class of people will be provided for, this clause should be passed, or the whole clause might stand over, I have no objection. But so far as the main principle is concerned, we are all agreed and there is absolutely no difference of opinion. It was discussed threadbare by the Committee which was appointed by this House and we unanimously came to the conclusion that this should be adopted.

Shri M. Ananthasayanam Ayyangar: I do not agree with Sir Alladi. He says that Union means Union territory. The clause says, "subject to the jurisdiction thereof". Is it subject to the jurisdiction of the territory or the Government of the territory? Mere territory is not enough. I therefore urge upon the House to remit this clause for the reconsideration of the Expert Committee.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: We may have remittance or re-remittance but I do not think that that Committee

can throw any additional light on this. If there is any other class to be provided for, we will provide for them. I am merely answering the suggestion of remittal and all that. I was stating that it was not fair to that Committee to remit. This is a political question and not a legal question. We must come to a conclusion on that point. We were only anxious to get the help of that Committee for the purpose of determining the question whether 'birth' shall be the foundation of a nationality or not, and that Committee has given its opinion. We may have any number of commitals and re-commitals, so far as the Committee of this House is concerned. The Committee which considered this consisted of Members of this House and also persons who are not members of this House. Under these circumstances, I would suggest that we have had all the help from people who are not members of this House and from the gentleman who was the President of that Committee. I do not think it will be fair to that Committee to remit it as if they had not considered any particular aspect of the question. It is a new question that has cropped up before the Committee and let us deal with it squarely. And before we next meet, there will be no difficulty in providing so far as that particular class of cases is concerned. This general principle may be passed and the other clause may be brought in later on or the whole thing may stand over. I am not wedded to either one theory or another, but let it be clearly understood that so far as the main principle is concerned, we accept the recommendation of the Committee presided over by a very distinguished lawyer.

The Hon'ble Sri C. Rajagopalachariar: I am sorry, Sir, the discussion has proceeded on lines which create a certain amount of confusion. I wish that attention should be bestowed on one important and entirely non-controversial matter, namely, that there are numerous persons in India today, who will be within the jurisdiction of the Union, however restricted it may be, however small it may be, who were born in other parts of India and who are now resident within the territories which are going to be in the Union. The formula as it stands today will exclude those large classes of people, not intentionally, but unintentionally. Therefore, the formula has to be corrected. It has to be corrected so as to give automatic citizenship to those large numbers of people who are born in various parts of India, as we today understand it, and who will be old and permanent residents of the areas which will be comprised within the Union. That exclusion would be wholly unintended and wrong. Therefore, the formula has to be revised. I myself believe that it can be revised, if Sir Alladi and Dr. Ambedkar sit at it, in the course of 15 minutes; but if it is considered difficult, the whole thing should be remitted, because if we pass a clause like this solemnly in the Constituent Assembly, it cannot be added to afterwards without much ceremonial. I would suggest that it be deferred. Sir Alladi and Dr. Ambedkar may meet today, discuss and finish it in a few minutes. If they do not think so, let them take their own time, but it cannot be simply ignored on the ground that it is a small matter. It is too large a matter to be put aside.

Mr. K. M. Munshi: Nobody suggests for a moment that this is not an important matter. The Committee did not consider it, but when the original draft was placed this difficulty was present in my mind. But this, as Sir Alladi very rightly said, is not a question of fundamental rights only. It is a question which will have to be decided in future in the setting of the political situation at the time when we finally draft the Constitution. Of course, it is very easy to move an amendment, but we do not know today what is going to be the position of the

[Mr. K.M. Munshi]

Union with regard to its territory, whether it is going to be the whole of India, or part of it, or whether some portions are going to be hostile. The second question that has to be considered is whether people born in the Union, who are residing in other parts of India, will have rights as regards citizenship in those territories. An instance was given of Mysore. I will restrict myself to that case. Suppose Mysore stays out of the Union and makes a law like this, that any Indian born in any other part of India, though residing in Mysore for a whole life-time shall not be a citizen. This House will be in a position to consider those intricate problems not merely as a matter of fundamental right but as a question dependent upon the political situation at the time we pass it finally. This fundamental right, as drawn up, is the minimum right, the basic right. The fluctuating situation today is such that you cannot possibly draft any amendment to this clause. Let us, therefore, see the political situation between now and the day when the situation is going to be finally considered. At that time it will be possible to produce a proper formula which will find a place either in the Fundamental Rights or in some other convenient place. It has been said that several fundamental rights are going to be considered hereafter. It has also been said that this is a preliminary draft and any situation arising hereafter will be considered. I, therefore, submit that we should take the clause as it is, and with regard to the amendment of Mr. Santhanam, it should be referred to the Advisory Committee together with the other amendments which are going to be referred, so that a proper aspect of the question may be brought before the House again.

Dr. B.R. Ambedkar (Bombay: General): Mr. President, Sir, I think there can be no doubt that the point raised by Mr. Santhanam is a point of great importance and we have to take this matter seriously. The difficulty that has arisen will be seen easily if one reads the very first sentence of the clause as drafted by the Committee. The draft says, "every person born in the Union". Obviously that has reference to future, those who will be born in the Union after the Union is formed. The question is this. What is going to be the position of people who are born in India, but who are born before the Union has come into being? In my judgment, in order to cover that case, we shall have to introduce another clause. I am not suggesting an amendment, I am putting forth an idea. The new clause shall have to be something like this :

"All persons born in India, as defined in the General Clauses Act and who are residing in the Union and subject to the jurisdiction of the Union shall be citizens of the Union."

I think that a clause somewhat on these lines is necessary and it will cover the case of people who are born in India, who will be the subjects of the Union, when the Union comes into being. Without this clause, large numbers of people will be denationalised. They will have no nationality at all. I, therefore, suggest that it may be as well to send the whole clause back for further consideration.

Mr. President: A suggestion has been made that the whole clause be held over for further consideration.

Mr. R. K. Sidhwa: This is not a matter for lawyers only. This question has a bearing on every ordinary person.

Mr. President: The Advisory Committee will be free to consider it, and if it so feels, it can put forward any suggestions at the next sitting.

Do I take it that the House agrees that this clause be held over for further consideration ?

Many Hon'ble Members: Yes.

Mr. President: It is held over. Now we take up clause 11.

CLAUSE 11

Mr. K.M. Munshi: The clause which has emanated from the Committee to which it was referred runs in thus.

“Traffic in human beings, and *begar* and other similar forms of forced labour are prohibited and any contravention of this prohibition shall be an offence.”

The Explanation which was dropped is in the view of the Committee necessary in order that the wording “forced labour” may not have a controversial interpretation. Sir, there was a conflict of opinion in several sections of the House as regards the Explanation and this Report was placed before the House only this morning. I, therefore, submit that it will be fair that this clause also should stand over till we meet again, because, I believe, certain Members would like to move amendments. I, therefore, feel it will not be proper that this clause should be considered today. It should stand over.

Mr. President: Instead of moving it, do you suggest that it should be held over ?

Mr. K.M. Munshi: Yes.

Mr. President: Is it the wish of the House that this clause also should be held over ?

Many Hon'ble Members: Yes.

Mr. President: It stands over.

We had a number of new propositions which were sought to be put forward in the form of amendments by certain Members, and it was decided by the House that they should be taken up after the clauses were disposed of. We have got a large number of such clauses which have not been considered. I do not know in what form the House would like to take up these.

Seth Govind Das (C.P. and Berar: General): I move, Sir, that all these new clauses be referred to the Advisory Committee so that the Advisory Committee may first consider them and then they may be brought before this House.

Mr. President: Seth Govind Das has made a suggestion that these clauses be referred to the Advisory Committee for consideration and that they may be brought up here with the Report of the Advisory Committee. May I take it that it is the sense of the House that all these clauses be referred to the Advisory Committee ?

Hon'ble Members: Yes.

Mr. President: All these clauses are referred to the Advisory Committee.

Mr. R.K. Sidhwa: Sir, paragraph 9 of the Report of the Chairman of the Advisory Committee states:

“The Fundamental Rights Sub-Committee and the Minorities Sub-Committee were agreed that the following should be included in the list of Fundamental Rights :—

“every citizen not below 21 years' of age shall have the right to vote at any election.....”

“While agreeing in principle with this clause, we recommend that instead of being included in the list of fundamental rights it should find a place in some other part of the Constitution.” The opinion of the House has to be taken whether it is in favour of putting this clause in the Fundamental Rights or whether it should

[Mr. R.K. Sidhwa]

form part of the Constitution. That question has to be decided and discussed here. Otherwise, what would be the effect of paragraph 9 of the Report of the Chairman of the Advisory Committee which has been submitted to you ? Does it automatically go into the Constitution ? the Chairman of the Advisory Committee by this para. desires to know the view of the House.

Mr. President: What is your suggestion? Do you move any proposition?

Mr. R.K. Sidhwa: I have no objection to this clause forming part of the Constitution.

Mr. President: What is your suggestion, whether this should form or should not form part of the Constitution ?

Mr. R.K. Sidhwa : It should form part of the Constitution.

The Hon'ble Sardar Vallabhbhai Patel: We have stated in the Report, "while agreeing in principle with this clause, we recommend that instead of being included in the list of fundamental rights, it should find a place in some other part of the Constitution."

Mr. President: This is the Report of the Committee and the House has to express itself on this part of the Report. That is why I asked Mr. Sidhwa whether this should be accepted and it should find a place in some other part of the Constitution.

Mr. R. K. Sidhwa: I said it should form part of the Constitution.

Mr. President: Mr. Sidhwa's proposition is that that paragraph should be adopted. Does any one wish to speak on this?

(None).

I put it to the House that paragraph 9 of the Report be adopted.

Paragraph 9 of the Report was adopted.

CLAUSE 2

Sri Biswanath Das (Orissa: General): I propose to invite the serious attention of the House to the implications of clause 2. It has been laid down:

"All existing laws, notifications, regulations, customs or usages in force within the territories of the Union inconsistent with the rights guaranteed under this part of the Constitution shall stand abrogated."

In this connection, I wish to refer to paragraph 7 of the Report wherein they have stated that they had not sufficient time to examine in detail the effect of this clause on the mass of existing legislation.

Mr. President: We have already considered clause 2 of the Fundamental Rights.

Sri Biswanath Das: I am not proposing to revise the clause. I am only referring to something which arises out of the acceptance of clause 2. I am going to suggest what further action is necessary as a result of the acceptance of clause 2. A thorough examination of its implications is necessary in the sense that we have got local laws and Indian laws and the extent to which these laws and regulations, etc., are going to be abrogated as a result of the acceptance of these fundamental rights, will have to be examined. This could be examined either by the Government of India and the Provincial Governments or by a committee of this House. It is rather unfortunate that we members; of the Agenda Committee could not go into this question because it was not before us. In these circumstances, I beg to suggest that it is necessary for us to take note of this question and to examine the implications in full before we again

assemble in this House. Unless we fully examine the extent of abrogations, it will not be possible for this House to realise the full implications and to make any interim arrangements in the Constitution. I am only referring to certain circumstances flowing from the acceptance of clause 2 and offering certain suggestions.

Mr. President: I take it you are referring to the last sentence of paragraph 7 of the Report which says:

“We recommend that such an examination be undertaken before this clause is finally inserted in the Constitution.”

It has been accepted. We are going to have an examination as suggested.

Mr. H. V. Kamath: My suggestion is that it should be undertaken immediately so that we may have a report as to the implications before us.

Mr. President: When the House has accepted it, that means that action will be taken.

Mr. H. V. Kamath: How will these clauses go to the Committee?

Mr. President. They will go as they are. The Secretariat will refer them to the Advisory Committee.

PRESIDENT'S REMARKS REGARDING THE RESOLUTIONS RELATING TO LINGUISTIC AND CULTURAL PROVINCES AND THE LANGUAGE OF THE CONSTITUTION TO BE FRAMED.

Mr. President: There are one or two matters to which I should like to make a reference. Hon'ble Members will recollect that notice was given of Resolutions regarding the formation of linguistic and cultural provinces by several Members in the last Session of the Assembly and those Resolutions were held over and it was expected that they would be taken up in this Session. But as we have already under Resolution of this House decided to constitute two Committees, one for drawing up the principles of the Union Constitution and another for drawing up a model Constitution for the provinces, I announced the other day that those Committees would take into consideration those Resolutions also. I take it that that would be done and nothing further need be done now regarding those Resolutions.

Then there is one other matter about which I have been feeling a bit worried and I wish to share that worry with the House—not that expect any answer to it just now but I would like the Members to take that into consideration. All our proceedings are being conducted in English because there are many Members who are not acquainted with the national language and so the drafts also are being prepared in the English language. In the drafts there are many expressions used which may be called terms of art, that is to say, technical language, taken from some constitution or other. Some of these constitutions have been subjected to legal interpretations, and by using that language we are in a way attracting the operation of those interpretations also to our constitution. In future—I do not say immediately, but in the future—a time may come when we shall probably cease to depend upon English as our language, and if the Constitution is passed today in the English language, then that remains the original constitution and any question of interpretation will have to be with reference to the language used in that constitution as it is passed today. The question arises whether we shall, continue for ever in future to interpret our Constitution in English language and whether we shall expect our judges in future always to be acquainted with English language so that they might interpret our Constitution in the future. If the Constitution is passed in the English language, I suppose that will be the natural consequence. It is difficult

[Mr. President]

at the present moment to make a suggestion which will resolve this difficulty. I was wondering whether we could have a translation made of this Constitution as it is drafted as soon as it is possible, and ultimately adopt that as our original Constitution. (*Cheers*). In case of any ambiguity or any difficulty arising as to interpretation, the English copy will also be available for reference, but I would personally like that the original should be in our main language and not in English language, (*Loud Cheers*), so that our future judges may have to depend upon our own language and not on a foreign language. (*Cheers*).

As I said, I do not expect an answer to a question like this, but I would like Members to take this matter into consideration, and in the meantime, if I have your permission, I shall try to get the Constitution as it is drafted translated into our language as soon as possible. I realize the difficulty of putting it in a form in which it will have the same interpretation, because appropriate terms of art will not be found in our language and we have naturally to add clauses which will explain those expressions of art. But if I have your permission, we might make an attempt. I am afraid our present staff the staff we have got for translating these things, is not adequate for this purpose and we shall have to take the help of persons who are really persons of a very high order and who can do that. I do not know if it will be possible for me to do it, but if I have your leave, I might attempt it. I thought I might bring this to your notice for your consideration because, if this Constitution is going to be a Constitution which is expected to last, at any rate, for some time, then we cannot expect to have it in a language which is not our language. We must provide for a time when we shall have to depend on our own language, and that, at a not very distant date. Therefore I have brought this to the notice of the House so that Members might also take this into consideration and offer their suggestions, if not today, at least at a later stage before we have actually finalized our Constitution.

(Some Members at this stage rose to speak.)

Mr. President: I did not expect any discussion on this. I simply expressed what I was feeling and I expect this thing would be taken into consideration at a later stage.

There is one other matter.

Shri Vishwambhar Dayal Tripathi (United Provinces : General): *[In this connection I have to]*

The Hon'ble Mr. B. G. Kher (Bombay : General): On a point of order, Sir. This is discussing.

Mr. President: Anyway, let him finish.

Shri Vishwambhar Dayal Tripathi: *[I do not wish to say any thing in this connection. But rules provide that all the proceedings of the Assembly e.g., agenda, etc., will be supplied to Members in Hindustani. True, there are difficulties. Nevertheless it is very important. I would request that some arrangements should positively be made for this in future.]*

Mr. President: *[Yes. I tell you why this could not be done. Our Hindustani Staff was not yet complete but arrangements are being made and I think it should be possible to arrange for it at an early date.]*

Shri Balkrishna Sharma (United Provinces : General): Without in any way going against the orders which have already been given in regard

[] English translation of Hindustani speech.

to the subject, may I just know whether the arrangement that is going to be made for the translation of the Constitution in our language will be in Hindi, Urdu or will be in a language which will be a conglomeration of both ?

Mr. President: It will be in a language which will be intelligible. *(Laughter)*.

Mr. President: Then, one other matter which I think we have to decide, *i.e.*, the next session of the Assembly. At the last session the House passed a Resolution fixing the month of April for this meeting. I would suggest that instead of fixing any date or even a month the House should leave it to me to fix the time of the next meeting.

Hon'ble Members: Yes.

Mr. President: I can give this undertaking that I shall do it as soon as I feel that we have got material ready for the meeting.

Sri K. Santhanam: I suggest, Sir, that a formal motion to this effect may be moved.

Mr. President: That is what I am also suggesting. A formal motion may be moved.

Shri Vishwambhar Dayal Tripathi: *[In this connection, I would like to add...]*

Mr. President: *[Let this be over.]*

Mr. Satyanarayan Sinha: Mr. President, Sir, I move that this Constituent Assembly do adjourn till such date as the President may fix.

Mr. President: The motion is that the Constituent Assembly do adjourn till such date as the President may fix. Do I take it that the House accepts the proposition?

The motion was adopted.

Mr. R. K. Sidhwa: I wish to make one request. That is, now that the date has been left to you, Sir, will you kindly see that the agenda is supplied to us in sufficient time at our residence, so that we may study it?

Mr. President: I have told you at the very beginning that I will fix the time when I have got the material ready for discussion.

.(To Mr. Tripathi), You wanted to say something.

Shri Vishwambhar Dayal Tripathi: *[I have only to repeat what Mr. Sidhwa has said before you and nothing else.]*

Mr. President: I think we have now finished our work. So the House now stands adjourned till such time as I may fix.

The Constituent Assembly then adjourned till such time as the President might fix.

[] English translation of Hindustani speech.

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Volume IV



**14-7-1947
to
31-7-1947**

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF INDIA

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SHRI K.V. PADMANABHAN.

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CONSTITUENT ASSEMBLY OF INDIA

Monday, the 14th July, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock on Monday, the 14th July 1947, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

Mr. President: Members who have not yet presented their credentials and signed the Register will do so now.

(The Secretary then called out the name of Haji Abdul Sathar Ham Ishaq Sait.)

Mr. Deshbandhu Gupta (Delhi.): Mr. President, may I rise to a point of order?

Before the Honourable Member is called upon to sign the Register, I would like to know whether it would not be fair to this House to ask whether he still subscribes to the Two-Nation theory or not? I take it that, as a sovereign body, and in view of the Partition that has been decided upon, we should review the whole question and lay down that a Member who does not subscribe to the Objectives Resolution that has been passed cannot sign the Register.

I want your ruling, Sir.

Mr. President: An interesting point has been raised. But I do not consider it is a point of order at all. It is a question of the right of Members who have been elected to the Constituent Assembly under the procedure laid down. Any one who has been elected is entitled to sit in this House as long as he does not resign. Therefore I do not think I can prevent any Member who has been elected duly from signing the Register.

The following, Members then presented their Credentials and signed their names in the Register:

Madras

1. Haji Abdul Sathar Haji Ishaq Sait
2. B. Pocker Sahib Bahadur
3. Mahboob Ali Baig Sahib Bahadur
4. K. T. M. Ahmed Ibrahim Sahib Bahadur

Bombay

5. The Honourable Mr. Ismail Ibrahim Chundrigar
6. Dr. B. R. Ambedkar
7. Mr. Abdul Kadar Mohammad Shaikh

8. Pandit Lakshmi Kanta Maitra
9. Mr. Debi Prosad Khaitan
10. Mrs. Renuka Ray
11. Mr. Damber Singh Gurung
12. Mr. R. E. Patel
13. Mr. Prafulla Chandra Sen
14. Mr. Upendranath Barman
15. Mr. Raghbir Ahsan
16. Mr. Nazirudin Ahmad
17. Mr. Abdul Hamid
18. Mr. Satish Chandra Samanta
19. Mr. Suresh Chandra Majumdar
20. Mr. Basanta Kumar Das
21. Mr. Surendra Mohan Ghose
22. Mr. Arun Chandra Guha

United Provinces

23. Chaudhri Khaliqzaman
 24. Nawab Muhammad Ismail Khan
 25. Mr. Aziz Ahmad Khan
 26. Begum Aizaz Rasul
 27. Mr. S. M. Rizwan Allah
- East Punjab*
28. The Honourable Sardar Baldev Singh
 29. Diwan Chaman Lall
 30. Maulana Daud Ghaznavi
 31. Gyani Gurmukh Singh Musafir
 32. Sheikh Mahoob Elahi
 33. Sufi Abdul Hamid Khan
 34. Chaudhuri Ranbir Singh
 35. Chaudhuri Mohd. Hassan
 36. Shri Bikramlal Sondhi
 37. Prof. Yashwant Rai

Bihar

38. Mr. Tajamul Hussain
39. Mr. Saiyid Jafar Imam
40. Mr. Latifur Rahman
41. Mr. Mohd. Tahir

C.P. & Berar

42. Kazi Syed Karimuddin

Assam

43. Saiyid Muhammad Saadulla.

*STATES**Mysore*

44. Dewan Bahadur Sir A. Ramaswamy Mudaliar.
45. Mr. K. Chengalarya Reddy.
46. Mr. H. R. Guruv Reddy.
47. Mr. S. V. Krishnamurthi Rao.
48. Mr. H. Chandrasekharaiya.
49. Mr. Mahomed Sheriff.
50. Mr. T. Channiah

Gwalior

51. Mr. M. A. Sreenivasan.
52. Lt. Col. Brijraj Narain.
53. Shri Gopikrishna Vijavargiya.
54. Shri Ram Sahai.

Baroda

55. Mr. Chunnihal Purshottamdas Shah.

Udaipur

56. Dr. Mohan Sinha Mehta.
- 56-A. Mr. A. Manikyalal Varma.

Jaipur

57. Raja Sardar Singhji Bahadur of Khetri.

Alwar

58. Dr. N. B. Khare.

Kotah

59. Lt. Col. Kunwar Dalel Singhji

Patiala

60. Sardar Jaidev Singh.

Sikkim & Cooch Behar

61. Mr. Himmat Singh K. Maheshwari.

Tripura, Manipur and Khasi States

62. Mr. G. S. Guha.

Rampur and Benares

63. Mr. B. H. Zaidi.

Eastern Rajputana States

64. Maharaja Mandhata Singh.
65. Maharaj Nagendra Singh.
66. Mr. Gokul Bhai Bhatt.

Western India & Gujarat States

67. Col. Maharaj Shri Himmat Singhji.

68. Mr. A. P. Pattani
69. Mr. Gaganvihari Lalubhai Mehta
70. Mr. Bhawanjee Arian Khimjee
71. Khan Bahadur Pheroze Kothawala
72. Mr. Vinayakrao B. Vaidya.

Deccan States

73. Mr. M. S. Aney
74. Mr. B. Munavalli

Eastern States

75. Rai Saheb Raghuraj Singh
76. Rai Bahadur Lala Rajkanwar
77. Mr. Sarangdhar Das
78. Mr. Yudhisthir Misra

Residuary Group

79. Mr. Balwant Rai Gopalji Mehta

Mr. President: Is there any other member who has not signed the Register yet? I take it that there is no one here who has not signed the Register yet.

Shri Balkrishna Sharma: (United Provinces: General): *[Mr. President: Before you proceed to take up the business of the day I beg to put forward, with your permission, some questions for consideration. Sir, have I your permission ?]*

Mr. President: *[The practice so far has been that, when any question is brought forward, it is considered whether permission to debate any matter relating to it is to be given or not. No question has been raised so far. I do not know what you intend saying. I think that permission will be given if what you intend saying is found to be proper and in order.]*

Shri Balkrishna Sharma: *[Though no question has so far been raised yet my prayer is that I may be permitted to explain my purpose, and a discussion may follow on it thereafter.]*

Mr. President: *[I do not know what you intend saying. If you had seen me and explained your purpose before, I may have given you permission. As no question has been so far raised, I do not see how I can give you the permission to speak at this moment.]*

Shri Biswanath Das: (Orissa: General): Mr. President, before you go on to the other items of the agenda I beg to invite your attention to the communique issued under the authority of Government on the decision regarding allotment of Armed Forces as per recommendations of the Sub-Committee. Sir, the decision is said to be final. It is said that it is a rough and ready division on communal basis based on the unanimous recommendation of the Armed Forces Reconstitution Sub-Committee, and it is said that this relates to allotment of ships etc., and that the requirements of each Dominion have been kept in view.

Mr. President: Mr. Das, I do not think the Constituent Assembly as such is concerned with any statement in any newspaper, at any rate, at this stage. Therefore the question does not arise.

*[]*English translation of Hindustani Speech.

Shri Biswanath Das: I am only submitting to you the contents to judge the relevancy of it. This concerns important questions of division of assets of India and has made us all anxious. This is practically the Legislature and Sovereign body. This matter is agitating the minds of all people.

Mr. President: I think you are suffering under a misapprehension. We are not yet the Legislative Assembly. We are still only the Constituent Assembly as it has been functioning so far. If this were the Legislative Assembly you might perhaps bring that in. Now I do not think that question arises.

Mr. H. R. Guruv Reddy (Mysore State): On behalf of the Mysore chosen representatives, I would like to bring to the notice of the President that we have not yet been supplied with any literature, particularly the Rules of Procedure. We have made the request to the Office but we have not so far been supplied. We do like to take part in the proceedings but we are unable to take part on account of this. We request you kindly to give necessary instructions to the Office.

Mr. President: The Secretary will take note of that and do the needful.

Mr. H. J. Khandekar (C. P. and Berar: General): On a point of information, I would like to know how many Scheduled Caste members have signed from the Indian States out of those who have presented their Credentials.

Mr. President: I am afraid this office is not in a position to answer this question. Perhaps at a later time you may get full information from the Secretary.

Mr. Tajamul Husain (Bihar: Muslim): May I know from you, Sir, if any member from Sylhet is present here to-day?

Sardar K. M. Panikkar (Bikaner State): On a point of order. Is there a question time for this Constituent Assembly?

Mr. President: There is no time fixed. I have given that latitude to the members. I hope it will not be abused.

ADDRESS BY PRESIDENT

Mr. President: *[Hon'ble Members, we are meeting today after an interval of two and a half months. During this period many important events have occurred to which I believe I should refer. The most important of these was the statement of His Majesty's Government made on June, the 3rd. This statement has profoundly affected Indian politics. One of its results has been the division of India, and it has also been decided to partition two provinces. Further, as a consequence of this, discussions are taking place, so far as I know, in the Government of India and the Provinces, concerned regarding the details of the Partition, and actual work relating to Partition is also proceeding. Besides this, changes in

*[English translation of Hindustani speech begins.]

[Mr. President]

the membership of this Constituent Assembly have occurred. In place of the members who formerly represented Bengal and Punjab some new and some former members have been returned in the new elections held in these two (which have now become four) provinces. Many States which had so far kept aloof from this Assembly have now sent in their representatives. The members belonging to the Muslim League who had so far remained absent are also attending the Assembly now.

The Constituent Assembly had appointed a number of Sub-Committees. Reports of these Sub-Committees have appeared in the Press and also been sent to the members. These reports, as they are now ready, will be placed before the House from time to time and you will be called upon to give your considered decisions on them. One of these Sub-Committee had been appointed to draft a model Constitution for the Provinces. Another was appointed to determine and recommend to us the principle on which the Union Constitution was to be based, and to prepare a rough draft of the Union Constitution as well. A third Committee was appointed to consider and determine the powers of the Union and submit its report relating to them. The reports of all the three Committees are now ready. One of these reports has been presented to the House for consideration and the reports of the other committees will be presented in due course, and I hope that the House will take its decision on them after due consideration during this session. It is my suggestion, and I believe you will approve of it, that after the House has accepted the reports some persons may be appointed to prepare the detailed draft of the Constitution, and that a Committee be appointed to go through this draft carefully and to submit its opinion on it to this House when it meets again. The draft will then be introduced in this House for detailed consideration and acceptance. Thus the Constitution would be finalised.

Another committee known as the Advisory Committee had been appointed, but it has not completed its work. It has set up the following Sub-Committees—Minority Sub-Committee, Fundamental Rights Sub-Committee, Tribal and Excluded Areas Sub-Committee. These Sub-Committees are parts of the former. One of these Sub-Committees has submitted its report, but the reports of the other two are not ready as yet. I hope that very soon the reports of these Sub-Committees will also, be submitted, so that when the Constitution is drafted these may be incorporated therein and the Constitution when finally accepted may be complete in all respects.

It is my hope that, if all this is done properly, we shall be able to pass the Constitution finally after due consideration in the October meeting of the Assembly, I want that the work of the Constituent Assembly should be speeded up, because, as you are aware, according to the proposed Indian Independence Bill the Constituent Assembly would also function as the Legislative Assembly, and already there are many matters pending before the Legislative Assembly which must be taken into consideration. After some time the Budget Session would also be due. Consequently, the earlier we finish the work of the Constituent Assembly the sooner we shall have the opportunity to take in hand the work of the Legislative Assembly. But I do not want that the work of the Constituent Assembly should be done in such a hurry as to spoil any part of it. Every matter will have to be decided after full consideration. In placing this proceed hurriedly to finish the work early, irrespective of whether its consequences are good or bad. On the other hand, you must devote so much time to each matter as you consider desirable. But if you keep in view that we have to do, sitting as the Legislative Assembly, other work also, we must finish our present work as early as possible.

I welcome all the new members, and they are many, who are present today. I hope that all of us together will finish, as early as possible, the work of the Constituent Assembly and will give a Constitution that shall be agreeable and acceptable to all.]*

Mr. H. V. Kamath (C.P. and Berar: General): *[Mr. President, could you kindly inform the House as to how many of the States representatives are elected and how many nominated?]*

Mr. President: *[I am unable to do so now. The information asked for will be supplied later on.]*

ELECTION CHANGES FROM BENGAL AND PUNJAB

Shri Sri Prakasa (U.P. General): *[Mr. President, so far as I know it was said at the time the elections to this Constituent Assembly were held that no outside authority had any control over it. I would like to be informed whether you were consulted about the changes that have taken place in Bengal and Punjab. Have these changes taken place according to the rules made by this Assembly? So far as I am aware members of this Assembly lose their membership when they submit their resignation. I would like to know if the members for Bengal and Punjab, who are no more members, lost their membership by submitting their resignation or as a result of the Viceroy's statement which led to new elections being held. If this is what has happened, and this appears to be the actual case, I would like to know your opinion and this matter and whether you consider all this proper and regular or not. We were told that once the Constituent Assembly was elected, neither any changes would be made in its constitution nor could any outsider have any authority or control over it. It appears to me that all these changes have taken place according to the statement of the Viceroy—a proceeding which is improper, unjust, illegal and contrary to the rules.]*

Mr. President: *[Your statement that these changes are the result of the Viceroy's statement and the consequential action taken by him on it is correct. But I believe that everyone has consented to these changes being made and so also have we done. The question of invalidity, therefore, does not arise. Moreover, now no one from among the members who had been formerly elected and have now lost their membership has submitted any petition against the termination of his membership. The newly elected members are members of this Assembly and shall continue to take part in its proceedings.]*

Shri Balkrishna Sharma: *[Mr. President: I want to draw the attention of the House to a point arising out of your statement. It is this. You have in your opening statement welcomed the new members and have expressed the hope that they will make their contribution to the proceedings of this Assembly and will help in the framing of such a constitution for our India.....]*

Mr. President: *[Are you making a speech or asking a question?]*

Shri Balkrishna Sharma: *[Sir, I am asking a question.]*

] *English translation of Hindustani speech ends.

*[] *English translation of Hindustani speech.

Mr. President: *[Please ask the question now.]*

Shri Balkrishna Sharma: *[My question is that when you expressed this hope it must not have escaped you that the election of some members, and their number is appreciable, has been through a special procedure and that they are participating in the Assembly while putting faith in the two nation theory.....]*

Mr. President: *[You have started making a speech; or are you asking a question?]*

Shri Balkrishna Sharma: *[Have you been given the assurance that those who have been elected on the basis of the two-nation theory, will associate in your work after renouncing the two-nation theory and cooperate in furthering the common task?]*

Mr. President: *[A similar point was raised by Shri Deshbandhu Gupta. I then said in reply that I had no authority to forbid the members who had been duly elected from attending. I have therefore asked for no assurance and no assurance has been given to me. I have accepted all those who have been duly elected as members and on this we are acting. What all of you do here will show the intentions of each and all.]*

An Honourable Member: We could not follow your reply, Sir, in Hindi.

Mr. President: The question has been put in Hindi and I have to answer it in Hindi. If any one puts a question in English I will answer it in English.

Pandit Govind Malaviya (United Provinces: General): Sir, I would like to ask a question in order to clarify a point. My Honourable friend Mr. Sri Prakasa has raised a question, viz., that this Constituent Assembly being a sovereign body and in view of the fact that members who had been previously elected had not resigned, how have other's taken their places. You, Sir, were good enough to say that everybody seemed to have acquiesced in this position and 'therefore it was right. I want to ask you, Sir, whether the position is not this that if any parts of the country decide to go out of the country, or secede from it, as, happily or unhappily, parts of two provinces have by their own vote decided to, the members from those parts of the country no longer have the right to continue as members of this Assembly? I want to get this point clarified, for, in future, it will be very important. I submit that the moment any part of the country decides not to remain part of India, automatically it loses all rights with regard to this Assembly.

Mr. President: I take it that any member elected from a part of a Province which has seceded is not entitled to sit here: and I do not think any member like that is here.

Mr. H. J. Khandekar: What about Mr. Sidhwa?

Mr. President : Mr. Sidhwa was your representative. (*Laughter*), and elected by you from the C.P. and Berar.

MESSAGE FROM THE CHAIRMAN OF THE BURMA
CONSTITUENT ASSEMBLY

Mr. President: We shall now go to the next item of business.

I am sure the Assembly will be glad to hear the message we have received from the Chairman of the Burma Constituent Assembly, in reply to the message that we had sent them.

*[]*English translation of Hindustani speech.

“On behalf of myself and the Constituent Assembly of Burma, I desire to thank you most warmly for your very kind message of goodwill and good wishes which has been most deeply appreciated by the Constituent Assembly and the country. Such cordial greetings and sincere good wishes from you and the Members of the Constituent Assembly of India, at the outset of our deliberations, would be a source of inspiration and encouragement to us in the task of framing a Constitution for a free and united Burma. I can assure you that a free Burma will regard it as its special duty and privilege to maintain most cordial and friendly relations with your country and to make all possible contributions to the peace and happiness of the world.

May I avail myself of this opportunity to thank you and Sir. B. N. Rau for all the kind help and assistance accorded to our Constitutional Adviser during his short stay at New Delhi and for the free gift of your publications which are found to be most valuable in our work?

May I also take this opportunity on behalf of the Constituent Assembly of Burma and the people of this country to send you and through you to the Members of your Constituent Assembly and the people of India our sincere good wishes, for the successful conclusion of your labours and speedy realisation of your cherished aim of establishing a free and united India?” (*Cheers*).

REPORT OF THE ORDER OF BUSINESS COMMITTEE

Mr. President: The next item on the Agenda is the motion to be moved by Mr. Munshi.

Mr. K. M. Mushi (Bombay: General): Sir, I beg to move the following resolution:

“Resolved that the Constituent Assembly do proceed to take into consideration the further Report* of the Order of Business Committee appointed by the Resolution of the Assembly of the 25th January, 1947.”

I have great pleasure, Sir, in moving this Report of the Order of Business Committee. As the House will see, this Report is quite different from the one submitted to the last sittings of the Assembly. Many and momentous have been the changes that have occurred in this country since, the last sittings, and this Report has become necessary as a result of these changes. Some parts of the country have seceded from India and from the jurisdiction of this Constituent Assembly. By the end of this week, the British Parliament would have adopted legislation which would set India free by the 15th of August, 1947—an event for which we have been waiting for centuries; and lastly, the fetters that were imposed upon this Constituent Assembly by the plan of May 16 have fallen. These changes, therefore require that the programme of this Constituent Assembly should be reorientated in the new atmosphere to meet the new situation which has arisen.

Sir, I may take the liberty of pointing out that the May 16 Plan has now gone for all practical purposes and that we as a sovereign body are moving towards reconstruction the constitution of the future in an atmosphere of complete freedom. I will take the liberty of mentioning in greater detail the change which has been referred to in a paragraph of the Report. The plan of May 16 had one motive—to maintain the unity of the country at all costs. A strong Central Government was sacrificed by the May 16 plan at the altar of preserving the unity which many of us, after close examination of the Plan found to be an attenuated unity which would not have lasted longer than the making of it. There were two stages envisaged in the Plan of May 16. The stages were the preliminary stage and the Union Constituent Assembly stage. A number of committees, which the House was pleased to set up, struggled to get some kind of a strong Government of India, a Government worth the name, out of these difficulties, but, the struggle, I am, free to confess, was not very

*Appendix.

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successful. As a matter of fact, very often if I may express my own sentiment, while examining the plan of May 16 over and over again the plan looked to me more like the parricide's bag which was invented by ancient Roman law. As you know, under the ancient criminal law of Rome, when a man committed a very heinous crime he was tied up in a bag with a monkey, a snake and a cock, and the bag was thrown into the Tiber till it sank.

The more we saw the plan the more we found the minority struggling to get loose, the sections gnawing at the vitals and we had the double majority clause poisoning the very existence. Whatever other Members may feel. I feel—thank God—that we have got out of this bag at last. We have no sections and groups to go into, no elaborate procedure as was envisaged by it, no double majority clause, nor more provinces with residuary powers, no opting out, no revision after ten years and no longer only four categories of powers for the Centre. We therefore feel free to form a federation of our choice, a federation with a Centre as strong as we can make it, subject of course to this that the Indian States have to be associated in this great task on a footing of the four categories powers and such further powers as they choose by agreement to cede to the Centre. Therefore, Sir I personally am not at all sorry that this change has taken place. We have now a homogeneous country, though our frontiers have shrunk—let us hope only for the moment—and we can now look forward to going on unhesitatingly towards our cherished goal of strength and independence. And therefore the report that was submitted to the House had to be revised.

Members will be pleased to see that the bulk of the work is already done. The Provincial Constitution Committee's Report on the main structure of the Constitution has been circulated to the Members of the House and it will be taken up in a day or two in due course. Then the Union Constitution Committee has already prepared a White Paper—if I may say so—on the structure of the Union Constitution and that will also be placed before the House at this sitting.

I may remind the House that the report of the Union Powers Committee was placed before the House last session. It contained the details of the powers which were implied in the four categories which were mentioned in the May 16 plan. In view of the change, these powers had to be re-examined, and a supplementary report of the Union Powers Committee will also be placed before the House for consideration. In the report it is suggested that when these principles have been accepted by the House they will be forwarded to a drafting committee appointed for the purpose which will perform the task of framing the necessary Bills for a Constitution of the Union of India.

With regard to paragraph 3 of the Report, as the House knows, several proposals for new fundamental rights have been referred back to the Advisory Committee. The Minorities Committee has still to examine several points, particularly the principles to be adopted in relation to minorities. Further, the Tribal Special Committees are at work; some of them have not completed their work and I do not know whether the work of some of them will be carried on at all. All these matters have yet to be decided by the Advisory Committee. They will go before the Advisory Committee and the report will come.

In the last sentence of paragraph 3 it is suggested that the Advisory Committee should complete its task in August and the recommendations

may go straight to the Drafting Committee which will draw up the necessary provisions of the Act and then they will come before this House at a later session in the form of certain provisions of the Bill. But Mr. Santhanam has moved an amendment to this Resolution of mine which I find is favoured by a considerable section of the House. The view, which I understand, is taken by fairly large numbers in this House, is that so far as the principles to be adopted in the constitution in relation to minorities are concerned, they should not be sent to the Drafting Committee straightway but that they must be placed before this House at this session; and after the principles are settled they should go before the Drafting Committee for being shaped into appropriate provisions. If that is the view of the House the Resolution of Mr. Santhanam will be accepted qualifying the last sentence in paragraph 3.

Paragraph 4 of the Report suggests that the Assembly should complete its work by the end of October of this year. It is highly necessary, Sir, as you were pleased to point out that the work of Constitution making should be completed at the earliest possible moment and that if possible by November we should complete our Constitution-making work. At one time the rules were framed on the footing that we may take longer. They dealt with the question of sections and groups and various other things. At the time the rule was framed—old Rule 63—it was intended that after the general lines of the Constitution were approved by this House they should be circulated to the members of the legislature. It is not necessary to indulge in that elaborate procedure, first because the office of the Constituent Assembly has circularised a set of questionnaires to which replies have been given by members of the several Legislatures in this country and the opinions are therefore before the Committees. Secondly, things are moving so fast that we cannot go on at the pace at which we intended to go before. By the 15th August India will be a free and independent Dominion. We want to attain that stage as early as possible and to secure a constitution of our own which will give us the necessary strength. We must not forget the fact that in the Dominion Constitution which comes into existence on the 15th August the States' representatives have no place. We want that the Constitution of the Union therefore must come into existence at the earliest possible time. If that is so we shall have to eliminate this unnecessary procedure of circulating the decision to the members of this House. This House is sufficiently representative of all interests and there is no reason why we should unnecessarily lengthen out the proceedings. Further, we know that this House is working under high pressure and within a limited time. For that purpose Members will find that in the Report of the Union Constitution Committee a provision has been made to this effect that within the first period of three years the Constitution could be amended easily. In framing a Constitution as we are doing under great pressure, there are likely to be left several defects; and it is not necessary that we should have a very elaborate and rigid scheme for amending these provisions, in the first three years. Therefore, the point that is placed before the House by the Report is that on the one side the Advisory Committee will continue to complete its task, on the other hand the Drafting Committee will take up the Constitution Bill and by the middle or the end of October next will be ready with the Bill for being placed before the House. It is of great importance that this Constitution should be framed as early as we possibly can do it.

One other point. We have today with us the representatives of the Muslim League. I have no doubt that they are here as loyal and law abiding citizens of India and that they will co-operate with us wholly

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in framing as speedily as we can a Constitution for the Union in which we hope they will get and honoured place as a minority. Secondly, I may refer to the representatives, of the States who have come here and I will make only one appeal to them. The time is very short. The report envisages the formation of the Union by the end of October or at least by the end of November. The House naturally expects the co-operation of Members and the representatives from the States as partners in this urgent work of framing a Constitution.

As regards the manner of the States coming into the Union, I am sure, whatever doubts they felt in the beginning, must have been dispelled by the way the Assembly has been working and by the statement issued a few days ago by the Honourable Sardar Vallabhbhai Patel which gives the fullest assurance to the States.

As far as the Members of the Constituent Assembly are concerned, they want the States to come in. On the basis of the May 16 Plan, I am sure the representatives from the States will be equally glad to come to an early decision.

I only want to say one thing. Time is of the essence of our activities here. We have to face the world with the determined purpose of framing a Constitution for a strong India which will be great and powerful. The world, I am afraid, is moving towards another crisis, and when that crisis comes—may it never come—it should not find us unprepared.

With these few words, I place this Report before the House for its consideration.

I have no objection whatever to accept the amendment which Mr. K Santhanam is proposing to move.

Shri K. Santhanam (Madras: General): Sir, I beg to move:

“Add the following at the end of the motion:

‘Resolved further that with the exception of para. 3, the Report be adopted and the Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas be called upon to formulate at an early date and if possible before the end of this session the general principles to be adopted in the Constitution in relation to minorities for Consideration and decision of the Assembly prior to their incorporation in the draft of the Constitution and when the principles are so approved, the procedure proposed in para. 3 may be followed.’”

I need not say much about the need for this amendment. We all know how our minds are greatly exercised about the principles to be followed regarding the safeguarding of the rights of minorities. If they are incorporated in the Draft Constitution, we shall find ourselves greatly handicapped in changing them. There will be a great deal of heart-burning if any important changes are sought to be made after the Draft is published, circulated and even commented upon in the press and on the platform. Therefore, it is essential that, like the other principles of the Constitution, the principles regarding electorates franchise and similar matters should first be approved and then only they should be put in the Draft.

Mr. President: Does any Member wish to speak on the motion before the house?

Mr. Naziruddin Ahmad: (West Bengal: Muslim): Mr. President. Sir, I am a new-comer to this House. I find from the motion moved by K. M. Munshi that what is proposed to be taken into consideration is the 'further Report' of the Order of Business Committee. It means that there was an earlier report. We have no copy of it. This puts us under a handicap.. It is very necessary for us to know what has been done already.

Secondly, we should have official copies of the May 16 Statement and also of the June 3 Statement. Although everybody has read them, we should like to have official copies of the same. Only then will it be possible for us to proceed in a systematic manner.

The Mover of the Resolution has appealed to the Members of the Muslim League to be loyal and law-abiding citizens of India. I should have thought that there was no need for any doubt whatever regarding the fact that we have come here as loyal and law-abiding citizens of India. (*Applause*). I submit with due humility that we have come here to take part in the deliberations of this House in framing a Constitution as quickly and as reasonably as we can. But we, the new-comers, require a little time to study the previous report, the debates and other relevant papers, before we can take a useful part in the House.

Shri R. V. Dhulekar: (U.P.: General): *[I agree with the Report submitted by Mr. Munshi and with what he has said regarding the work that this Constituent Assembly should have done so far. I want to speak about some matters which will come before the House. The first is that recently some changes have occurred, with the result that some have ceased to be members of the Constituent Assembly and new ones have been elected, in their place. The new members, who have come here, will take some time to understand all that we have done. Thus we have to review the work that this Constituent Assembly has done during the past six months, and so long as we do not take into consideration what has been already accomplished we cannot proceed further. We have to think over it. We find that India has now been divided into two and we have to see whether the Constituent Assembly should stick to the views it adopted at the time of its inception or whether it should change them. We have to consider that also, because there are many things which are proper at a particular time which cease to be so when the times have changed. The first thing that we have to note in the proceedings of the past few months is that we promised in the Objectives Resolution, which was moved in the House, that the people residing in India would be protected in every way and their culture, language and civilization would be fully safeguarded. We have to consider now whether the significance of these safeguards should continue to be what it was when they were accepted or it has to be altered. In my opinion it is necessary now to change our point of view and I think it necessary to amend the resolution that we have passed and also change the views expressed in discussing that resolution. At that time I raised the point that this Constituent Assembly should adopt Hindustani as its language. Now I submit that we have to reconsider the question of our language and script. The second thing that has been recorded in the Report relates to the month of October or November. It is said that this Constituent Assembly will now be converted into Central Assembly and we have to consider as to what will be the position of those who are members of the Provincial Legislature and have been returned to the Constituent Assembly. Some people say that the members of

*[English Translation of Hindustani speech begins.

[Shri R.V. Dhulekar]

Provincial Assemblies, who have come here, will be requested to go back.....]*

Mr. President: *[Mr. Dhulekar, I think you have strayed far from the matter under consideration.]*

Shri R. V. Dhulekar: *[No, Sir; I am not far from the point.]*

Mr. President: *[I have been under the impression that I was doing my job and I feel that you have strayed far from the point. The question before us is whether we accept the programme or the time-table submitted to us in this Report. You are raising too many questions and this is not the time for you to raise constitutional issues.]*

Shri R. V. Dhulekar: *[Sir, I am sorry but I beg to point out that the programme submitted by Mr. Munshi makes the Business Committee, which is in existence, feel that no matters, such as new elections, should be brought up as might cause delay. Therefore, I suggest that the present members of the Constituent Assembly should continue till the Constitution has been framed.]*

Mr. President: *[The question as to who should continue to be its members and who should not, does not arise. The simple and straight question is whether or not you accept the time-table now submitted by the Committee. Nor is the question of language before us. Your remarks in this connection are irrelevant. What have you to say about the time-table and the other questions before the House?]*

Shri R. V. Dhulekar: *[I am sorry, but I beg to submit that it would suit the convenience of the Constituent Assembly that the existing members who have devoted all the their time to it should continue till October by which time the Constitution would be ready.]*

Mr. President: *[Again the same question I have already told you and the whole House that up to the time the members do not resign they continue. If anybody intends to remain as a member this question will arise.]*

Shri R. V. Dhulekar: *[Sir, I am satisfied, I wish to say one word more that some opportunity should be given to the House in its present meeting to have an idea of the work already done and to be done in future. I have to say only this much.]*

Haji Abdul Sathar Haji Ishaq Sait (Madras : Muslim): I just want to call the attention of the House to the fact that this important amendment was not circulated to members of the House. I am not objecting to the amendment. It is an important amendment and I am in favour of it but it is very difficult to understand it without having a copy. May I therefore request your help to see that such important amendments, as far as possible, are circulated to members, in good time?

Mr. President: I entirely agree with you that all important amendments should be given notice of in due time so that members may have an opportunity of studying them.

The Hon'ble Pandit Hirday Nath Kunzru (United Provinces : General): May I request you, Mr. President, to talk a little louder?

] *English translation of Hindustani speech ends.

*[] *English translation of Hindustani speech.

We could not hear you even when you were speaking through the microphone.

Mr. President: I am very sorry, but nobody complained before.

The Hon'ble Pandit Hirday Nath Kunzru: We can hear you now.

Mr. President: But I don't think I have raised my voice now.

The Hon'ble Pandit Jawaharlal Nehru: (U.P. : General): It is a matter of the distance between you and the mike.

Shri M. Ananthasayam Ayyangar: (Madras : General): I want to say a word or two about what Mr. Munshi said in moving his resolution. I do not feel very happy over what has happened, though I and others of my view have reconciled ourselves to this solution as the best, in the circumstances. I am glad, Sir, that the members of the Muslim League have come here in so far as they are residents of the Union of India. I am glad too that many States have come in. I would have been gladder still if entire India had been represented here. I am really surprised that my friend, Mr. Munshi, who stood for Akhand Hindustan, is now equally supporting this solution. I personally think that the May 16 solution was the best. I am sorry that solution has been given up. But let us not float over what has happened. Even though what has happened is the best in the circumstances, we should all hope for the day when we will come again together. If the May 16 solution which was unanimously approved had been adhered to, the partition of Bengal, the partition of the Punjab, the secession of the North-West Frontier Province, the giving away of Sylhet, all these would have been avoided.

Mr. President: I entirely agree with you, but it is no use taking Mr. Munshi to task for that.

Mr. S. H. Prater: (Madras : General): Sir, I rise to support the amendment. We are considering the principles of a new Provincial Constitution which deeply affect the position of the minorities and decisions may be taken at this session accepting these principles. I therefore propose that the Minorities Committee be given early opportunity to consider them and their views may receive due consideration by this Assembly before decisions are finally adopted. I therefore support the amendment.

The Hon'ble Mr. Jaipal Singh: (Bihar : General): Mr. President, I have great pleasure in supporting the amendment moved by Mr. Santhanam. While we all fully appreciate the urgency of expedition in the carrying on of our business here. I feel that it is quite impossible for the Report of the Excluded Areas Sub-Committee to be presented during this session. It has been suggested that big principles right be decided during this session. But, as it is, the Sub-Committee on Excluded Areas has yet to visit the Excluded and Partially Excluded areas of the provinces of Bihar and the United Provinces. While these two Provinces cannot possibly be visited during the rainy season, I do not see how the Adibasi problem and the big things that are going to affect them can possibly be decided during this session, as Mr. Munshi suggests. I think as Mr. Prater has pointed out, it is very necessary that no 'section'—I regret I have to use the word 'section'—no portion of people of this Union should be left out when matters which vitally affect them are being considered. I wish only to point out that the Report of the Tribal Sub-Committee cannot possibly be ready till the end of August.

Mr. Aziz Ahmad Khan: (U.P.: Muslim): *[Honourable President, I oppose the Resolution which has been moved by Mr. Munshi and support the amendment. Sir, agree with you, that as in the process of this glorious task we have to solve scores of important problems, it does not behove us that we should conclude the proceedings in haste without considering them thoroughly. Sir, you have said that we should remember that the time at our disposal is short and work is long, but at the same time, we should keep in mind that we have to frame the constitution of India with due care. Contrary to this, I find in this Resolution that the Mover is of opinion that the Reports of the three Committees, which are extremely important, need not be submitted to this Assembly even after their completion. Accordingly, they are inserting the sections in the Constitution of India. The Resolution runs thus:

“We propose accordingly that the Assembly authorise the President to summon a session sometime in October, preferably in the early part of this month, for the purpose of considering the Draft Constitution.”

Sir, so far as Fundamental Rights are concerned, we ought to get an opportunity to express our opinion after careful consideration and then to hand over suggestions to the framers of the Constitution.]*

Mr. President: *[So far as Fundamental Rights are concerned, the Constituent Assembly has considered them very carefully. Now, only the Reports of Minority Committee and Tribal Areas Committee remain to be considered.]*

Mr. Aziz Ahmad Khan: *[If this is so, I think the wording of the resolution is wrong, because in the original resolution the Committee on Fundamental Rights has been clearly mentioned. So far as the Committee on Tribal Areas is concerned I think, in the present circumstances perhaps that would almost be useless. Why will it be useless? You know the reason better. But before the Minorities Committee Report is inserted in the Constitution, it is desirable that it should be placed before the Constituent Assembly and we should get the fullest opportunity to discuss it and after we have given our best thought to it, it should be drafted in accordance with the procedure laid down in this connection. Therefore, as the Honourable President in his inaugural address has pointed out, in these matters we should not be in such a hurry as to make a mess of the whole thing. Taking my stand on this. I oppose this resolution and support the amendment].*

Mr. Mohan Sinha Mehta (Udaipur State): Sir, I understood from Mr. Munshi's speech—I may be wrong—that he had anticipated and accepted Mr. Santhanam's amendment.

Mr. President: Mr. Munshi had said that he had already accepted the suggestion of Mr. Santhanam, although he had not formally moved the amendment Mr. Munshi has already accepted the amendment.

The Honourable Pandit Jawaharlal Nehru: *[Mr. President, I have listened attentively to all the speeches that have been made hitherto, but I fail to understand why so many speeches have been made on this subject. Unfortunately, I could not follow even Mr. Munshi's speech. In any case, it is a simple matter that we must determine our future programme and the principles involved therein. We are not concerned with whether the work is finished in this session or the next. But we must have a concrete plan before us. Mr. Munshi has now put a plan

*[English translation of Hindustani speech begins.

*[]*English translation of Hindustani speech.

before us, and we have to take a decision on it. After all what is the debate about? We will try to finish as much work as we can during this session and take up the remainder in October or November.]*

Mr. Mahomed Sheriff: (Mysore State): *[Mr. President, I endorse what has been said by Maulvi Aziz Ahmad. He has stated in his speech that no resolution, no law, and no plan can be of much use without granting adequate and satisfactory safeguards to the minorities. The principle to which the Maulvi Saheb has drawn your attention is very important. You know that if the resolution is accepted, an atmosphere of opposition and mistrust will be created among the minorities. So it is better to decide it (the minority question) at our earliest. So long as we do not find its solution, I think it would be premature to support the resolution. I, therefore, oppose this resolution and fully support the position taken up by Aziz Ahmed Saheb.]*

Shri Sri Prakasa: Mr. President, will you please read out the Amendment again?

Mr. President: The amendment moved by Mr. Santhanam runs thus: This is to be added at the end of the motion:

“Resolved further that with the exception of para 3 the Report be adopted and the Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas be called upon to formulate at an early date and if possible before the end of this session the general principles to be adopted in the constitution in relation to minorities for consideration and decision of the Assembly prior to their incorporation in the draft of the Constitution and when the principles are so approved, the procedure proposed in para. 3 may be followed.”

B. Pocker Sahib Bahadur: (Madras: Muslim): Mr. President, first of all, I must confess the disability under which I am suffering namely that I have not been able to follow most of the proceedings which have taken place, to the extent to which they are in languages other than English. Therefore, I would appeal to the President to make provision for rendering into English the proceedings that take place here. Otherwise, it would be very difficult for us to follow and participate in the proceedings. No doubt, I do agree that it is necessary to have a common language, a *lingua franca*, a national language. I agree with all that. But we have to take facts as they are. As the Constituent Assembly is now constituted, it consists of members who are acquainted with various languages. All of us know that all the members of this Assembly are not familiar either with Hindi or with Urdu. There may be some members who are not familiar with English. But I take it that most of the members are familiar with English and therefore it would be a very useful procedure if the President finds his way to make the proceedings known to us all.

Now, Sir, as regards the proposition before the House, before dealing with that subject itself, I would like to say just one word as to the circumstances under which we the Muslim League Members have come here and have decided to participate in these proceedings. Now, Sir, you will agree that we have met here after an unprecedented event in the history of the world, namely the securing of independence for both India and for Pakistan without shedding a drop of blood.

Many Honourable Members: No, No.

B. Pocker Sahib Bahadur: I know quite well that there are several members.....

] *English translation of Hindustani speech ends.

*[] *English translation of Hindustani speech.

Mr. Debi Prosad Khaitan: (West Bengal: General): I rise to a point of order, I submit the speech of the Honourable Member is absolutely irrelevant to the proposition before the House. I would submit, Sir, that he should be asked to restrict himself to the motion before the House.

Mr. President: I would ask Honourable Members to leave that part of the task to me.

B. Pocker Sahib Bahadur: I know the feeling, Sir, perhaps a very painful feeling in many quarters, that what was known as India before has been reduced in extent and another kingdom namely Pakistan has been..

Mr. President: Will you please confine yourself to the motion before the House?

B. Pocker Sahib Bahadur: Sir, why I referred to that fact is only this. We have met here now after an event which has no precedent in the history of the world.

We are all very glad that we have met here and I congratulate Mr. Munshi for the excellent speech and for the excellent spirit in which he made it,—a speech which will be conducive to the united work of all the people concerned. I am very sorry to note that another Honourable Member has made a note of discord in his speech and I do believe that it was not quite wise on his part to have done so. We have to take the facts as they are and I may say that, so far as division is concerned, it is a matter of agreement between the two important bodies, the two great organisations in this country, namely, the Congress and the League. Both the organisations having agreed to the division, there is nothing to cry over.

Mr. President: May I remind the Honourable Member to confine himself to the motion before the House? I am afraid he has gone much beyond that.

B. Pocker Sahib Bahadur: I am only dealing with the point that has been dealt with by Mr. Munshi and referring to the reply given by another Honourable Member. If I am out of order in these circumstances, certainly I bow to your ruling and I do not want to say anything further. I have only made a reference to that. Mr. Munshi made an appeal to the members of the Muslim League to be loyal citizens of India and to cooperate. Certainly this assurance has been there and the Muslim League members will be loyally co-operating with this Constituent Assembly and they also expect a responsive co-operation from the other side.

Now, Sir, so far as the resolution before the House is concerned, certainly the resolution has to be carried. As regards the amendment of Mr. Santhanam, I wholeheartedly support it.

Many Honourable Members: The question be now put.

The Honourable Pandit Govind Ballabh Pant (U.P.: General): I was going to move that the question be now put.

Mr. President: I accept that motion. I think the House does not want any further discussion.

I put Mr. Santhanam's amendment to the House.

The amendment was adopted.

Mr. President: The motion, as amended, is put to the House.

The motion, as amended, was adopted.

AMENDMENT OF RULES

Mr. President: The next item is a series of resolutions relating to amendment of the Rules of the Constituent Assembly. I will ask Mr. Munshi to move.

Mr. K. M. Munshi: Mr. President, Sir, the amendments which I have the honour to move on behalf of the Steering Committee really follow the lines which have been adopted in the Report. With your permission, Sir, I will take Rule by Rule. Sir, I move:

“That the following amendments to the Constituent Assembly Rules be taken into consideration:

‘Rule 2:—In clause (b), *delete* the words ‘Sections or’ *Delete* clause (f) 5.55.

Mr. President: Does anyone wish to say anything? I put this motion which has been moved by Mr. Munshi.

(At this stage some members stated that they had not been supplied with copies of the Rules of Procedure).

I am told that copies have been sent to the addresses of the members but still such copies as are available in the office will be supplied to the new members.

Mr. Sarangdhar Das (Eastern States Group 1): We might take up the discussion tomorrow.

Diwan Bahadur Sir A. Ramaswami Mudaliar (Mysore State): Sir, I would like to support the suggestion that the Rules may be taken up tomorrow for consideration.

Mr. President: The amendments are of a formal character. But if members want it tomorrow, I am afraid I shall have to adjourn the House. We can take up the Resolutions. As there is some objection on the part of some members that they have not got copies of the Rules of the Assembly and they would like to have them before the amendments are moved, I am afraid there is no option but to adjourn discussion of the Rules till tomorrow. There are certain other motions that we can take up.

ELECTION OF MEMBERS TO COMMITTEES

Mr. President: The next is regarding the election of Vice-Presidents. It cannot be taken up today because it is consequent upon a change in the Rule. So that also will have to be put off till we pass the amendments to the Rules.

Mr. Satyanarayan Sinha will move the next Motion.

Dr. B. Pattabhi Sitaramayya (Madras: General): To say that two Vice-Presidents will be elected is not opposed to the Rule. We may proceed to do that.

Mr. President: He can take that up later.

Mr. Satyanarayan Sinha (Bihar: General): The motion which stands in my name, Mr. President, is of a formal character:

“Resolved that this Assembly do proceed to elect, in the manner required under Rule 41(1) of the Constituent Assembly Rules, two member to be members of the Staff and Finance Committee.”

You know, Sir, last time we had elected the Staff and Finance Committee by this House. Since then some of the members who were originally elected cease to be members of this House and under the Rules, when they cease to be members of the House, they cease to be members of the Committee. Therefore, there are vacancies on this Committee and the manner in which the vacancies are to be filled up is to be determined by the President. I therefore commend to this motion for your acceptance.

Mr. President: This Resolution has been moved by Mr. Satyanarayan Sinha.

“Resolved that this Assembly do proceed to elect, in the manner required under Rule 42(1) of the Constituent Assembly Rules, two members to be members of the Staff and Finance Committee.”

The motion was adopted.

Mr. Satyanarayan Sinha: Sir, I move:

“Resolved that this Assembly do proceed to elect, in the manner required under Rule 44(3) of the Constituent Assembly Rules, three members to be members of the Credentials Committee.”

I have to say the same thing which I said in regard to the first motion. The members originally elected for this Committee have ceased to be members of this House. Therefore, the House has got to elect three members from amongst its present members in the manner to be determined by the President.

An Honourable Member: We have not got the Rules.

Mr. President: The motion is only that certain members have to be elected according to rules to certain Committees. If we adopt the motion, then we will elect them according to the rules and before we elect them you will get the rules, I suppose! (*Laughter.*)

I do not think any discussion on this either is necessary. I shall put the motion to vote.

The motion was adopted.

Mr. Satyanarayan Sinha: Sir, I move:

“Resolved that this Assembly do proceed to elect, in the manner required under Rule 45(2) of the Constituent Assembly Rules, three members to be members of the House Committee.”

I have to say the same thing as I said in regard to the previous motion, because the original members elected to this Committee have ceased to be members of the House since.

Mr. President: I put this also to vote now.

The motion was adopted.

Mr. Satyanarayan Sinha: Sir, I move:

“Resolved that this Assembly do proceed to elect, in the manner required under Rule 40(2) and (5) of the Constituent Assembly Rules, nine members to, be members of the Steering Committee.”

In this connection, I would like to invite your attention, Sir, to Rule 40 which says:

“A Steering Committee shall be set up for the duration of the Assembly and shall consist initially of eleven members (other than the President) to be elected by the Assembly in accordance with the principle of proportional representation by means of the single transferable vote.”

Last time we had elected 11 members. Out of the original members elected by the House, three have ceased to be members of this House. Therefore, there are three casual vacancies. You will find under the same rule, sub-rule (2) the following:

“The Assembly may from time to time elect, in such manner as it may deem appropriate, eight additional members, of whom four shall be reserved for election from among the representatives of the Indian States.”

Out of these additional eight members, four seats were reserved for the States. Out of those four, last time we had elected two from amongst the members of the States, so that there are two vacancies to be filled up out of the seats allotted to the States. The other four seats we have got to fill up by election of members from the General Constituency. Now these six vacancies have to be filled by the method of proportional representation and the three casual vacancies in the manner to be determined by the President. What I am suggesting is that just as we elected two Members from among the States representatives by the method of proportional

representation, so I would commend to this House that they will accept that the other six vacancies may also be filled by proportional representation and out of these six, two will be reserved for the States representatives. The other three vacancies will be filled up like other committees by election in a manner to be determined by the President, as he deems fit.

Mr. President: Is it necessary to have any discussion on this? I put the motion to vote.

The motion was adopted.

ELECTION OF VICE-PRESIDENTS

Mr. President: Now, there is one Resolution which we have to consider and that is with regard to election of two Vice-Presidents, Under the Rule as it stands at present, there are two Vice-Presidents to be elected by the House and there were to be three Vice-Presidents *ex-officio* who would have been the Chairmen of the three Sections. Now the amendment that is proposed is that since Sections are not going to meet, all references to Sections should be omitted from the Rules and therefore those three Vice-Presidents will not now be Vice-Presidents at all because there will be no Sections whose Presidents would have been *ex-officio* Vice-Presidents of the Constituent Assembly. Dr. H. C. Mookerjee was the Vice-President who was elected last time, but after the new set-up he ceased to be a member of the Constituent Assembly because all members of the Constituent Assembly from Bengal have ceased to be members. He has been re-elected but since he ceased to be a member so he ceased to be the Vice-President also. Now, someone has to be elected in his place. I do not know whether members may like to re-elect him, but that is a different matter. What I am suggesting is that there is no real difficulty because this is no intricate question. The motion is merely that two Vice-Presidents have to be elected. Of course, the election may take place tomorrow or day after, but at present all you have to say is that these two places of Vice-Presidents should be filled up. If the members have no objection, then I might ask the mover to move the Resolution, but if there is any objection on the part of any member I would rather put it off.

Honourable Members: There is no objection.

Mr. President: Then, Mr. Satyanarayan Sinha, you may please move this.

Mr. Satyanarayan Sinha: Sir, I move:

“Resolved that this Assembly do proceed to elect two Vice-Presidents in accordance with the provisions contained in the Constituent Assembly Rules.”

Sir, you have already explained that we have got to elect only two Vice-Presidents. Last time we elected only one Vice-President and left the other seat to be filled up later. Dr. Mookerjee was unanimously elected Vice-President of this House. He ceased to be a member of this House on account of the Bengal Partition. I am glad that he has been re-elected to this House, but under the Rules the position has not changed. He is after all a newly elected member and we have also to elect another Vice-President. The manner in which the election will be held will be determined by the President.

Dr. N. B. Khare (Alwar State): Sir, while I support the Resolution, I would suggest that out of the two Vice-Presidents.....

Honourable Members: Mike, please.

Dr. N. B. Khare: I am speaking very loud (laughter)—one seat—should be from the States Group.

Mr. President: I am sorry, Dr. Khare, I have not heard what you said. (*Renewed laughter.*)

Dr. N. B. Khare: While supporting this Resolution I would respectfully suggest that out of the two Vice-Presidents one should be from the States representatives. This does not mean that I want this on the basis of proportional representation for the States.

Mr. President: I put the motion to vote.

The motion was adopted.

Mr. President: I would now make some announcements. Now that we have decided that all these elections should take place I have to fix a time for putting in nominations and also for voting if it becomes necessary. I am fixing the times as follows:

Nominations will be received by the Secretary up to 1 P.M. on the 16th. I have given 48 hours from now for the nominations. The elections, if necessary, will be held in accordance with the principle of proportional representation by means of single transferable vote between 3 and 4 P.M. on the 17th in the Under Secretary's room, No. 25 ground-floor. This relates to the various Sub-Committees with regard to which we have just passed Resolutions.

With regard to the Vice-Presidents, there is no question of proportional representation there, but we have certain rules, according to which that election will take place. I have fixed 5 P.M. tomorrow for receiving nominations and the elections will take place on the following day, if necessary, at 4 P.M. in the same room, mentioned above.

There is one thing more which I would like to mention to the House before we adjourn today and that is with regard to the timing of our sessions from tomorrow onwards. The Secretary, according to our usual procedure has notified that tomorrow we will begin at 10 o'clock. I was suggesting that it would be better if we sit in the afternoons every day *i.e.* from 3 to 6 P.M. That would give members plenty of time to consider the various proposals that will be coming up; they will have the whole of the morning at their disposal for this purpose. Therefore, I would suggest that we have our sessions from 3 to 6 P.M. from tomorrow onwards.

Mr. Tajamul Husain: Sir, I would like to point out that to have the sittings from 3 to 6 P.M. would be rather inconvenient to the members because that will be a very hot time. We have to come from long distances and in order to be here by 3 we have to leave our houses by say 12 or 1 P.M. The best time would be the mornings as we have had today. We may, if necessary, have the sittings from 11 A.M. to 1 or 1-30 P.M.

Mr. President: I may point out that Delhi is quite hot even at 1 o'clock—the time of going back. It will not make any difference if you go at 1 o'clock at about 2 P.M.

Begum Aizaz Rasul (U.P.: Muslim): May I point out that the month of Ramzan will be starting in a few days' time and it would be very inconvenient for Muslim members to sit from 3 to 6 P.M. because the time for breaking the fast will be soon after that? So I would suggest that the morning time would be the best for all.

Mr. President: I do not know when Ramzan commences. We can consider the question again when Ramzan begins. We shall in any case be finishing of at 6 P.M. which is at least one hour before sun-set. Here the sun sets after 7 P.M. I take it that the House accepts my suggestion.

The House stands adjourned till 3 P.M. tomorrow.

The Assembly then adjourned till 3 P.M. on Tuesday, the 15th July, 1947.

APPENDIX
No. C.A./22/Com/47
CONSTITUENT ASSEMBLY OF INDIA
REPORT OF THE ORDER OF BUSINESS COMMITTEE

COUNCIL HOUSE,
New Delhi, 9th July, 1947.

From

THE CHAIRMAN,
ORDER OF BUSINESS COMMITTEE

To

THE PRESIDENT,
CONSTITUENT ASSEMBLY OF INDIA.

SIR,

During the last session of the Assembly, we submitted a report which was necessarily tentative because of the fluid political circumstances then obtaining. Since then, momentous changes have occurred and the position has become crystallised. His Majesty's Government has issued a fresh statement on June the 3rd which has been accepted by all the principal political parties; and as a result of the decisions taken in pursuance of that statement, certain parts of the country will secede from India. These changes have revolutionised both the procedural and the substantive parts of the scheme on the basis of which we have been working hitherto. So far as the procedural aspect is concerned, it is no longer necessary, for the Assembly to split into Sections and to consider the question of groups, and the double majority provisions in regard to matters of major communal importance are no longer operative.

It is against this background that we held a meeting on the 3rd of July. Pandit Nehru was present at the meeting at our request and we are grateful to him for the help he gave us.

2. We understand that during the next session,—the Assembly will have before it three reports for consideration—those of the Union Constitution Committee, the Union Powers Committee and the Provincial Constitution Committee. Between them these reports will deal with a large majority of questions that would have to be decided by the Assembly. We recommend that the Assembly take decisions on these reports in the July Session and direct that the work be taken up at once of drafting the Constitution Bill. We recommend also that the Assembly appoint a Committee of members to scrutinise the draft before it is submitted to the Assembly and its subsequent session.

3. The matters that will remain outstanding at the end of July Session will be the reports of the Advisory Committee on Fundamental Rights, Minorities and the Administration of the Tribal and Excluded Areas. We suggest that the Advisory Committee complete its work in August and the recommendations made by them be incorporated by the Draftsman in his Bill notwithstanding that no decisions will by then have been taken on them by the Assembly. Any changes which are subsequently considered necessary could be incorporated in the draft Bill by suitable amendments.

4. In our last report, we had suggested that the Assembly should complete its work by the end of October this year. We reiterate this recommendation; and, having regard, to the progress made by the committees, we think this is quite practicable. We propose accordingly that the Assembly authorise the President to summon a session sometime in October, preferably in the early part of the month, for the purpose of considering the draft of the Constitution.

5. We do not think it necessary in the altered circumstances for decisions taken in the July Session to be circulated in accordance with Rule 63 of the Constituent Assembly Rules.

6. Our recommendations will involve an amendment to the Rules which we request the Steering Committee to take into consideration.

I have the honour to be,

Sir,

Your most obedient servant,

K. M. MUNSHI,

Chairman.

(on behalf of the Committee)

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CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 15th July, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Three of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The following Members presented their Credentials and signed the Register:

1. The Honourable Mr. Hussain Imam (Bihar: Muslim).
2. Mr. N. Madhava Rao (Eastern States Group-III).
3. Rao Raja Jayendra Singh Jue Dev (Central India States Group).
4. Pandit Thakur Das Bhargava (East Punjab).
5. Mr. Jasimuddin Ahmed (West Bengal: Muslim).

AMENDMENTS OF THE RULES

Mr. President: I shall now take up the amendments of the Rules.

RULE 2

Mr. K. M. Munshi (Bombay: General): Sir, I propose to move my amendments rule by rule. Perhaps that would be more convenient to the House. Sir, I move:

“That in clause (b) of Rule 2 the words ‘Sections or’ be deleted and also that clause (f) be deleted.”

As the House will see both these clauses refer to Sections. Rule 2, clause (b) says:

“‘Chairman’ means the person who for the time being presides over the Assembly or any of its Sections or Committees.”

There are to be no sections and therefore the word “Sections or” have to be deleted. Also clause (f) which refers to Sections should be deleted from the Rules.

Mr. President: The question is:

“That in clause (b) of Rule 2 the words ‘Sections or’ be deleted and also that clause (f) be deleted.”

The motion was adopted.

RULE 3

Mr. K. M. Munshi: Sir, I move:

“That in Rule 3 the words ‘or any Section thereof’ be deleted.”

Mr. President: The question is:

“That in Rule 3 the words ‘or any Section thereof’ be deleted.”

The motion was adopted.

RULE 4

Shri K. Santhanam (Madras: General): Sir, I have an amendment to Rule No. 4. I move:

“That the Proviso to Rule 4 be deleted.”

This is consequential to the abolition of the Indian Legislative Assembly and the proviso ceases to have any meaning. Therefore I move for its deletion.

Mr. K. M. Munshi: Sir, I accept the amendment moved by Mr. K. Santhanam.

Shri Sri Prakasa (U.P.: General): What happens to the Members who represent these constituencies (Delhi or Ajmer-Mewara) at the present moment in the Constituent Assembly?

Mr. K. M. Munshi: The present members will continue but in case there is a vacancy a provision is being made in the amendment that is going to be moved by Mr. K. Santhanam to Rule No. 5 Special provision has been made for it.

Mr. President: The question is:

“That the Proviso to Rule 4 be deleted.”

The motion was adopted.

RULE 5

Mr. K. M. Munshi: Sir, I move:

“That in sub-rule (2) of Rule 5, delete the words ‘or the appropriate authority in British Baluchistan’.”

“That for sub-rule (6) the following be substituted:

‘(6) As soon as may be after the receipt of the request mentioned in sub-rule (2) the Speaker of the Provincial Legislative Assembly concerned—

- (a) shall appoint by suitable notification a person to be the Returning Officer for the election and may also in like manner appoint any person who may, subject to the control of the Returning Officer, perform all or any of the functions of the Returning officer at any such election, and
- (b) shall also appoint by suitable notification—
 - (i) a date, not later than fifteen days after the date of, notification for the nomination of candidates;
 - (ii) a further date, not later than the third day after the first-mentioned date, for the scrutiny of nominations ;
 - (iii) a further date, not later than two days after scrutiny, for withdrawal of his candidature by a candidate; and
 - (iv) a further date, not later than twenty one days from the date fixed for withdrawal on which a poll shall if necessary, be taken.’”

The reason for these amendments is that no provision was made for the appointment of a Returning Officer and it has been found that such a provision is necessary.

Mr. President: The question is:

“That in sub-rule (2) of Rule 3, delete the words ‘or the appropriate authority in British Baluchistan’.”

“That for sub-rule (6) the following be substituted:

(6) As soon as may be after the receipt of the request mentioned in sub-rule (2) the Speaker of the Provincial Legislative Assembly concerned—

- (a) shall appoint by suitable notification a person to be the Returning Officer for the election and may also in like manner appoint any person who may, subject to the control of the Returning Officer, perform all or any of the functions of the Returning Officer at any such election, and

(b) shall also appoint by suitable notification—

- (i) a date, not later than fifteen days after the date of notification, for the nomination of candidates ;
- (ii) a further date, not later than the third day after the first-mentioned date, for the scrutiny of nominations ;
- (iii) a further date, not later than two days after scrutiny, for withdrawal of his candidature by a candidate; and
- (iv) a further date, not later than twenty-one days from the date fixed for withdrawal, on which a poll shall, if necessary, be taken.”

The motion was adopted.

Shri K. Santhanam: Sir, I move:

“That in sub-rule (2) of Rule 5, after the words ‘as the case may be’ the words ‘the Advisory Councils of Delhi and Ajmer-Merwara’ be inserted.”

“That in sub-rule (5) of Rule 5, after the words ‘in any part of India’, the words ‘which is participating or entitled to participate in this Assembly’ be inserted”.

“That for sub-rule (11) of Rule 5, the following be substituted:

“The foregoing rules shall apply in relation to Delhi and Ajmer-Merwara subject to the following modifications, namely:

- (a) that for the ‘the Provincial Legislative Assembly’ there shall be substituted ‘the Delhi Advisory Council or the Ajmer-Merwara Advisory Council, as the case may be; and for the ‘the Speaker of the Provincial Legislative Assembly’ there shall be substituted ‘the Chairman of the Delhi or Ajmer-Merwara Advisory Council as the case may be’.
- (b) that instead of a section of the Provincial Legislature taking part in the election, the non-official members of the Delhi or the Ajmer-Merwara Advisory Council shall take part in it’.”

These are all consequential to the changes that have been made and I do not think any further explanation is needed.

Mr. K. M. Munshi: Sir, I accept the amendments moved by Mr. Santhanam. They carry out the idea that the representatives of Delhi and Ajmer-Merwara have to be elected by the respective Advisory Councils.

Mr. President: The question is:

“That in sub-rule (2) of Rule 5, after the words ‘as the case may be’ the words ‘the Advisory Councils of Delhi and Ajmer-Merwara’ be inserted.”

“That in sub-rule (5) of Rule 5, after the words ‘in any part of India’, the words ‘which is participating or entitled to participate in this Assembly’ be inserted”.

“That for sub-rule (11) of Rule 5, the following be substituted:

“The foregoing rules shall apply in relation to Delhi and Ajmer-Merwara subject to the following modifications, namely:

- (a) that for ‘the Provincial Legislative Assembly’ there shall be substituted ‘the Delhi Advisory Council or the Ajmer-Merwara Advisory Council as the case may be’; and for ‘the Speaker of the Provincial Legislative Assembly’ there shall be substituted ‘the Chairman of the Delhi or Ajmer-Merwara Advisory Council as the case may be’.
- (b) that instead of a section of the Provincial Legislature taking part in the election, the non-official members of the Delhi or the Ajmer-Merwara Advisory Council shall take part in it’.”

The motion was adopted.

Mr. K. M. Munshi: Sir, I move:

“That after sub-rule (6) of Rule 5 the following new sub-rule be inserted:

- ‘(6)A. The Speaker of the Provincial Legislative Assembly concerned shall, if a poll is taken, by suitable notification fix the hour at which the poll shall commence and the hour at which it shall close on the date fixed under sub-clause (iv) of clause (b) of sub-rule (6) and the place at which the poll shall be taken.’ ”

[Mr. K. M. Munshi]

“That the following be added at the end of sub-rule (9) of Rule 5:

‘where any such rules or regulations exist, it shall be competent for the Speaker of the Provincial Legislative Assembly concerned to make, with the previous approval of the President, such modifications therein as may be necessary for the purposes of this sub-rule.’ ”

This completes the mechanism for holding the election. In Rule 5 we have added a provision with regard to the Returning Officer. With a view to completing the whole mechanism of election it is necessary that the Speaker should be authorised to have a poll taken, if required. Also, there may be rules which may be required to be modified and it may not be possible to come to the Constituent Assembly. In order to complete the election, therefore, the Speaker may be authorized with the previous approval of the President, to modify the rules.

Mr. K. Chengalaraya Reddy (Mysore State): Sir, when the previous amendment was moved, I stood up to raise a question as to what was the provision made for filling up a vacancy, if it arose in an Indian State. I was told by an Honourable friend that the provision was incorporated in the Rules, and I then sat down. But now, an amendment has been moved laying down the procedure to fill up vacancy by by-election. On a cursory reading of the Rules I do not find that any provision has been made for filling up a vacancy; if it arose, in an Indian State. I therefore suggest that a suitable provision may be made in the Rules of Procedure.

Mr. K. M. Munshi: There is some misunderstanding. As regards elections with respect to Indian States, a Standing Order has been made by the President and they will be governed by the Standing Orders.

shall commence and the hour at which it shall close on the date fixed under sub-clause (iv) of clause (b) of sub-rule (6) and the place at

These relate to the Chief Commissioners provinces.

Mr. President: The question is:

“That after sub-rule (6) of Rule 5 the following new sub-rule be inserted:

‘(6)A. The Speaker of the Provincial Legislative Assembly concerned shall, if a poll is taken, by suitable notification fix the hour at which the poll shall be taken.’ ”

“That the following be added at the end of sub-rule (9) of Rule 5:

“where any such rules or regulations exist, it shall be competent for the Speaker of the Provincial Legislative Assembly concerned to make with the previous approval of the President, such modifications therein as may be necessary for the purposes of this sub-rule.”

The motion was adopted.

RULE 10

Mr. K. M. Munshi: I come to rule No. 10, that is with regard to the convening of a meeting of the Sections. I move that the whole of the rule be deleted.

Shri Sri Prakasa: I sent notice of an amendment this morning for the insertion of a new rule after Rule 5.

Mr. President: I understand that this notice was received this morning.

Shri Sri Prakasa: I could not send it earlier. I sent it today at 10 o'clock.

Mr. President: Is it not too late?

Shri Sri Prakasa: I think the amendment is an important one because it fills in a lacuna in the existing rules. If you will permit me I shall move it.

Mr. K. M. Munshi: May I rise to a point of order? Our Rule 66 states that "No new rule shall be made nor shall any of these rules be amended or deleted except after a reference of the proposal so to make, amend, or delete the rule to the Steering Committee which shall report to the Assembly within two weeks of the receipt of the reference".

Shri Sri Prakasa: I am in your hands. I am only trying to fill in a lacuna. New elections have taken place. Rules 4 and 5 have been violated by an outside authority. All the new elections that have taken place in Bengal and the Punjab will otherwise be *ultra vires*.

Mr. President: Will you please wait till we have finished the other Rules? In the meantime, I shall consider it.

The question is:

"The rule 10 be deleted."

The motion was adopted.

RULE 11

Mr. K. M. Munshi: Sir, I move:

"That in Rule 11 for the words 'five Vice-Presidents' the words 'two Vice-Presidents' be substituted, and the following be inserted at the end of this rule.

'who shall be elected by the Assembly from amongst its members in such manner as the President may prescribe'."

Rule 11 provides for five Vice-Presidents, and this is interconnected with Rule 12 which says that the Chairman of each of the sections shall be an *ex-officio* Vice-President of the Assembly. As there are no sections now all this becomes unnecessary. In the result there will be two Vice-Presidents both of whom will be elected by the Assembly as a whole. Sir, I move.

The motion was adopted.

RULE 12

Mr. K. M. Munshi: Sir, I move that Rule 12 be deleted. That is consequential Sir, I move.

The motion was adopted.

RULE 13

Mr. K. M. Munshi: Sir, I move:

"That in Rule 13 for the words 'Rule 12(1)' the words 'Rule 11' be substituted."

Rule 13 the election of two Vice-Presidents is referred to as being under Rule 12 (1). Now Rule 12 having gone and the matter having been incorporated in Rule 11, Rule 13 should be amended accordingly. Sir, I move.

The motion was adopted.

RULE 14

Mr. K. M. Munshi: Sir, I move:

"That in sub-rule (2) of Rule 14 for the words 'an elected' the word 'a' be substituted, and that the words 'as a whole' be deleted."

[Mr. K. M. Munshi]

Rule 14 says that a Vice-President shall cease to hold office as such if he ceases to be a member of the Assembly. "Any vacancy in the office of an elected Vice-President of the Assembly shall be filled by election by the Assembly as a whole." In view of the changes that have already been made there is no reason to have the words "in elected" because both the Vice-Presidents are elected. Also there is no reason to keep the words "as a whole" because both the Vice-Presidents are going to be elected by the House as a whole. Sir, I move.

The motion was adopted.

RULE 17

Mr. K. M. Munshi: Sir, I move:

"That in Rule 17 'sub-rule (6)' be deleted, and in sub-rule (8) the words 'or a Joint Secretary' be deleted."

Sub-rule (6) provides for the Secretary of the section and it lays down that the Secretary of the section shall be a Joint Secretary of the Assembly. As there are no Joint Secretaries the sub-rule should be deleted. Further the words "Joint Secretary" appear in sub-rule (8) and these words should be deleted. Sir, I move.

The motion was adopted.

RULE 18

Mr. K. M. Munshi: Sir, I move:

"That in Rule 18 the words 'sections and the' be deleted."

The motion was adopted.

RULE 19

Mr. K. M. Munshi: Sir, I move:

"That in Rule 19, 'sub-rule 1(iii)' be deleted and in sub-rule 1(iv) the words 'or the sections' be deleted."

The motion was adopted.

RULE 23

Mr. K. M. Munshi: Sir, I move:

"That after Rule 23 the following be inserted as Rule 23A—

- '23A. (1) The presence of at least one-third of the whole number of members shall be necessary to constitute a meeting of the Assembly or any of its committees.
- (2) If the Chairman, on a count being demanded by a member at any time during a meeting, ascertains that one-third of the whole number of members are not present, he shall adjourn the Assembly or the committee, as the case may be, for fifteen minutes, and if on a fresh count being taken after that period it is found that there is still no quorum, he shall adjourn the Assembly or the committee as the case may be, till the next day on which it ordinary sits.' "

On the last occasion the question of quorum was not decided by the rules and it was left over to be incorporated in an additional rule. Sir, I Move.

Shri K. Santhanam: Sir, I am not moving the amendment that stands in my name.

Shri Sri Prakasa: Sir, may I know if these amendments of Mr. Munshi and the further amendments moved by Mr. Santhanam had been referred to the Steering Committee and if all this is in the nature of a note by the Steering Committee? Or are Mr. Munshi and Mr. Santhanam moving these off their own bat?

Mr. K. M. Munshi: These rules are not my Own; they are the report of the Steering Committee which I am placing before the House. They were initiated by the Steering Committee and I am moving them on behalf of the Committee.

Shri Sri Prakasa: Then what about Mr. Santhanam's amendments?

Mr. K. M. Munshi: These are amendments of the rules as proposed by the Steering Committee and so they are not covered by Rule 66; they are not new rules.

Shri Sri Prakasa: Sir, I do not know if you are satisfied with what Mr. Munshi says. I am not. I feel that you may just as well permit my amendment to be moved which is before you and which I think is very important.

Mr. President: I have asked the Honourable Member to wait till the end; the question of moving it does not arise at this stage.

Shri Sri Prakasa: An occasional reminder will be helpful. (*Laughter.*)

Shri Jaspal Roy Kapoor (U. P. General): Sir, I do not propose to move my amendment.

Mr. R. K. Sidhwa (C. P. & Berar: General): I am also not moving my amendment.

Mr. President: Then the amendment of Mr. Munshi will be put to the vote.

The question is:

"That after Rule 23 the following be inserted as Rule 23A—

- '23A. (1) The presence of at least one-third of the whole number of members shall be necessary to constitute a meeting of the Assembly or any of its committees.
- (2) If the Chairman, on a count being demanded by a member at any time during a meeting, ascertains that one-third of the whole number of members are not present, he shall adjourn the Assembly or the committee, as the case may be, for fifteen minutes, and if on a fresh count being taken after that period it is found that there is still no quorum, he shall adjourn the Assembly or the committee, as the case may be, till the next day on which it ordinarily sits."

The motion was adopted.

RULE 31

Mr. K. M. Munshi: I now come to Rule 31. I move:

"That sub-rule (3) of this Rule be deleted."

Rule 31 says:

"(1) A matter requiring the decision of the Assembly, shall be brought forward by means of a question put by the Chairman.

(2) In all matters requiring to be decided by the Assembly, the Chairman shall exercise a vote only in the case of an equality of votes.

(3) Any question relating to a matter referred to in paragraph 19(vii) of the Statement shall be decided as laid down therein."

Now, Sir, this sub-rule (3) has no efficacy. It has no meaning. I therefore move that it be deleted.

Mr. M. S. Aney (Deccan States): Will the Honourable Mover read out paragraph 19(vii) of the Statement.

Mr. K. M. Munshi: It reads:

“In the Union Constituent Assembly resolution varying the provisions of paragraph 15 above or raising any major communal issue shall require a majority of the representatives present and voting of each of the two major communities. The Chairman of the Assembly shall decide which, if any, resolutions raise major communal issues and shall, if so requested by a majority of the representatives of either of the major communities, consult the Federal Court before giving his decision.”

This is a double majority clause which, as I said, has lost its efficacy.

Mr. President: The question is:

“That sub-rule (3) of Rule 31 be deleted.”

The motion was adopted.

RULE 35

Mr. K. M. Munshi: Sir, I move:

“That the two provisos to Rule 35 be deleted.”

The rule and the provisos run as follows:

“In all matters relating to procedure or the conduct of business of the Assembly, the decision of the Chairman shall be final:

Provided that when a motion raises an issue which is claimed to be a major communal issue, the Chairman shall, if so requested by a majority of the representatives of either of the major communities, consult the Federal Court before giving his decision:

Provided further that no Section shall deal with matters which fall within the purview of the powers and functions of the Union Constituent Assembly or vary any decision of the Union Constituent Assembly taken upon the report of the Advisory Committee referred to in paragraph 20 of the Statement.”

For the reasons which I gave yesterday, these provisos become entirely useless. I move therefore that these two provisos may be deleted.

The motion was adopted.

RULE 36

Mr. K. M. Munshi: I now come to Rule 36. I move first that the word ‘exclusive’ in the first line be deleted. It says: ‘It shall be the exclusive function of the Advisory Committee referred to in paragraphs 19 and 20 of the Statement to initiate and consider proposals..... Now that that Statement is gone, this Statement becomes useless.

I move next that the words “Union Constituent” wherever they occur in this Rule and the words “shall be binding on the Sections and” be deleted.

Mr. President: You omit only the words “Union Constituent”?

Mr. K. M. Munshi: Yes, Sir, the word “Assembly” remains.

Mr. President: The question is:

“That in Rule 36,—

- (i) the word ‘exclusive’;
- (ii) the words ‘Union Constituent’, wherever they occur; and
- (iii) the words ‘shall be binding on the Sections and’
be deleted.

The motion was adopted.

RULE 41

Mr. K. M. Munshi: Sir, Rule 41 deals with the functions of the Steering Committee. Sub-rule (1) (c) runs thus: "act as a general liaison body between the Assembly and the Sections, between the Section *inter se*, between Committees *inter se*, and between the President and any part of the Assembly". I propose that in sub-rule (1) (c), the words "between the Assembly and the Sections, between the Section *inter se*" be deleted. These words are not longer necessary.

The motion was adopted.

RULE 42

Mr. K. M. Munshi: In sub-rule (1) (b) of this Rule, for the word 'five', substitute the word 'two'. As there are only two-Vice-Presidents now, this change has become necessary.

The Honourable Pandit Hirday Nath Kunzru (U. P.: General): May I know from Mr. Munshi how the amended Rule 41 (1) (c) reads?

Mr. K. M. Munshi: The Committee shall act as a general liaison body between Committees *inter se*, and between the President and any part of the Assembly.

The Honourable Pandit Hirday Nath Kunzru: Liaison between the Assembly and the Committees?

Mr. K. M. Munshi: No Between the committees.

Pandit Govind Malaviya: (U. P.: General): Will Mr. Munshi, Sir, explain what is meant by liaison between any part of the Assembly and the President? I can understand liaison between the committees.

Mr. K. M. Munshi: I am not responsible for that.

Mr. President: I am afraid the question of interpretation has been raised too late. When it becomes necessary to interpret it, we shall do so.

The Honourable Mr. Hussain Imam (Bihar: Muslim): If any absurdity becomes apparent it is within the competence of the House to make the necessary consequential change.

Mr. President: It does not arise out of the amendment now moved.

Mr. Munshi's amendment is to Rule 42.

In clause (b) of Sub-rule (1) substitute the word "two" or "five".

The motion was adopted.

RULE 45

Mr. K. M. Munshi : I now come to Rule 45. I move that in sub-rule (2), delete the words "one representing each Governor's Province" This is also consequential. Sub-rule (2) reads as follows:—this is about the House Committee:

"The Committee shall consist of eleven members, who shall be elected by the Assembly, one representing each Governor's Province in the manner to be prescribed by the President."

Now there are not eleven Governor's provinces, and the amendment would mean that there may be eleven members but not each representing a Governor's province. I move the amendment.

The motion was adopted.

RULE 46

Mr. K. M. Munshi: The next amendment is to Rule 46 which relates to other Committees. I move:

“That the words ‘or a Section according as the business of the Committee relates to the Assembly or the Section’ be deleted.”

This is also consequential.

The motion was adopted.

RULE 47

Mr. K. M. Munshi: I move that in Rule 47 the words beginning with “and the Secretary of any Section, etc.” to the end of the rule be deleted.

Mr. President: This is also consequential.

The motion was adopted.

RULE 48

Shri K. Santhanam: I move, Sir, that in Rule 48 for the word “shall” the word “may” be substituted. This is purely consequential to the amendment with regard to quorum which the House has adopted today. As the rule stands, it says:

“The motion by which a Committee is to be set up shall state the quorum necessary to constitute a meeting of the Committee.”

Because we had no rule regarding quorum, it was obligatory to state the quorum. Now we have got a rule which lays down the quorum as one-third. Therefore, this obligation is no more necessary. My amendment is that the motion by which a committee is to be set up may state the quorum, as quorum has already been provided for.

Shri Sri Prakasa: May I draw your attention, Sir, to Rule 66? Has this been referred to the Steering Committee?

Mr. President: I do not think that the Steering Committee has been consulted, but this amendment follows from the other amendment which you have accepted. It is only consequential.

Shri Sri Prakasa: I hope the same ruling will apply in my case.

Mr. President: The question is:

“That in Rule 48 for the word ‘shall’ the word ‘may’ be substituted”.

The motion was adopted.

RULE 49

Mr. K. M. Munshi. I move:

“That in Rule 49 the words ‘or to the Section concerned, as the case may be’ be omitted.”

The motion was adopted.

RULE 63

Mr. K. M. Munshi: I move that Rule 63 be deleted. This is with regard to the consideration of the draft constitutions by the Provincial Legislatures. I gave my reasons when I presented the report of the Order of Business Committee and I need not repeat them now.

Mr. President: Mr. Munshi's amendment is that Rule 63 be deleted. Does anyone wish to say anything about it?

The motion was adopted.

Shri Sri Prakasa: Before Mr. Munshi moves his amendment to Rule 67, I move that Rule 66 be deleted, even if it has not gone to the Steering Committee, as it is purely a consequential amendment. I hope you will permit this amendment to be moved. I think, Sir, that this Rule should go, and the Constituent Assembly should be able to exercise its inherent powers to change the rules instead of members having to go to the Steering Committee every time. I have a precedent for this in this afternoon's proceedings themselves inasmuch as the amendments to the original rules moved by Mr. Santhanam were in no way amendments to Mr. Munshi's amendments. If you will see, Sir, the amendments moved by Mr. Santhanam to Rules 4 and 5, you will find that they were absolutely new amendments and that they did not go to the Steering Committee. Since you permitted these amendments to be moved here, I hope you will permit me also to move this amendment.

Mr. President: Your amendment is out of order. The amendments to which reference has been made referred to amendments placed before the House and which had come here in due course after being passed by the Steering Committee. Therefore those amendments were perfectly in order. This Rule has never gone before the Steering Committee and therefore your amendment is altogether out of order.

RULE 67

Mr. K. M. Munshi: Coming to the last amendment with regard to Rule 67, I move:

"That the words 'the Sections and' in the first sentence and the whole of the second sentence be deleted."

This is also a consequential amendment.

Mr. President: Does anyone wish to say anything on this?

Shri Jaspat Roy Kapoor: Mr. President, I am raising a point of order. Rule 67 is the rule on which Mr. Munshi has been relying so far. Rule 67, Sir, lays down that every proposal must go before the Steering Committee and the Steering Committee must consider it and must submit its report to the Assembly. Now, Sir, all these proposals which have so far been placed before us by Mr. Munshi have I understand been considered by the Steering Committee but in addition to that the Steering Committee must submit its report to the Assembly. So far no report of the Steering Committee has been placed before us. Now, Mr. Munshi is proposing an amendment to Rule 67. I would like to know what is the report of the Steering Committee. With regard to this proposal of Mr. Munshi, if there is no report of the Steering Committee before us, I think it is out of order for him to make any proposal to amend Rule 67.

Mr. President: As I understood from Mr. Munshi, all these amendments which he has been proposing were on behalf of the Steering Committee, and though they are put in the form of amendments, it is really the report of the Steering Committee.

The Honourable Pandit Hirday Nath Kunzru: Was the President informed that these were the amendments to the rules which had been proposed by the Steering Committee?

Mr. President: There was a meeting of the Steering Committee in which all these rules and amendments had been considered and they are coming from there.

Shri Jaspal Roy Kapoor: My submission is that there must be a report of the Steering Committee before us. On the agenda paper all that we have is that Mr. Munshi shall move the proposal as are contained in the Order Paper. There has been no report of the Steering Committee before us. The report of the Steering Committee must be presented in a proper form to the Honourable the President of the Assembly either by the President or by the Secretary of the Committee. Mr. Munshi is neither the President nor the Secretary of the Steering Committee.

The Honourable Sardar Vallabhbhai Patel (Bombay: General): On a point of order I would like to ask how this could be raised after the rules have been passed. It should have been asked at the initial stage.

Mr. President: I agree. The question was raised at an earlier stage and it was answered that the amendments had been considered by the Steering Committee. Probably the mistake has arisen because it is not so stated in the agenda that this is a report from the Steering Committee. Otherwise, so far as the substantial compliance with the rules is concerned that has been done.

Shri Jaspal Roy Kapoor: Then, as a matter of fact, is there any report of the Steering Committee?

Mr. President: It is not stated as a report but it is a report submitted by the Steering Committee, Mr. Munshi has been authorised by the Steering Committee to put these amendments before the House on behalf of the Steering Committee.

The Honourable Sardar Vallabhbhai Patel: The Chairman of the Steering Committee is the President of the Constituent Assembly and the reference may be oral.

Mr. K. M. Munshi: The position is that the President of the Constituent Assembly is the *ex-officio* Chairman of the Steering Committee. Naturally he cannot place the report. The *ex-officio* Secretary is not a member of this House and the Steering Committee has asked one of its members as a Reporteur to place its decisions before this House. These rules were the rules which emanated from the Steering Committee and which the Steering Committee authorised me to place before the House.

Mr. President: I have already ruled that the amendment is in order. Now I put the amendment which has been moved by Mr. Munshi to vote.

The question is:

“That in Rule 67 the words ‘the Sections and’ in the first sentence and the Whole of the second sentence be deleted.”

The amendment was adopted.

Mr. President: There was an amendment which Mr. Sri Prakasa wanted to move. That has not gone to the Steering Committee, but I understand that the amendment which he proposes to move rectifies

a lacuna in our rules. I therefore ask the permission of the House to let him move the amendment. If the House agrees, I would permit him to move it.

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): May I suggest that he be asked to send it to the Steering Committee and it may be taken up later?

Mr. President: It is after all more or less a formal business. It rectifies a lacuna which exists in our rules which we have discovered. So it may not be necessary to go through the formality and send it to the Steering Committee, if the House permits it.

Diwan Chaman Lall (East Punjab: General): Are we bound by the rules we have made?

Mr. President: We are certainly bound by the rules.

Diwan Chaman Lall: There is no rule under which the President can ask the permission of the House. I want to know what is the proper procedure to amend the rules passed by the Steering Committee.

Mr. President: After hearing the amendment if the House still thinks that it should be put to the Steering Committee, then I will do so. Mr. Sri Prakasa, will you kindly read out the amendment?

Mr. M. S. Aney: Rule 66 seems to be very imperative and leaves no discretion to anybody. Unless some power under the rules is given to President to suspend the operation of any rule on account of emergency, I think the President cannot call upon this House to accept any amendment in order to infringe these rules.

Mr. President: I thought the House had power to dispense with its own rules when it liked and therefore I must not take upon myself to permit this amendment to be moved. As far as I can see there is no provision for allowing the House or the President to suspend any of the rules, but I take it that it is inherent in the House to suspend any of the rules for the time being and to permit any member to move anything which does not strictly fall within these rules.

Shri Jaspat Roy Kapoor: May I draw your attention to Rule 26 which says:

“Unless otherwise directed by the Chairman, notice of every motion accompanied by a copy of the motion shall be given at least three clear days before the day on which the motion is to be moved in the Assembly.....”

Mr. President: That only lays down the time for giving notice of any motion. That is why I said that if the House does not wish to take this up, I am not going to allow it. But if the House permits. I shall have no objection. Therefore, I put it to the House.

Will Shri Sri Prakasa read his amendment?

Shri Sri Prakasa: After Rule 5, insert the following new rule:

“Notwithstanding the provisions of Rules 4 and 5 above, the Governor-General of India may, in pursuance of the statement of His Britannic Majesty’s Government of 3rd June 1947, order fresh elections to the Constituent Assembly from the areas mentioned in paras 4 to 14 of that statement and thereupon the members already elected from the said areas whether or not they have taken their seats in the Assembly in the manner prescribed in Rule 3, shall be deemed to have vacated their seats and the members newly elected shall be deemed to have been duly elected as members of the Assembly. This rule shall have retrospective effect from June 3, 1947.”

[Shri Sri Prakasa]

I think, Sir, that this rule is self-explanatory. The fact is that the Viceroy acted in a manner which was contradictory to the Rules that the Constituent Assembly had framed for itself. Rules 4 and 5 definitely prescribe the manner in which seats will be vacated and filled. These rules were grossly violated during the last few months and new elections were held. Many members of this House were deemed to have vacated their seats without having resigned their membership. We have all acquiesced in that.

Now, Sir, in order to vindicate our own honour, I think it is imperative that we should pass a rule so that all that has happened may be sanctioned formally. If we do not pass this rule, I submit, Sir, most respectfully that the presence of the new members from Bengal and the Punjab cannot be allowed. I therefore think that it is essential that this rule should be passed. I hope the House will agree.

Mr. President: I would like to know whether the House would permit this amendment to be taken up. We are not now going into the merits. The question is whether it should be allowed to be discussed.

The Honourable Pandit Jawaharlal Nehru: I am not saying anything on merits. What I was going to say is this. Even if it is taken up, this is something which the Steering Committee must consider. This is a long drawn out Rule which, even if accepted on merits, has to be looked into by lawyers and others. The question is how it should be accepted. It cannot be taken up in this manner. Otherwise, instead of removing a difficulty we might be creating other difficulties. I submit the proper course is to send it to the Steering Committee.

Mr. President: I am putting it to the House.

The motion to permit the amendment being taken up was negatived.

Shri Sri Prakasa: Am I to take it that this amendment is lost?

Mr. President: It is not lost. It is not taken up. You can send it to the Steering Committee and it may come up in due course.

Shri Sri Prakasa: May I respectfully enquire what will be the position of the new members who have been elected and who have taken their seats? In the light of Rules 4 and 5, will their presence be allowed.

Mr. President: I allowed them to take their seats yesterday. They will continue.

The Honourable Pandit Jawaharlal Nehru: May I point out that the question that Shri Sri Prakasa has raised is an important question? The question is how to do it. The bringing up of an informal amendment to the Rules is an improper way. Possibly it will be open to the House to pass a resolution or if it is necessary to change the Rules we may change them. But it must be considered by the appropriate authority. My only submission is that it cannot be taken up in this casual way.

Shri Sri Prakasa: We have admitted members in a casual way.

Mr. President: We may now pass on to the next item.

Mr. H. V. Kamath (C.P. & Berar: General): I submit that in the light of the new rules that have been made, and the old rules that have been amended or deleted all the rules be re-numbered omitting all A's etc.

Mr. President: We shall do that. I think the House has no objection to the re-numbering of the Rules consequent on the amendments. I take it that this is agreed to.

Pandit Govind Malaviya: Sir, I think the right course will be, that the rules should all be correctly re-numbered, and then in a formal manner put before the House *en bloc* and adopted without any further discussion. That will regularise things.

Many Honourable Members: Why?

Mr. President: We shall now pass on to the next item.

Mr. Deshbandu Gupta (Delhi): Before the next item is taken up, Sir, may I know what has happened to the amendment of which notice had been given by me?

Mr. President: That shares the same fate as that of Mr. Sri Prakasa.

Mr. Deshbandhu Gupta: In view of the important nature of the amendment, may, I submit that it may be taken up now with the permission of the House.

Mr. President: I think there is no use of repeating that experiment. You had better leave it.

We shall now go on to the next item in the agenda. Sardar Vallabhbhai Patel will move the motion standing in his name.

Mr. Tajamul Husain (Bihar: Muslim): Before we proceed with the motion, I would like to know what happened to the resolution which I had sent about four days ago in connection with the motion about to be moved now?

Mr. President: I take it that you are referring to the dissolving of the Committee which has already completed its function and submitted its report. Is that the resolution you are referring to?

Mr. Tajamul Husain: That is the only resolution I have sent you.

Mr. President: I have ruled it out of order because the function of the Committee is already over and it has made its report.

Mr. Tajamul Husain: May I know if it is the custom of the House not to inform an Honourable Member who sends a resolution that it has been disallowed? I have had no information of this up till now.

Mr. President: I have ruled it is out of order.

Mr. Tajamul Husain: I accept your ruling. I am asking why I was not informed of it. Is it the practice, when an Honourable Member sends a resolution and you disallow it, that you do not inform the member concerned?

Mr. President: I shall take care in the future to inform members if I disallow any resolution.

REPORT ON THE PRINCIPLES OF A MODEL PROVINCIAL CONSTITUTION

The Honourable Sardar Vallabhbhai Patel: Sir, I move that this Constituent Assembly do proceed to take into consideration the Report* on the principles of a model Provincial Constitution submitted by the Committee appointed in pursuance of the resolution of the Assembly of the 30th April, 1947.

*Appendix.

[The Honourable Sardar Vallabhbhai Patel]

This Committee has submitted its report which has been circulated amongst all the members of this House since about a fortnight and the report is in the possession of all the members. What I wish to point out in moving this motion is that report is not the final draft of the provincial constitution. According to the instructions given to the Committee, it has settled certain principles of the provincial constitution, and therefore, this House need not go into the verbal details or into the exact legal form or constitutional form of these clauses that have been submitted in the memorandum. If the various clauses in the report are, after consideration, adopted, or improved upon, then, it will be the function of the draftsmen or the lawyers who will be entrusted with the work of drafting the constitution to put them in the proper form. Therefore, the House need not waste its time on going into a consideration of the language of the various clauses.

It should also be remembered that this report contains roughly about 85 per cent. of the draft or 85 per cent. of the principles of the provincial constitution that has to be framed. Because, you will remember that this House has appointed an Advisory Committee which has to submit its report after that Reports of the Minorities Committee and the Tribal and Excluded and Partially Excluded Areas Committee are received. These Reports have not yet been received. When they are received, in due course, the Advisory Committee will meet and consider these Reports when the question of protection of minorities rights and interests will be taken into account. It has been agreed that this Advisory Committee should meet during the course of this month and submit its report before this House disperses or meets again. Therefore, that report will come at a later stage.

Now, in dealing with the memorandum that is before you. I shall briefly touch upon the salient features of the draft. The first question we had naturally to consider was whether the provincial constitution shall be of a unitary type or shall be of a federal type, and as there was a little difference of opinion on this question, the Committee thought it proper to have a joint session of the Provincial Constitution Committee and the Union Constitution Committee. Both these Committees met and they came to the conclusion that it would suit the conditions of this country better to adopt the parliamentary system of constitution, the British type of constitution with which we are familiar. The two Committees have agreed and the Provincial Constitution Committee has accordingly suggested that this constitution shall be a parliamentary type of Cabinet.

Some misunderstanding may arise on some of the items mentioned in Clause 9. Clause 9 provides four items under the note. The first one says, the prevention of any grave menace to the peace and tranquillity of Province or any part thereof. It means that the Governor is probably given powers in the case of a grave menace to the peace and tranquillity in the province, which, I may say, is not exactly the intention of the Committee. The Committee, in setting this question, intended to convey that the Governor shall have only the authority to report to the Union President about the grave situation arising in the province which would involve a grave menace to the peace of the province. It was not their intention that this power or authority, as to be exercised by the Governor which may perhaps bring a conflict between the Ministry and the Governor. The Governor having no control over the services, the authority of administration entirely vests in the Ministry and therefore, although there was considerable difference of opinion on

this question on account of the prevailing conditions in the country,—some thought that it would be advisable under the present peculiar unsettled conditions in the country to give some limited powers to the Governor—eventually the Committee came to the conclusion that it would not be workable, that it would create deadlocks and therefore, the proper course would be to limit his powers to the extent of authorising him to report to the President of the Union. What steps, or, what authority the President of the Union exercise would be a matter for the Union Powers Committee to provide in the Union Constitution. But, so far as the provincial constitution is concerned, it was agreed that this limited power of reporting only should be given to the Governor.

Then, you will see the second item in Clause 9, the summoning and dissolving of the Provincial Legislature (Clause 20 of this Part). This is a normal power which is given in every constitution to a Governor and therefore there is nothing special about it.

The third item provides for the superintendence, direction and control of elections. In this matter, I think the Fundamental Rights Committee made a recommendation that in order to ensure fair elections, there should be appointed a Commission by the President of the Union Constitution, so that it should be above party influences and fair elections in all provinces can be ensured. This, I think, was adopted by this House when the Fundamental Rights were adopted and therefore this clause will have to be brought into line with the former resolution adopted by this House.

There is then the fourth item the appointment of the Chairman and members of the Provincial Public Service Commission and of the Provincial Auditor General. In this matter also, the appointment of the Chairman and the members of the Provincial Service Commission is generally made on the recommendation of the Cabinet or Ministry.

Therefore, when we analyse Clause 9, practically the only powers left to the Provincial Governor is the power to report to the Union President when a grave emergency arises threatening menace to the peace and tranquillity of the province and the summoning and dissolving of the Provincial Legislature.

When we have dealt with Clause 9, we then come to the recommendations of the Committee which deal with the constitution of the legislature whether there should be two Houses or one House. The Committee generally agreed that there should be only one House of Legislature. But it was also agreed that if any of the Provinces wanted a bicameral legislature, it should be open to the province to set up, such a legislature, but that the constitution of the Upper House would be, according to the opinion of the Committee, on the Irish model, where a certain percentage is to be elected on functional representation and a certain percentage to be nominated and provision has to be made for election. Now, the recommendation of the Committee regarding the Second House is a departure from the existing Act in so far as half of the members are to be elected by functional representation. There will be representation in the Lower House for special interests such as women, labour, commerce, industry, etc. This appears to be a reasonable provision and is in accordance with the Irish model.

The Committee have given special attention to the appointment of Judges of the High Court. This is considered to be very important by the Committee and as the judiciary should be above suspicion and should be above party influences, it was agreed that the appointment of High

[The Honourable Sardar Vallabhbhai Patel]

Court Judges should be made by the President of the Union in consultation with the Chief Justice of the Supreme Court, the Chief Justice of the Provincial High Court and the Governor with the advice of the Ministry of the provinces concerned. So there are many checks provided to ensure fair appointments to the High Court. These are the special features. The principle settled by the Committee is contained in the memorandum and for the rest of the Constitution it was agreed that drafting should be made on the adaptation of the present 1935 Act, by making suitable alterations. Therefore, I move that this report of the Committee be taken into consideration and if the House agrees, the Report may be taken clause by clause.

Maulana Hasrat Mohani (United Provinces: Muslim): *[Sir, my Honourable friend Sardar Patel has presented the Report before you and with due respect to him I raise an objection to it. It is that till the Report on Union Constitution is presented before the House, consideration of this Report seems quite inappropriate. The reason is not this, as Patel Sahib has himself said, that it is not final and the mistakes, if any, could be rectified later on. If only verbal changes were intended I would never have raised this point. I want to tell you, and through you, my nationalist and national-socialist friends, who are present here, that my objection is a vital and far-reaching one. If you lightly pass over this objection, then I am sure you will have to repent this action of yours and regret it some day.

Looking around, I find that except Nationalist members no one else is present here. There was one Communist member from Bengal, but somehow he has been ousted. From amongst the Forward Blockists, Sarat Chandra Bose has resigned from the membership. Mr. Tripathi of U.P. and one Forward Blockist of C.P., though they have not designed their seats, for some unknown reasons they are not present in the House. I feel it my duty to place the view-point of such of my friends before you.]*

The Honourable Sardar Vallabhbhai Patel: On a point of order. The debate is going on a wrong track and I do not understand what has the question of whether the Constitution shall be a Republican Constitution or not, to do with the Provincial Constitution and whether, there should be a Dominion Constitution also has nothing to do with it because we are today setting the principles of a Provincial Constitution and when the question as to whether there should be a Dominion Constitution or Republican Constitution comes. Maulana Hasrat Mohani can move any amendment or say anything. To-day we deal with only the Provincial Constitution draft which can fit in with an Independent India which has nothing to do with Dominion Status and which can fit in with the Republican Constitution according to the Resolution which has been passed by the Constituent Assembly. Therefore, he may not be allowed to cover a wide range which has nothing to do with our present motion.

Maulana Hasrat Mohani: *[Had there been some ulterior motives behind it, I would not have put it up in this way. For example, if I had done all this with communal feelings and dilatory tactics. I would have asked you to withhold this Report until the report on Minorities is put up before us. But in fact, the question is simply this that you

*[English translation of Hindustani Speech begins.

*[English translation of Hindustani Speech ends.

*[English translation of Hindustani speech begins.

should proceed on some principles and do not put up the Provincial Constitution before the Union Constitution is put before the House.

No doubt, Pandit Nehru has moved the Objectives Resolution of the Republic, but it has not been made clear as yet whether the proposed Republic would be of unitary type or of Federal type. Again it has not been as yet decided in case it is a Federal Republic, whether the Government would be centrifugal or centripetal.

If you do not accede to my request, my party will line up with the Leftist groups and with the aid of the Communists and Forward Blockists it will compel you to accede to our demand. Let me explain this also in this way, that, unless there is some change in the Union Constitution and the Constitution of the Union is not made satisfactorily, till then the condition of the Provinces will remain unchanged and, it will not go beyond provincial autonomy, and we will, as an Indian saying has it; "we would always remain shoe-makers that we were".

In the Report which Sardar Saheb has just now put up, he has very intelligently stated in it that they wanted to appoint Governors. You will see that with this word only, the whole constitution of the Union is defaced and distorted.

Even if we accept the suggestion of Sardar Patel, the clear meaning would be simply this that the Provinces would get Provincial autonomy only, and if this is so, I will say that all the years of your sacrifices, labours and the 'Quit India' Resolution, one and all will be rendered useless.]*

Mr. President: I think Maulana Hasrat Mohani's amendment is in order. It is open to the House to throw it out.

Maulana Hasrat Mohani: *[All the time you were telling us that we would establish an Independent Republic and parties shall be formed not on the basis of religion, but on socialistic principles.]*

Mr. President: *[This is not the question. For the present, the simple question is whether the Report should be considered or not.]*

Maulana Hasrat Mohani: *[What I mean is that this you want to pass the Provincial Constitution by the back door.]*

Mr. President: *[You have already stated the reasons. You forgot that this is not occasion to discuss your Republic and all sorts of questions.

So far this amendment is concerned, you have already stated, the grounds on which you want to move it; and I feel that other questions should not be discussed.]*

Maulana Hasrat Mohani: *[Sir, I will conclude my statement within a short time. All the Forward Block and Communist members are absent, therefore, on their behalf, I will protect their rights, and if by your voting strength in this House, you pass anything as you like, then I will adopt other methods to protect their rights. Once again I submit that all your actions should be based on principles and that you should protect the rights of all.]*

]* English translation of Hindustani Speech ends.

[] English translation of Hindustani speech.

An Honourable Member: on a point of order, Sir. Is the Honourable Member in order in calling this a packed House? Is it parliamentary? He may be asked to withdraw the expression.

Maulana Hasrat Mohani: I did not use any unparliamentary expression. I only said that somehow or other people here are all nationalists and as such were deaf. I did not mean and discourtesy to the House.

The Honourable Pandit Jawaharlal Nehru: *[Mr. President, if the Report of the Union Constitution Committee had been under consideration at this time, I would be standing here in a special capacity. But I rise now to remove the misunderstandings that have arisen in the minds of some of the members. It may be that I may not wholly succeed in my object. It is quite possible that I may fail to convince Maulana Hasrat Mohani who is rather a deep person and claims to be at once the representative and spokesman of both the Communists and Forward Blockists. It is quite obvious that if my fear comes true he would suffer from considerable perplexity. But what I intend saying is nothing very incomprehensible and technical. It is quite correct to say that we would be acting improperly if we took up the consideration of the Provincial Constitution without keeping in view the ideals we seek to realise and the goal we seek to reach. We have, it is true, taken up the consideration of the Provincial Constitution, first.

Six months ago this House passed a Resolution which placed before it the plan and the ideals. These were approved. When Once the outline of anything has been drawn, the order in which the several problems involved therein are to be taken in hand had to be decided. In this case it so happened that the question of the Provincial Constitution arose earlier and the Report of the Provincial Constitution Committee also was ready earlier. Consequently, members got sufficient time to study this Report. The other Report, however, has been sent to the members only six or seven days ago. Consequently, keeping in view the fact that the members would not have sufficient time to study it, it was considered proper for their convenience not to submit that Report to the House for the time being, but to present the Report of the Provincial Constitution Committee which had been already sufficiently studied. Honourable Members have all received the Report of the Union Constitution Committee. If the President permits, I am ready to present it to the House immediately. The only difficulty in doing so is that the members may complain that they had no time to study it sufficiently, and that even if time be given for studying it, it would mean the waste of two or three days in doing so now. It was in view of this that it was considered proper to present the report which was ready and had been thoroughly studied. The other report will also be presented to the House just as this one has been. All of you should know that there is no intention of concealing anything or acting in an underhand manner in following this procedure.

In the present report the term 'Governor' occurs. This has completely upset the Maulana, I admit that the term 'Governor' has come down to us from the previous regime and that our associations with it are not very happy. But at present we are not concerned with the question of terminology. We do not know whether our Constitution would be in the English or any other language. So far as the term itself is concerned, you are all aware of there being Governors in America as also of the powers and authority they wield. I, therefore, submit that this does not violate in the least the ideas and the principles we have in view. It is my submission that there is no question of

*[English translation of Hindustani Speech begins.]

principle involved in it. The only question is of the convenient working of this House. If you and Sardar Patel so desire, I am prepared to present the Report of the Union Constitution Committee to the House.]*

Mr. Mohd. Tahir (Bihar: Muslim): Mr. President, Sir, I rise to support the amendment moved by Maulana Hasrat Mohani, firstly on the basis of a logical formula, *viz.*, what is true of the whole is true of the part. Sir, up till now we do not know as to what form of constitution this House will decide on regarding the Union of India. Certainly, the provinces are parts of India and unless we know the constitution of the Indian Union, it would not be fair to consider the principles of the provincial constitution. Just now, the Honourable Pandit Jawaharlal Nehru, Sir, has said that the constitution of the Indian Union is also ready and every member has got a copy of it. But, Sir, I would submit that having the copy of the constitution with the members is one thing and that taking of decisions by this House is another. Besides this, Sir, the Honourable Pandit Jawaharlal Nehru has just now said that he even prepared now to put the principles of the Indian Union Constitution before the House, and that it was by chance that the principles of the provincial constitution have been placed before the House beforehand. This clearly indicates that he also realises that the consideration of the constitution of the Indian Union should be taken up first.

My second point, Sir, would be that we do not know anything about the Report of the Minorities Committee, the Tribal Area Committee, etc., and the recommendations of those committees are to be incorporated in the constitution. Unless those reports are received it would not be fair to take up the consideration of the provincial constitution.

With these words, Sir, I support the amendment moved by Maulana Hasrat Mohani.

Shri Balkrishna Sharma (United Provinces: General): Mr. President, Sir, I rise to oppose the amendment which has been moved by Maulana Hasrat Mohani. When a minute before he was trying to act as a 'Khudai Fausdar', I was reminded of his very famous saying that he is either a Communist or a Communalist. (Some Honourable Members: "Both"). Now, he has become both a communist and a communalist and thereby he has tried to bridge the gulf between Karl Marx and Jesus Christ. The Maulana is a very great man. We have allooked upon him with reverence and respect all our life for his integrity of purpose and honesty, but I have always felt that he is one of those men who have always refused to work in a team. He is a man who is a solitary figure ploughing his lonely furrow. Even in the Muslim League which he joined after a great deal of confabulation, the Maulana, even though he was included in the High Command, remained a solitary figure. Now the amendment which he has moved is a very funny amendment, funny for the very simple reason that it really makes very little difference whether we consider the Union Constitution first or the provincial constitution first, because we have already got our objectives before us by a resolution of this House and anything that is not in consonance with that objective any member of the House is at perfect liberty to point out either in the model constitution for the provinces or in the Union Constitution, and therefore there is very little difference whether we consider the provincial constitution first or the Union Constitution first. The Maulana really raised a fundamental

] *English translation of Hindustani Speech ends.

[Shri Balkrishna Sharma]

question as to whether we should have the provincial constitution in nature of merely giving provincial autonomy to provinces or a republican constitution. If the Maulana thinks that the House will fall in line with him, he can certainly bring forward amendments to the provincial constitution, deleting the words which he does not like, making the Governor the President, if he so likes, and giving all sorts and manner of powers that he wants to give to the provincial legislature. If his amendments are not accepted by this House, naturally it will not help him to bring in the Union Constitution for consideration first. Where is the difference, I fail to see. Let it be clearly understood that we have made up our minds not to follow any of the constitutions in a slavish way, neither the American Constitution, nor the British model, nor any other model. We are going to evolve a constitution according to our needs and we shall see to it that we do not fall a victim either to this or to that pattern.

The Maulana has talked bibly about the U.S.S.R. Perhaps the Maulana forgets the very great difference between the U.S.S.R. and this unfortunate land where the Maulana is trying to fly at my throat and I have been trying to fly at his throat. We have got to take into consideration the situation in which we are placed. I think that, if our country wants to evolve a constitution which is mid-way between federation and a unitary form of government, we must be at perfect liberty to do so. In a country like ours which is always inventing all sorts and manners of divisions—this fissiparous tendency is a historical tendency—I think we must be very careful that we do not give so much power to the provinces as would lead to further division of the country.

It does not make the slightest difference whether we consider the provincial constitution first or the Union Constitution first. If the Maulana thinks that the House will agree with him in making the Provincial Constitution a model republican constitution, he is at perfect liberty to place his views before the House, but if he tries to monkey with it, he will succeed in doing so.

Sir, I strongly oppose the amendment which has been placed before the House by the Maulana.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I beg to support the original motion, namely, that the Provincial Constitution be now taken into consideration. The amendment really is to the effect that the Provincial Constitution should not be taken up before the Report on the Union Constitution is considered. I submit, however, that the Provincial Constitution and the Union Constitution are two different things. It does not matter which constitution is taken first. If there are defects, if there are points of difference, if there are points on which any Member feels any objection, it will be open to him to raise the same and move the necessary amendments in the House. As has already been pointed out the Union Constitution proposals are already circulated and so we know what the Union Constitution proposals are likely to be.

The House therefore has a complete picture of what the Union and the Provincial Constitution would be like. I submit that on a matter like this we should not take the time of the House any further and the Question as to which constitution is taken up first is quite immaterial. With these few words, I support the original motion.

Pandit Govind Malaviya : Sir, I move closure of this debate.

Mr. President: Closure has been moved. The question is:

“That the question be now put.”

The motion was adopted.

Mr. President: The Mover of the resolution will reply to the debate.

The Honourable Sardar Vallabhbhai Patel: The amendment to the motion moved by Maulana Hasrat Mohani is that this motion should be taken up after the consideration of the Union Constitution Committee Report. The Maulana has perhaps seen the Union Constitution report as well as the Provincial, Constitution report, because he has been closely following what is going on in this Assembly and he has seen the objectives resolution of this Constitution that has been passed in the initial stage. Now I ask the Maulana whether this draft motion which I have moved contravenes the fundamentals in any manner of that objective. If it does not contravene in any way the original resolution that has been passed by this House, I do not see how he could have any doubts whether this constitution shall be a Republican Constitution or a *Shariat* Constitution or a Democratic Constitution. The real point is whether it is better to stand on the legs or on the head and we prefer to stand on the legs. We start with the provinces and we will come to the top, but some people occasionally try acrobatic feats and it is open to them to do so. The Maulana says that the Mover has done some sort of a trick by cleverly moving this resolution. I do not understand what trick I have done nor do I understand where the trick lies. The simple question is whether the draft which has been moved by me should be considered or not. He does not show by any argument that this motion should not be taken today. He suspects that there must be something in the Union Constitution and if he finds anything in the Union Constitution Report, when the report is taken, he will have ample time and opportunity to make any suggestions or alteration or modifications. There is nothing in this motion which gives room for suspicion or doubt and a simple motion like this should not be used for the purpose of taking any more time of this House. As Mr. Naziruddin Ahmad made it quite plain it will lead to an unnecessary waste of time of the House. The two are separate. One does not encroach upon the province of the other and therefore, they can conveniently be taken according to the order in which the order of the business is settled and the motion therefore before the House should be adopted without any division.

Mr. President: The Motion is:

“That the Constituent Assembly do proceed to take into consideration the Report on the principles of a model Provincial Constitution submitted by the Committee appointed in pursuance of the resolution of the Assembly of the 30th April 1947.”

To this an amendment has been moved:

“That the Report on the principles of a model Provincial Constitution be not taken into consideration before the Report on the principles of the Union Constitution.”

I put the amendment to vote.

The amendment was negatived.

Mr. President: The amendment is lost. I will put the original proposition to vote.

[Mr. President]

The question is:

“That the Constituent Assembly do proceed to take into consideration the Report on the principles of a model Provincial Constitution submitted by the Committee appointed in pursuance of the resolution of the Assembly of the 30th April 1947.”

The motion was adopted.

Chapter I

CLAUSE—1

Mr. President: We shall proceed to take the report clause by clause.

The Honourable Sardar Vallabhbhai Patel: Now with your permission, Sir, I move the first clause of the report—Chapter I—the Provincial Executive,

“*Governor*—1. For each Province there shall be a Governor to be elected directly by the people on the basis of adult suffrage.

(NOTE.—The Committee were of the opinion that the election of the Governor should, as far as possible, synchronise with the general election to the Provincial Legislative Assembly. This may, be difficult to provide by statute, because the Legislative Assembly may be dissolved in the middle of its term.)”

Now in this clause two important points are involved. The first thing is that for each province there shall be a Governor. That principle is an important one. The other important principle is that he shall be elected by adult franchise. Now in the Provincial Constitution you may have seen that very limited powers are given to the Governor and yet he has to be elected by a process which is very cumbersome and therefore the question may naturally arise that if the Governor has got limited powers, why do we go through the process of election which involves so much difficulty because an election in a province by the process of adult franchise is a very difficult job? Yet it is considered necessary because of the dignity of the office which a popular Governor will hold and naturally a Governor who has been elected by adult franchise of the whole province will exert considerable influence on the popular ministry as well as on the province as a whole. His dignity and status also demands that he should have the unanimous and general support of all the sections of the people in the country. Therefore, two principles are involved in this motion. One is the appointment of a Governor considered necessary in all the provinces according to the Model Provincial Constitution Report and the other is adult franchise and therefore I move.

Mr. President: I have received notice of a number of amendments to this clause. Many of them are printed and have been circulated, but I am getting amendments even now. I do not propose to take the amendments which I am getting now.

An Honourable Member: With your permission, Sir may I ask a question? Sardar Vallabhbhai Patel referred in the course of his speech to the fact that a joint meeting of the Provincial Constitution Committee and the Union Constitution Committee was held and that as a result of the deliberations of that Committee certain changes are to be made. May I know whether this clause was also considered and is it a fact that that Committee was of opinion that the election of Governor should not be held directly by adult franchise but he should be elected by the Provincial Legislature in accordance with the principle of proportional representation by a single transferable vote?

Mr. President: That is a question which the Mover may answer if he wishes.

Shri T. A. Ramalingam Chettiyar (Madras: General): I want one point to be made clear. That is whether this model constitution which has been framed for the provinces is the one which the Provinces will have to adopt necessarily or whether the Provinces are free to adopt them with such changes as they would like. This is a matter on which I would like to have elucidation.

Mr. President: All these questions will be replied to by the Mover if he wishes to answer them.

Dr. P. S. Deshmukh (C. P. & Berar: General): Sir, I would like to say a word about the amendments which have been received by you now. I would like to point out that although we were told to send the amendments early, the substantial motion has only just been made and it is only after a motion has been made that members are entitled to send any amendments. Therefore, I would request you, Sir, that these amendments which have been sent to you now and would be sent to you up to 6 o'clock today should be admitted and considered. It would be somewhat unfair not to admit them.

Mr. President: Do I understand, Dr. Deshmukh, that we should adjourn the House for allowing members to give notice of amendments which would be taken up later?

Dr. P. S. Deshmukh: No, Sir, I am suggesting that we should go on with the amendments already printed, but if there are any amendments which are sent in during the day they might also be considered. The very first clause has numerous amendments and it will take a long time to consider them; so no time will be lost in admitting the fresh ones.

Mr. President: If there are any amendments which you have given notice of and which, although not printed, members have had occasion to consider, then I will not stand in the way, but I will not admit amendments put before the House without proper notice, and giving opportunity to members to consider them.

Shri Mahavir Tyagi (U.P.: General): On a point of order, Sir.

Mr. President: The point or order arises on what?

Shri Mahavir Tyagi: I want to put a question to you with regard to the interpretation of the rules. Now, Sir, there is a rule that notice of amendments has to be sent one clear day in advance of the date on which the motion is made. I want to know if by the word "motion" the whole report is meant or each clause is a motion in itself. As far as I know, in our provincial legislature motion means a question put to the House or discussed before the House. Each question is a motion in itself. So, Sir, if I choose to send an amendment to, say, Clause 21, of this Report which will I expect come up day after tomorrow and give notice of an amendment today, I think, Sir, that amendment will be in order because there will be one clear day's notice.

Mr. President: Rule 32 lays down:

"Except as permitted by the Chairman, notice of any amendment to a motion must be given at least one clear day before the motion is to be moved in the Assembly."

[Mr. President]

The motion which has been moved was circulated and given notice of, I think, several days ago and members have had ample time to give 24 hours' notice of amendments. Therefore, I say, I cannot take up any amendment of which notice is given just now.

Shri Mahavir Tyagi: Sir, I was asking whether the moving of Clause 21 three days afterwards will be a motion in itself or not. The House will be in possession of that motion and be discussing it after three days. That being so, I submit I am entitled to bring in an amendment now because it will be more than one clear day in advance.

Mr. President: As I have said, if I get notice of an amendment in time for circulation to the members so that they may have an opportunity to consider it before coming to the House, I may accept it; but I cannot accept an amendment which cannot be printed and circulated to the members beforehand. If, however, notice is given now of an amendment to a motion which will come three days later, I do not mind it.

Shri Mahavir Tyagi: Thank you, Sir, my point is achieved.

Mr. President: We shall take up the amendments.

Mr. Naziruddin Ahmad: Sir, I submit that copies of the amendments were received by us only this morning. The matters dealt with are of an extremely difficult and abstruse nature and we have had no sufficient time to consider the amendments. I submit, therefore, that we may please be given at least twenty four hours' time to go through the amendments and then get ready to say yes or no or offer observations. That is the only thing I ask for.

Mr. President: I understand these amendments were circulated last night?

Mr. Naziruddin Ahmad: But we have received them only this morning. Some of us, I understand, got them today oncoming to the House.

Mr. President: I allowed members time up to yesterday evening to send in the amendments, and it has taken time to get them printed and circulated to the members. Some of them have received the copies, rather late. If members think they have not had enough time to consider the amendments, we may put off their consideration. But we have about 40 minutes more, and I suggest that we may take up their consideration now. We may not be able to take up more than one or two amendments, and if there is any difficulty we shall consider postponing them.

Nawab Muhammad Ismail Khan (United Provinces: Muslim): These amendments were laid on the table only this afternoon and we have had no time to consider the bill in the light of these amendments and I think it is only right that the members should get an opportunity to study the bill in the light of the amendments and thereafter the amendments may be taken one by one.

Mr. President: I was under the impression that the amendments were circulated last night.

Nawab Muhammad Ismail Khan: We received this book only this afternoon.

Mr. K. M. Munshi: But most members received it last night.

Mr. President: It seems there have been some delays in circulating the amendments because the addresses of some members were not

known to the office. It seems some members have not had these amendments until late this afternoon. I am entirely in the hands of the House as to whether we should consider the amendments now.

(After a pause.)

I now call upon Maulana Hasrat Mohani to move his amendment.

B. Pocker Sahib Bahadur (Madras: Muslim): I only want to remind you of the request I made yesterday, that arrangements should be made to render the speeches into English as a large number of members are not able to follow the speeches in languages other than English. Therefore, Sir, in view of the fact that Maulana is going to speak in Urdu, I would request that arrangements may be made to give us a rendering into English of the valuable speech which Mr. Maulana is going to make.

Maulana Hasrat Mohani: Sir, I move my amendment to this Clause No. 1. I think I will have some difficulty in expressing myself in a foreign tongue but to accommodate my friend from Madras, I shall try my best to express myself as best as I can. I move:

“That in Clause 1, for the words ‘a Governor’ the words ‘a President’ shall be substituted.”

By this I intend to say that we have got an inherent right of all the members of all these constituent provinces to demand a Provincial Republic for every Province. What we have intended and what we thought and what we were expecting to get, we wanted and we thought that we will get a Union of Indian Republics. My friend Mr. Tripathi had moved an amendment in the last session of this Assembly that he wanted to introduce the word ‘Socialist’. It did not have the support of the House. We will see to it afterwards. If we have got a Federal Republic, it does not matter whether you agree to make it a Socialist Republic or not. In the first instance, you may have a Nationalist Constitution and majority of Nationalist members but I am sure that the tendency of the World is to become, everyone of us is becoming now, socialist minded and I think that the time is not far off when, as we expect, we will be able to form a solid group of leftists and I think that by the latest, in the next election. I hope that we will be able to capture the whole of the organization. If you now agree to make every province a Republic, I do not care whether you agree to make it socialistic or not. We will make it a socialist republic. But one thing I must say, you cannot shelve this question. You cannot say “We want only a Republic in the Centre. We will not allow any of these Provinces to become a Republic”, and as I said, this is a trick when you say that in each Province there shall be a Governor. I say that it must be a President. If you accept the word ‘President’, then it means that you agree to make every Province a Republic. If you refuse to accept the word ‘President’, then it means that you are determined to retain those Provinces as mere autonomous Provinces. You grant only Provincial autonomy and nothing else. If that is your intention, I most strongly protest against this sort of treatment which if I am not using any strong words, I shall say, will be something like staging a farce on the people of all the Provinces, especially on my Province, the United Provinces. Here my friend Pandit Nehru says “you can introduce afterwards any amendment you like to the Union Constitution”. I say I introduce this amendment here and now, and ask you to make this word ‘Governor’ ‘President’, so that you may not be able to refuse to reopen the whole thing on the occasion of my moving an amendment to the Union Constitution. Then the question of the Union Constitution

[Maulana Hasrat Mohani]

will anyhow come in and this difficulty will crop up. My friend Sardar Patel also said there is no difference whether we call Governor or President. There is a great difference. Once you disallow my amendment you will say 'No, we will have only Governor'. That means that you want to give us only Provincial autonomy. You do not want many of the Provinces to go even a single step further. I have read very carefully your Union Report. In this Union Report, page 12, Clause 9 says:

"The executive authority of the Ruler of a Federated State shall continue to be exercisable in that State with respect to Federal subjects until otherwise provided by the Federal authority."

To this Clause 9, a note is added which says:

"In this respect the position of the provincial units is rather different. These have no executive power in respect of Federal subjects save as given by Federal Law."

In respect of the Indian States you say something. But you say the position of the Provincial units is different. They have no residuary power in respect of special subjects. You fix only the provincial subjects. And you ask us to accept this clause. We will not. Of course, you have got a majority. You can pass anything you like. But I ask in the name of justice and fairplay "What right have you got to deprive the provinces of India from aspiring to become republics of the Union of Federal Republics, and not only Federal Republics but Socialist Federal Republics at that"? This was moved in a former meeting of the Assembly. You did not accept that. But the position was quite different then. You were suspecting the Pakistan people might make mischief. But they have been separated now. Some Muslim Leaguers raised this objection; "Now that India and Pakistan have become two different things, what is the meaning of the All-India Muslim League?" All-India Muslim League means the Muslim League of India, *i.e.* of the minority Provinces. So, they said, "If you want to have a Muslim League, you can start one for Pakistan, where we the Muslims of the Muslim minority provinces can have no influence, except through the Council of the All-India Muslim League which according to the decision of Mr. Jinnah still exists and to which new members have already been elected. I am one of the from U.P. (*Interruption*).

Mr. President. Order, order.

An Honourable Member: Does the speaker think that this is the All-India Muslim League Council?

Maulana Hasrat Mohani: No, no. I am pointing out that I have nothing to do with Pakistan except as a member of the All-India Muslim League Council. Where is the harm if we take the Union Constitution first. You have deliberately put the Provincial Constitution here first. What is the meaning of that? By taking this model provincial report first you are doing us a very grave injustice. Of course, you can have it passed. But you cannot prohibit the provinces from demanding independence and becoming republics. You have said "We want only a Unitary Republic". Then why have you introduced the word "Federation" in your report here? It is simply to deceive the public. You fight shy of the word "Unitary". Therefore to have your way you have said "Federation". This is why you want to preclude the provinces from demanding republic government. But I tell you, you cannot compel them. You cannot impose your authority on them. We want a Union of Socialist Republics and if you persist in imposing

nationalism and a nationalist constitution on your provinces you will soon be swept off the face of the earth.

(Messrs. M. Ananthasayanam Ayyangar, Khurshed Lal, V. Muniswami Pillai, Dr. P. Subbarayan, T. A. Ramalingam Chettiar, Ajit Prasad Jain and R. K. Sidhwa did not move their amendments.)

Mr. President: These are all the amendments of which I have received notice in regard to Clause 1. As there was a wish expressed by some members to bring in amendments and as I wanted to consider that wish, I have just allowed one amendment to be moved. The others have not been moved. That amendment will be considered tomorrow.

As regards the Union Constitution Report, I understand it has been already circulated to members and I would request members to send in notice of amendments to that Report by Thursday evening.

Now we adjourn till tomorrow at 3 P.M.

The Assembly then adjourned till Three of the Clock on Wednesday, the 16th July, 1947.

APPENDIX

No. CA.64/Cons/47

CONSTITUENT ASSEMBLY OF INDIA

COUNCIL HOUSE,
NEW DELHI, THE 27TH JUNE, 1947.

FROM

THE HON'BLE SARDAR VALLABHBHAI PATEL,
CHAIRMAN, PROVINCIAL CONSTITUTION COMMITTEE.

To

THE PRESIDENT,
CONSTITUENT ASSEMBLY OF INDIA.

SIR,

On behalf of the members of the Committee appointed by the Hon'ble the President in pursuance of the resolution of the Constituent Assembly of the 30th April, 1947, to report on the principles of a model Provincial Constitution, I have the honour to submit the annexed Memorandum, which embodies the recommendations of the Committee together with explanatory notes where necessary.

I have the honour to be,
SIR,
Your most obedient servant,
VALLABHBHAI PATEL,
Chairman.

CONSTITUENT ASSEMBLY OF INDIA

PROVINCIAL CONSTITUTION COMMITTEE

Memorandum on the Principles of a model Provincial Constitution

PART I

GOVERNORS' PROVINCES

CHAPTER I

The Provincial Executive

1. Governor.—For each Province there shall be a Governor to be elected directly by the people on the basis of adult suffrage.

[*Note.*—The Committee were of the opinion that the election of the Governor should, as far as possible, synchronize with the general election to the Provincial Legislative Assembly. This may be difficult to provide by statute, because the Legislative Assembly may be dissolved in the middle of its term.]

2. Term of Office.—(1) The Governor shall hold office for a term of four years, except in the event of death, resignation or removal.

(2) The Governor may be removed from office for stated misbehaviour by impeachment, the charge to be preferred by the Provincial Legislature, or where the Legislature is bicameral, by the Lower House of the Provincial Legislature and to be tried by the Upper House of the Federal Parliament, the resolution in each case to be supported by not less than two-thirds of the total membership of the House concerned.

(3) The Governor shall be deemed to have vacated his office by continued absence from duty or continued incapacity or failure to discharge his functions for a period exceeding four months.

(4) The Governor shall be eligible for re-election once, but only once.

3. Casual vacancies.—(1) Casual vacancies in the office of Governor shall be filled by election by the Provincial Legislature on the system of proportional representation by means of the single transferable vote. The person so elected shall hold office for the remainder of his predecessor's term of office.

(2) In the event of the Governor's absence from duty or incapacity or failure to discharge his functions for a period not exceeding four months, the President of the Federation may appoint such person as he thinks fit to discharge the Governor's functions until the Governor's return to duty or until the Governor is elected, as the case may be.

4. Age qualifications.—Every citizen of the Federation of India who, has reached his 35th year of age shall be eligible for election as Governor.

5. Disputes regarding election.—Disputes regarding the election of a Governor shall be enquired into and determined by the Supreme Court of the Federation.

6. Conditions of Governor's office.—(1) The Governor shall not be a member of the Provincial Legislature and if a member of the Provincial Legislature be elected Governor, he shall be deemed to have vacated his seat in that Legislature.

(2) The Governor shall not hold any other office or position of emolument.

(3) The Governor shall have an official residence and shall receive such emoluments and allowances as may be determined by Act of the Provincial Legislature and until then such as are prescribed in Schedule.

(4) The emoluments and allowances of the Governor shall not be diminished during his term of office.

7. Executive authority of Province.—The executive authority of the Province shall be exercised by the Governor either directly or through officers subordinate to him, but this shall not prevent the Federal Parliament or the Provincial Legislature from conferring functions upon subordinate authorities, nor shall it be deemed to transfer to the Governor any functions conferred by any existing Indian law on any court, judge or officer or local or other authority.

8. Extent of the Executive authority of Province.—Subject to the provisions of this Constitution and of any special agreement, the executive authority of each province shall extend to the matters with respect to which the Provincial Legislature has power to make laws.

[*Note.*—The reference to special agreements in this provision requires a word of explanation. It is possible that in the future there may be Indian States or groups of Indian States desiring to have a common administration with a neighbouring Province in certain specified matters of common interest. In such cases, the Rulers concerned may by a special agreement cede the necessary jurisdiction to the Province. Needless to say, this will not interfere with the accession of the State or States concerned to the Federation, because the accession to the Federation will be in respect of Federal subjects, whereas the cession of jurisdiction contemplated here is in respect of Provincial subjects.]

9. Council of Ministers.—There shall be a Council of Ministers to aid and advise the Governor in the exercise of his functions except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

[*Note.*—For the most part, the Governor will act on advise, but he is required to act in his discretion in the following matters:—

(1) the prevention of any grave menace to the peace and tranquility of the Province or any part thereof (Clause 15 (2) of this Part),

(2) the summoning and dissolving of the Provincial Legislature (Clause 20 of this Part),

(3) the superintendence, direction, and control of elections (Clause 22, proviso (2) of this Part),

(4) the appointment of the Chairman and the members of the Provincial Public Service Commission and of the Provincial Auditor General, (Part III).

It is to be noted that the Governor, under the proposed Constitution, is to be elected by the people, so that he is not likely to abuse his “discretionary” powers].

10. If any question arises whether a matter is one for the Governor’s discretion or not, the decision of the Governor in his discretion shall be final.

11. The question whether any, and if so, what advice was tendered by the ministers to the Governor shall not be enquired into in any court.

12. Other provisions as to ministers.—The Governor’s ministers shall be chosen and summoned by him and shall hold office during his pleasure.

13. (1) A minister who for any period of six consecutive months is not a member of the Provincial Legislature shall at the expiration of that period cease to be a minister.

(2) The salaries of ministers shall be such as the Provincial Legislature may from time to time by Act determine, and, until the Provincial Legislature so determine, shall be determined by the Governor:

Provided that the salary of a minister shall not be varied during his term of office.

14. Conventions of responsible Government to be observed.—In the appointment of his ministers and his relations with them, the Governor shall be generally guided by the conventions of responsible Government as set out in Schedule.....; but the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with these conventions.

[*Note.*—Schedule..... will take the place of the Instrument of Instructions now issued to Governors.]

15. Special responsibilities of Governor.—(1) In the exercise of his responsibilities, the Governor shall have the following special responsibility, namely, the prevention of any grave menace to the peace and tranquillity of the Province or any part thereof.

(2) In the discharge of his special responsibility, the Governor shall act in his discretion:

Provided that if at any time in the discharge of his special responsibility he considers it essential that provision should be made by legislation, but is unable to secure such legislation, he shall make a report to the President of the Federation who may thereupon take such action as he considers appropriate under his emergency powers.

16. Advocate-General for Province.—(1) The Governor shall appoint a person being one qualified to be a judge of a High Court, to be Advocate-General for the Province to give advice to the Provincial Government upon legal matters.

(2) The Advocate-General shall retire from office upon the resignation of the Prime Minister, but may continue to carry on his duties until a new Advocate-General shall have been appointed.

(3) The Advocate-General shall receive such remuneration as the Governor may determine.

17. Conduct of business of Provincial Government.—All executive action of the Government of a Province shall be expressed to be taken in the name of the Governor.

18. Rules of Business.—The Governor shall make rules for the more convenient transaction of the business of the Provincial Government and for the allocation of duties among Ministers.

CHAPTER II

The Provincial Legislature

19. Constitution of Provincial Legislatures.—(1) There shall for every Province be a Provincial Legislature which will consist of the Governor and the Legislative Assembly; in the following Provinces, there shall in addition, be a Legislative Council (here enumerate those Provinces, if any, which desire to have an Upper House).

(2) The representation of the different territorial constituencies in the Legislative Assembly shall be on the basis of population and shall be on a scale of not more than one representative for every lakh of the population, subject to a minimum of 50 for any Province.

The elections to the Legislative Assembly shall be on the basis of adult suffrage, an adult being a person of not less than 21 years of age.

(3) Every Legislative Assembly of every Province, unless sooner dissolved, shall continue for four years from the date appointed for its first meeting.

(4) In any Province where the Legislature has an Upper House, the composition of that House shall be as follows:—

(a) The total numerical strength of the Upper House should not exceed 25 per cent. of that of the Lower House.

(b) There should be within certain limits functional representation in the Upper House on the lines of the Irish Constitution, the distribution being as follows:—

one-half to be elected by functional representation on the Irish model;

one-third to be elected by the Lower House by proportional representation;

one-sixth to be nominated by the Governor on the advice of his ministers.

[*Note.*—Under the existing Constitution, Madras, Bombay, Bengal, U. P., Bihar and Assam have two Houses and the rest one. It was agreed that the members of the Constituent Assembly from each Province should vote separately and decide whether an Upper House should be instituted for the Province. There is to be no special representation in the Legislative Assembly either for universities, or for labour or for women.]

20. Composition of Provincial Legislatures, etc.—The provisions for the meeting, prorogation and dissolution of the Provincial Legislature, the relations between the two Houses (where there are two Houses), the mode of voting, the privileges of members, disqualification for membership, parliamentary procedure, including procedure in financial matters, etc. shall be on the lines of the corresponding provisions in the Act of 1935.

21. Language.—In the Provincial Legislature, Business shall be transacted in the Provincial language or languages or in Hindustani (Hindi

or Urdu) or in English. The Chairman (where there is an Upper House) or the Speaker, as the case may be, shall make arrangements for giving the House, where he thinks fit, a summary of the speech in a language other than that used by the member and such summary shall be included in the record of the proceedings of the House.

22. Franchise for the Provincial Legislature.—The Provincial Legislature may from time to time make provisions with respect to all or any of the following matters, that is to say,

- (a) the delimitation of territorial constituencies;
- (b) the qualifications for the franchise and the preparation of electoral rolls ;
- (c) the qualifications for being elected as a member of either House;
- (d) the filling of casual vacancies in either House;
- (e) the conduct of elections under this Constitution and the methods of voting thereat;
- (f) the expenses of candidates at such elections;
- (g) corrupt practices and other offences at or in connection with such elections;
- (h) the decision of doubts and disputes arising out of or in connection with such elections;
- (i) matters ancillary to any such matters as aforesaid:

Provided

- (1) that no member of the Lower House shall be less than 25 years of age and no member of the Upper House shall be less than 35 years of age;
- (2) that the superintendence, direction and control of elections, including the appointment of election tribunals shall be vested in the Governor acting in his discretion.

CHAPTER III

Legislative powers of the Governor

23. (1) If at any time when the Provincial Legislature is not in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require.

(2) An ordinance promulgated under this clause shall have the same force and effect as an Act of the Provincial Legislature assented to by the Governor, but every such ordinance—

- (a) shall be laid before the Provincial Legislature and shall cease to operate at the expiration of six weeks from the reassembly of the Provincial Legislature, or if before the expiration of that period resolutions disapproving it are passed by the Legislature, upon the passing of the second of those resolutions; and
- (b) may be withdrawn at any time by the Governor.

(3) If and in so far as an ordinance under this clause makes any provision which the Provincial Legislature would not under this Constitution be competent to enact it shall be void.

[*Note.*—The ordinance-making power has been the subject of great criticism under the present Constitution. It must however be pointed out that circumstances may exist where the immediate promulgation of a law is absolutely necessary and there is no time in which to summon the Provincial Legislature. In 1925, Lord Reading found it necessary to make an ordinance abolishing the cotton excise duty when such action was immediately and imperatively required in the interests of the country. The Governor who is elected by the people and who was normally to act on the advice of ministers responsible to the Legislature is not at all likely to abuse any ordinance-making power with which he may be invested. Hence the proposed provision.]

CHAPTER IV

Excluded and Partially Excluded Areas

[The provisions of this Chapter cannot be framed until the advisory Committee has reported.]

PART II

The Provincial Judiciary

1. The provisions of the Government of India Act, 1935, relating to the High Court should be adopted *mutatis mutandis*; but judges should be appointed by the President of the Federation in consultation with the Chief Justice of the Supreme Court, the Governor of the Province and the Chief Justice of the High Court of the Province (except when the Chief Justice of the High Court himself is to be appointed).

2. The judges of the High Court shall receive such emoluments and allowances as may be determined by Act of the Provincial Legislature and until then such as are prescribed in Schedule.....

3. The emoluments and allowances of the judges shall not be diminished during their term of office.

PART III

Provincial Public Service Commission and Provincial Auditor-General

Provisions regarding Public Service Commission and Auditors-General should be inserted on the lines of the provisions of the Act of 1935. The appointment of the Chairman and members of each Provincial Public Service Commission and of the Auditor-General should be vested in the Governor in his discretion.

PART IV

Transitional Provisions

1. Any person holding office as Governor in any province immediately before the commencement of this Constitution shall continue as such and shall be deemed to be the Governor of the Province under this Constitution until a successor, duly elected under this Constitution, assumes office.

2. There should be similar provisions, *mutatis mutandis*, in respect of the Council of Ministers, the Legislative Assembly and the Legislative Council (in Provinces which decide to have an Upper House).

[*Note.*—These provisions are necessary in order that there may be a Legislature and a Government ready to take over power in each Province as soon as this Constitution comes into force.]

3. The Government of each Governor's Province shall be the successor of the Government of the corresponding Province immediately before the commencement of this Constitution in respect of all property, assets, rights and liabilities.

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CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 16th July, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Three of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The following Members presented their Credentials and signed the Register:

1. Mr. Kishori Mohan Tripathi (Eastern States Group).
2. Mr. Ram Prasad Potai (Eastern States Group).

Shri Sri Prakasa (United Provinces: General): Sir, before you begin the proceedings of this afternoon I should like to bring to your notice what I regard as a serious breach of the privileges of the Members of this House. I found that tongas bringing in Members of this Assembly were not allowed to drive into the portico of this building. Till yesterday they were so allowed but today when our need for this convenience was greatest, as it was raining, a European officer was stopping the tongas outside the portico. When I asked him if members were expected to get drenched in the rain, he replied that those were his orders, that tongas were to be stopped outside and only cars were to be allowed inside the portico. I think, Sir, that this is a piece of snobbery which you, of all others cannot tolerate.

Mr. President: I will ask the Secretary to look into the matter.

ELECTION OF VICE-PRESIDENTS AND OF MEMBERS OF COMMITTEES

Mr. President : I have pleasure in announcing that Dr. H. C. Mukerjee and Sir V. T. Krishnamachari are the only candidates who have been duly proposed and seconded for the office of Vice-Presidents and I accordingly declare them as duly elected Vice-Presidents of this Assembly.

As the House is aware it was decided to elect members to certain other Committees and I have to announce the results in regard to those elections also.

The following members have been duly nominated to the various Committees in accordance with the resolutions of this House of the 14th July, 1947:

1. *Credentials Committee:*
Bakshi Sir Tek Chand.
B. Pocker Sahib Bahadur.
Sri Ram Sahai.

[Mr. President]

2. *House Committee:*

Ch. Mohd. Hassan.
Mr. Upendra Nath Barman.
Sri Jainarain Vyas.

3. *Steering Committee:*

Haji Saiyid Mohd. Saadullah.
Mr. Abdul Kadar Mohammad Shaikh.
Sri Surendra Mohan Ghose.
Sri Jagat Narayan Lal.
Acharya J. B. Kripalani.
Gyani Gurmukh Singh Musafir.
Sri Chengalaraya Reddy.
Sri Balwant Rai Mehta.
Diwan Chaman Lall.

4. *Staff and Finance Committee:*

Shri Bhavanji Arjan Khimji.
Shri K. Santhanam.

There being only as many candidates as there are vacancies in all cases, I have great pleasure in declaring these members to be duly elected to the respective Committees.

Mr. H. V. Kamath (C. P. and Berar: General): Sir, on a point of order, Dr. H. C. Mukerjee and Bakshi Sir Tek Chand have not, I believe, signed the Register of this House and as such they are not eligible to be elected to the Committee until they have duly signed the Register.

Mr. President: They will begin to function only after signing the Register and as soon as they come here they will sign the Register.

REPORT ON THE PRINCIPLES OF A MODEL PROVINCIAL
CONSTITUTION—*contd.*

Mr. President: We shall now go on with the discussion of yesterday's Resolution.

Kazi Syed Karimuddin (C. P. and Berar: Muslim): Sir, I desire to raise a point of constitutional importance. Maharaja Nagendra Singh, representative of the Eastern Rajputana States is a member of the Indian Civil Service. His name is on this cadre. He has not retired and his services have not been terminated. Can a salaried servant of the Crown be a member of the independent sovereign Constituent Assembly of India? Is it not inconsistent on his part to owe allegiance to the British Crown and at the same time be a member of the sovereign Constitution Assembly of India? Under Section 25 of the Succession to the Crown Act, "If any person being chosen a member of the House of Commons shall accept any office of profit from the Crown during such time as he shall continue a member, his election shall be and is hereby declared to be void".

Mr. President: I understand that the particular gentleman is no longer working in the Defence Department of the Government of India and that he is on his way to take service in the Bundi State, perhaps as Dewan of the State. He has been returned.

Kazi Syed Karimuddin: He has not retired from service, nor have his services been terminated.

Mr. President: That is not a disqualification according to our rules.

Yesterday Clause 1 was moved, and there was an amendment by Maulana Hasrat Mohani. The resolution as well as the amendment are now open for discussion.

CLAUSE 1—*contd.*

Mr. H. V. Kamath: Mr. President, Sir, yesterday we listened to a speech which I believe was the first of its kind ever delivered in this House. It was a speech unique in more respects than one. It was in the first place a jumble of nationalism, national socialism, republicanism, communism and what not. It was unique for the vehemence with which it was delivered. In spite of all that, I listened to the speech with the respect and attention which any utterance from Maulana Hasrat Mohani ought to command. We have known him as a veteran, as a hero of a hundred battles in the country's cause for freedom. Whatever political complexion he might be wearing today, whatever Political "choga" he might be putting on today, we have known him in the past as a valiant fighter for the country's freedom. We have not forgotten the days when he was with us in the Congress, when he was a close co-worker and associate of Mahatma Gandhi and our other revered leaders. But the speech which he made yesterday, cannot escape our attention and our notice. The speech dealt so little with the amendment and so much with everything else besides, that I for one was hard put to it to sift the grain from the chaff. Maulana Sahib thinks that by substituting the word 'President' for the word 'Governor' he would, as if by a wave of his magic wand, create a socialist republic in every province. I for one fail to see how by substituting the word 'President' for 'Governor'. Such a transformation could be brought about. We know very well how even the President of America is different from the President of Finance. We know how the Chancellor Germany—the Reichskanzler-der-Fuhrer—differed so much from the other Chancellors of Europe. Therefore, I do not see any point in this mere change of the word 'Governor' into 'President'.

Another point which he sought to make was about socialism. Well, even Netaji Subhas Chandra Bose, whose Forward Bloc he did mention in the course of his speech, used to say times without number that in the immediate present our main task was the achievement of the independence of India—a united, free, strong and independent India—and that only after the achievement of this independence our labours and energies should be directed to the socialist reconstruction of a free, united, independent India. Of all people I least expected that Maulana Hasrat Mohani as he is today would bring before this House the plea for socialism. I believe Maulana Hasrat Mohani is a pillar of the Muslim League today, and it is a historic fact that the Muslim League has demanded and achieved the partition of India on a communal basis, a basis which to my mind is the very antithesis of socialism. If Maulana Hasrat Mohani stands before us today and tries to preach socialism to us I would tell him "Physician, heal thyself". It is not for members of an organisation who are committed to a patently communalistic policy to come before us and advance the plea for a socialist society unless they shed their communalism. It does not lie in the mouth of members of such an organisation to plead for socialism. We who have been guided by leaders like Mahatma Gandhi, Pandit Nehru, Sardar Patel and Netaji Subhas Chandra Bose, do not stand in need of instruction about socialism. If at all anybody stands in need of being taught about socialism, I should say it is the Muslim League which has been for the last so many years

[Mr. H.V. Kamath]

preaching a vivulently communalist policy and today has achieved a certain measure of success. I for one would plead with Maulana Hasrat Mohani even today to reconsider his own attitude and his own approach to Indian politics. I would ask him "What about the masses in your own Pakistan? Will you call upon your own masses in Pakistan to join hands with the masses in the Indian Union—in our Hind, in our Bharat Varsha—on a socialist basis, shed your communalist 'choga' and policy and let us go forward to build a united, strong, independent, socialist India in a socialist Federation of one free world?" I do not wish to take any more time of the House. I only wish to reiterate that this amendment is a pointless amendment and that nothing would be gained by the substitution of the word 'President' for 'Governor'. After all we have reserved that term for the head of the Indian Union. There must be some way of discriminating between the head of the Indian Union and that of a province. On these grounds, I oppose the amendment of Maulana Hasrat Mohani.

Mr. President: If the Mover of the Resolution wishes to say anything in reply he may do so.

Maulana Hasrat Mohani (United Provinces): May I be permitted to say something?

Mr. President: The mover of an amendment has to right of reply.

Maulana Hasrat Mohani: The previous speaker was asking 'How has Maulana Hasrat Mohani become a socialist, he is a communist, etc. I What to say something by way of personal explanation.

Mr. President: I do not think the House is much interested in that personal explanation.

The Honourable Sardar Vallabhbhai Patel (Bombay: General): Sir, I shall give my reply to the speech made by the Mover in support of his amendment. I note that he was anxious to say something a second time. He has moved an amendment to the effect that instead of 'a Governor' there should be 'a President' for each Province. In the Union Centre we have a President and, if in the Provinces also, there are to be Presidents, there will be confusion. These Governors are to be elected by adult franchise. Therefore we must not have the wrong idea that anything appearing in the new Constitution connotes the old ideas, connected with the Constitution under which we are now functioning. This is a simple proposition in which there should be no misunderstanding or further discussion. I hope the amendment will be withdrawn.

Mr. President: the question is:

"That in Clause 1, for the words 'a Governor' the words 'a President' be substituted."

The motion was negatived.

The Honourable Pandit Hirday Nath Kunzru (United Provinces: General): Mr. President, will you allow me to say a few words before you put this Clause to the vote?

Mr. President: I gave an opportunity to Members to speak on this amendment, but nobody desired to speak at that stage.

The Honourable Pandit Hirday Nath Kunzru: The discussion so far has been on the amendments. There has been no discussion on the clause as a whole.

Mr. President: I said definitely that both the Clause and the amendment were open to discussion and invited Members to take part in the discussion. When nobody rose to speak I thought nobody had anything to say on the question.

The Honourable Pandit Hirday Nath Kunzru: If you hold that no further discussion is permissible under the procedure adopted by you, I do not want to speak. But if it is still open to a member to offer any general remarks, I should be glad to avail myself of the opportunity.

Mr. President: I think the time for these remarks is over. Those who are in favour of the original proposition will please say 'Aye' and those against will say 'No'.

The motion was adopted.

CLAUSE 2

The Honourable Sardar Vallabhbhai Patel: Sir, I move Clause 2 relating to Term of Office.

"2. (1) The Governor shall hold office for a term of four years, except in the event of death, resignation or removal.

(2) The Governor may be removed from office for stated misbehaviour by impeachment, the charge to be preferred by the Provincial Legislature, or where the Legislature is bicameral, by the Lower House of the Provincial Legislature, and to be tried by the Upper House of the Federal Parliament, the resolution in each case to be supported by not less than two-thirds of the total membership of the House concerned."

Dr. P. S. Deshmukh (C. P. and Berar: General): Sir, I have an amendment to Clause 1. It has not been considered. It is in the Supplementary List of amendments.

Mr. President : I am afraid there has been a mistake. There are a certain number of other amendments to Clause 1 of which notice has been received last night. I have not given an opportunity to Members who have given notice of those fresh amendments to move their amendments. I think I had better call upon them to move their amendments one after another. I do not think they should suffer on account of my mistake.

(Shri R. V. Dhulekar did not move his amendment.)

Dr. P. S. Deshmukh: Mine, Sir.

Mr. President: That comes under sub-clause (3) which will now be moved.

The Honourable Sardar Vallabhbhai Patel: I do not propose to move sub-clause (2). Then I move sub-clause (4) which becomes sub-clause (3) which runs thus:

"(3) The Governor shall be eligible for re-election once, but only once."

I move the three sub-clauses of this Clause for the acceptance of the House.

Mr. President: There are two amendments of Mr. Sidhwa.

Mr. R. K. Sidhwa (C. P. and Berar: General): I do not move them.

Mr. President: Mr. Santhanam may now move his amendment.

Shri K. Santhanam (Madras: General): Sir, I move:

“That in sub-clause (2) of Clause 2, for the words ‘to be tried by the Upper House of the Federal Parliament’ the words ‘to be confirmed by the Upper House of the Federal Parliament after investigation by a Special Commission of that House’ be substituted.”

In the case of the Union Constitution, a similar procedure has been adopted for the impeachment of the President. There it is laid down that the Lower House shall make a charge and the Upper House shall appoint a Commission to investigate and after it is satisfied that the charge is proved, then, by a Resolution, the Upper House will confirm the charge. I have adopted the same procedure. Otherwise it will mean that the Governor will be tried by the whole Upper House. It will be inconvenient and damaging to the prestige of the province as the Governor is to be elected by adult franchise. I hope the House will accept this amendment.

Shri L. Krishnaswami Bharathi (Madras: General): Sir, in the matter of omitting the sub-clauses, may I point out, Sir, that it would be better for the Mover, Sardar Vallabhbhai Patel, to formally move the subclauses as they appear on paper for adoption and then to get someone to move an amendment for their deletion where necessary. This is a report of the Committee and therefore the proper thing to do is for the Mover to move it as it is, and then allow an amendment for the deletion of the unwanted item.

Mr. President: The question has been raised that it is not open to the Mover to remove any particular clause which is contained in the report, that it can be deleted only by way of an amendment and that the Mover can then accept the amendment.

The Honourable Sardar Vallabhbhai Patel: The objection is more of a technical nature. I do not think it makes any substantial difference, but if the technicalities are to be satisfied, I have no objection. Then sub-clause (3) stands. In substance it makes no difference.

Mr. President: Pandit Pant will now move his amendment.

The Honourable Pandit Govind Ballabh Pant (United Provinces: General): Mr. President, I move:

“That sub-clause (3) of Clause 2 be deleted.”

The Mover is in agreement with me, so also a large body of opinion in this House. In fact, we had no desire to keep this clause ourselves. A similar clause found a place in the Draft Constitution of the Indian Union also, but when the matter was examined, it was found that it would not work, and so it was removed from the draft; you will not find it in the Report that has been circulated. Similarly, this clause also was scrutinised and it was found advisable to remove it. The clause says, “The Governor shall be deemed to have vacated his office by continued

absence from duty or continued incapacity or failure to discharge his functions for a period exceeding four months". Who is to determine what amounts to incapacity or failure to discharge his functions? Considering all these things, we came to the conclusion that the sub-clause will not work in actual practice. Besides, it was decided to bring the constitution of the provinces so far as possible in a line with that of the Central Constitution. Keeping all these points in view, it has been decided to omit this clause. I move that this sub-clause be omitted.

Mr. President: There are certain other amendments.

Mr. H. V. Kamath: President, Sir, I am now advised by our elder statesman that a two-thirds majority is enough and so I withdraw the amendment.*

Mr. H. V. Kamath (Bombay: General): In view of the fact that sub-clause (3) is to be deleted, I do not want to move my amendment.

(Other Hon'ble Members who had given notice of amendments did not move them.)

Mr. President: Mr. Ayyangar, are you not moving any of your amendments.

Shri M. Ananthasayanam Ayyangar (Madras: General): No. Sir.

(Messrs. K. Santhanam, P. S. Deshmukh and H. V. Pataskar did not move their amendments.)

Mr. President: I think these are all the amendments of which I have received notice.

The clause and the amendment are now open for discussion. If any member wishes to make any remarks, he can do so.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, in regard to Clause 2, I feel some difficulty in agreeing to sub-clause (3) being deleted. Sub-clause (3) has certain good features. The other features are impracticable. So far as the good features are concerned, they are that the Governor shall be deemed to have vacated his office by continued absence from duty. This is a very desirable provision. If the Governor remains absent for a continued period of more than four months, the work of the province will come to a standstill. It is my humble suggestion that we should retain this part of the sub-clause.

With regard to another part of the sub-clause, *viz.*, continued incapacity, this has not been defined. It will be very difficult to decide as to what is continued incapacity.

*That in sub-clause (2) of Clause 2, for the words the resolution in each case to be supported by not less than two-thirds of the total membership of the House concerned" the following be substituted:

"the resolution in the former case to be supported by not less than two thirds, and in latter not less than three-fourths, of the total membership of the House concerned."

The Honourable Pandit Govind Ballabh Pant: May I just have a word, Sir, in order to avoid unnecessary discussion? I should like to invite your attention to another amendment which is on the Order Paper, where I wish to move that the Deputy Governor should be appointed. That comes under clause 3. It is No. 8 on the Order Paper which was circulated in the form of a supplementary list.

Mr. Naziruddin Ahmad: It is said that an amendment on the lines of what I have suggested is already on the supplementary list, but we have no notice of any supplementary list whatsoever. I believe many Honourable Members have not seen it. If there is any amendment it should be moved along with these, for attention should be called to them together. If there is any amendment to that effect it would be a good amendment. I was however pointing out that the good feature in this sub-clause should be retained. But the condition as to continued incapacity is vague that relating to "failure to discharge his functions" is equally vague and will lead to great difficulties.

With regard to the next sub-clause, I feel some difficulty. I do not desire to oppose this clause altogether, but I submit my difficulty for clarification or correction, if necessary. Sub-clause (4) says that the Governor shall be eligible for re-election once, but only once. I do not see the point that a Governor cannot be re-elected twice. Suppose there is a very good Governor, a very competent man and ready to do good to the people he will be shut out for the second re-election by the last portion of this sub-clause. The sting of this sub-clause lies at the tail. There is no point in limiting the people's choice in electing a Governor. It is just like the chimney sweeper who has to go up inside a chimney in order to clean it and in order to go into it, he must be small enough but as soon as he gets experienced he becomes too big to get into it. I think the chimney sweeper test should not be applied to a Governor. I make only a suggestion for the Honourable Sardar Vallabhbhai Patel to give his consideration to this. I simply draw the attention of the House to what seems to be an absurd and untenable position, though I think it is too early to go into great details. Enough opportunity would be given to the House to give its verdict on the final draft. I therefore make a suggestion in the hope that those in charge should keep it in their minds.

The Honourable Sardar Vallabhbhai Patel: Sir, there is not much controversy about the motion that I have moved. About the third clause I had already suggested that I would not move it as I anticipated that there was going to be a suitable amendment in a subsequent clause. We found that if we retained sub-clause (3) difficulty would arise as to who is to judge the 'incapacity or failure to discharge his functions'. In order to avoid all these complications, an amendment has been tabled to the subsequent clause, which avoids all difficulties. Now I accept Pandit Govind Ballabh Pant's amendment. About the fourth sub-clause a suggestion has been made that the re-election should not be restricted for any term. In all if he is allowed to stand for election twice, he gets a period of eight years. For the third re-election the sub-clause proposals to restrict candidature because according to the discussion that took place in the Committee it was suggested that the President, if he remains for two terms, may well establish his power to such an extent that perhaps somebody might suggest or some suggestions may be made that he has stabilized his position and it may be difficult to absolve him from the charge of having manoeuvred, from his position, support for the third election. It was considered better to avoid any such insinuation against the Governor

as well, as it was also considered that the eight years' period is a sufficiently long time. As the candidate for the Governorship will fairly be a man of substance, age, and experience, after the eight years, period he may better retire and give a chance to a younger man. I think the Committee has come to the conclusion after mature consideration. I think it is a better suggestion. Therefore, the motion that I have moved as modified by the amendment of Panditji should be adopted, and the amended clause as it stands should be accepted by the House.

I forget to say that I accept Mr. Santhanam's amendment.

Mr. President: I have to put to vote the two amendments moved, one relating to sub-clause (2) of Clause 2 and the other relating to sub-clause (3) of Clause 2. The mover has accepted both these amendments. So I put the clause as a whole to the House, but before doing that I had better take votes on the amendments also.

Mr. Santhanam's amendment is as follows:

"That in sub-clause (2) of Clause 2 for the words 'to be tried by the Upper House of the Federal Parliament' the words 'to be confirmed by the Upper House of the Federal Parliament after investigation by a special Commission of that House' be substituted."

The amendment was adopted.

Mr. President: The other amendment is by Pandit Govind Ballabh Pant and it is as follows:

"That sub-clause (3) of Clause 2 be deleted."

The amendment was adopted.

Mr. President: Now, clause 2, as amended is put to vote.

Clause 2, as amended, was adopted.

CLAUSE 3

Mr. President: We will now go to Clause 3.

The Honourable Sardar Vallabhbhai Patel: Casual Vacancies. (1) Casual Vacancies in the office.....

Mr. President: There is notice of an amendment that after Clause 2, another clause be inserted. I do not know whether it can be moved as an amendment. We shall put it in the right place. We shall go on with the clauses as they stand.

The Honourable Sardar Vallabhbhai Patel: I move:

"*Casual Vacancies.*—(1) Casual Vacancies in the office of Governor shall be filled by election by the Provincial Legislature on the system of proportional representation by means of the single transferable vote. The person so elected shall hold office for the remainder of this predecessor's term of office.

(2) In the event of the Governor's absence from duty or incapacity or failure to discharge his functions for a period not exceeding four months, the President of the Federation may appoint such person as he thinks fit to discharge the Governor's functions until the Governor's return to duty or until the Governor is elected as the case may be."

In this, as was suggested in the course of the discussion of Clause 2, there is an amendment to be moved by Pandit Govind Ballabh Pant. Therefore, I move this portion and I do not propose to say anything more.

(Messrs. V. C. Kesava Rao, M. Ananthasayanam Ayyangar and Shibban Lal Saksena did not move their amendments.)

The Honourable Pandit Govind Ballabh Pant: I move, Sir, that for Clause 3, the following be substituted:

“There shall be a Deputy Governor for every province. He will be elected by the Provincial Legislature on the system of proportional representation by single transferable vote after every general election. The Deputy Governor will fill a casual vacancy in the office of the Governor and he will also act for the Governor in his absence.”

The first part of Clause 3, that is sub-clause (1), is incorporated in my amendment. In so far as it differs from Clause 3, it provides for a contingency which might arise in consequence of the adoption of the amendment which I moved a few minutes ago. The original clause provided that in case of casual vacancies occurring during the term of office of the Governor, the vacancy will be filled up by election. The legislature would be seized of the matter and the provincial legislature would elect a substitute Governor for the remainder of the term according to the system of proportional representation by means of the single transferable vote.

In the case of short term vacancies, however, which might occur, it was provided by sub-clause (2) that the President of the Federation would nominate a Governor to officiate for the permanent Governor. I think it would be unwise to impose this embarrassing duty on the President of the Federation. Besides, it would be somewhat repugnant to the principle of provincial autonomy. As Honourable Members are aware the provision in the constitution that has been devised for the Federation contemplates a Vice-President to be elected by the legislature after the general election. A Vice-President is elected so that in case any vacancy occurred or any occasion arose for another person stepping into the shoes of the President, a person might be readily available to discharge the functions of the President. By the amendment that I am proposing, I am suggesting a procedure that will be in accord with that already accepted for the Federation.

As Honourable Members are aware, in some of the constitutions abroad, a Vice-President is elected by the general electorate along with the President. It is not necessary to go through an equally cumbersome process here as the Vice-President will not have very heavy responsibilities to discharge and a second election in the course of four years for the election of a substitute Governor for a short term would involve undue labour and worry and expense. So it is considered desirable that some simpler method should be prescribed. We have accordingly by this amendment suggested that the Deputy Governor should be elected by the legislature and he should be readily available to fill any vacancy that might occur during the term of office of the Governor whether the vacancy be temporary or permanent.

It is likely that the Governor may have to go abroad for important public business, that he may be deputed for diplomatic service of an important character for a short term or he may be required to perform other duties for a limited period which may not allow him to discharge his normal functions. For such occasions we should have a Deputy Governor to take his place. The question was raised by one of the Honourable Members when I moved my first amendment. This amendment that I have now moved furnishes the remedy. The amendment is straight forward and simple and I hope it will be unanimously accepted and adopted by the House.

Mr. President: Mr. Santhanam, you have an amendment.

Shri K. Santhanam : I do not wish to move it.

Mr. President: Mr. B. Das.

Shri Biswanath Das (Orissa: General): I do not wish to move.

Mr. President: Dr. Deshmukh has given notice of an amendment to Clause No. 1. Do you wish to move it now?

Dr. P. S. Deshmukh: It is covered by Pandit Pant's amendment. I do not wish to move my amendment.

Mr. President: The Clause has been moved and so also the amendment of Pandit Pant. Those who wish to say anything with regard to the original proposition as also the amendment are now free to do so.

Mr. Naziruddin Ahmad: Mr. President, Sir, I regret having to come here for the second time in connection with these amendments. With regard to the amendment that has now been moved, it was not circulated to us. It was only when it was moved here that I discovered its existence. It is difficult for us to follow the implications of these amendments. The original clauses have been drafted very carefully by an expert Committee consisting of expert draftsmen, experts in Constitutional Law and our great statesmen together. When they have drafted the report after so much deliberation and care its amendment should be taken in a serious manner; I should think the task of following the clause and the amendment on the spur of the moment on obtruse constitutional questions, becomes for us, laymen, all the more difficult. I submit that an amendment of this serious character altering the basic character of the original clause should not be allowed without giving us some time to consider its repercussions on the clause itself as well as upon the whole report because upon these clauses the final Bill will be drafted for our final consideration. In a matter of this importance, I think some caution should be used and some time should be allowed us for considering them. I find that to the original clause a large number of amendments have been moved. I doubt not that if the amendment just now moved was circulated to the Honourable Members, many amendments might have been suggested.

In the circumstances, I would suggest that this clause should not be rushed with. Some little time, however small, which the House or you, Sir, might consider sufficient, should be given to us. I must make it plain that it is by way of co-operation that I approach the House and approach you, Sir, for a little time. I plead with the Mover of the Clause as well as the Honourable the Mover of the amendment, who are great figures of our country, for a little time. I would ask them to consider the position of laymen in constitutional law having to take decisions on important issues without having previously considered them adequately. That is a prayer which I wish to make so that it may be sympathetically considered and some time given to us to consider the situation.

Mr. President: Does any one else wish to speak on the clause as well as the amendment?

B. Pocker Sahib Bahadur (Madras: Muslim): Mr. President, Sir the question that the House has to consider is whether the original clause, or the clause sought to be substituted by the amendment, should be adopted by the House. I think the amendment should be accepted for various reasons which have already been mentioned by the Mover of the

[B. Pocker Sahib Bahadur]

Amendment. It is very unwise to create a possible occasion for an election by this complicated procedure in the middle of four years. In order to avoid that, it is much better to have a Deputy Governor elected even along with the general election itself. Therefore, I have great pleasure in supporting the amendment that has been proposed. But I have one doubt as regard the system of proportional representation by means of the single transferable vote. I ask you, Sir, to consider the question whether that is an effective system when the object is only to elect one candidate. I can understand the efficacy of that system when you have to elect a larger number of candidates than one. But if the candidate to be elected is only one, I do not know how far this system would be efficacious in achieving the object at all. The object of having election by means of proportional representation by single transferable vote is to give representation to various groups or sections or views among the voters. If the candidate to be elected is ultimately only one, I doubt if it is wise to undergo this laborious process of proportional representation by means of single transferable vote. This is a matter to be considered by the House, particularly by the experts who have drafted this Report. They certainly must have thought about this point. I am afraid, in the first place, it has no effect at all so far as the object to be achieved is concerned, when the candidate to be elected is only one. But as I said, this is a matter to be considered by the House, I have not given any amendment, but I hope this matter will be taken up for consideration by the drafters of this Report.

Sri M. Ananthasayanam Ayyangar: The last speaker seems to be under the impression that the Deputy Governor will have to be elected by votes of all the adults of the province. This, however, is not the case. The election will be done by the Provincial Legislature where the number will be only about 150 or 200. That being so it will not be a difficult matter at all. It is not a huge body; we have such elections by proportional representation by means of single transferable vote for various other bodies also. For example, in the case of the Council of State, the strength of the electorate is 3,000; in the case of a Provincial Legislature, I suppose the strength will not be more than say 300. Therefore, this need not stand in the way of our having proportional representation by means of the single transferable vote. I think the amendment may be accepted.

The Honourable Rev. J. J. M. Nichols-Roy (Assam: General): Mr. President, Sir, I am going to speak on the amendment. It deals with the filling up of a casual vacancy in the office of the Governor. It, however, does not solve the problem of a casual vacancy that may arise in the office of the Deputy Governor. The amendment says:

“There shall be a Deputy Governor for every province. He will be elected by the Provincial Legislature on the system of proportional representation by single transferable vote after every general election. The Deputy Governor will fill a casual vacancy in the office of the Governor for the remainder of the term of office of the Governor and he will also act for the Governor in his absence.”

But what will happen if there are casual vacancies both of the office of the Governor and of the office of the Deputy Governor? In that case, there will be a dead-lock. There is no provision at all for such a case. For this reason, Sir, it seems to me that the clause as drafted originally is far better than the amendment. At every casual vacancy of the office of Governor, the Provincial Legislature may fill up that vacancy; but according to the amendment there will be a vacuum, there is no provision

for filling up a vacancy if there are such vacancies both in the office of the Governor and in the office of the Deputy Governor. For this reason, Sir, the clause as originally drafted it seems to me, is preferable to the amendment.

Mr. K. M. Munshi (Bombay: General): Mr. President, Sir, with regard to the submission made to the House by Mr. Pocker, the explanation why the system of proportional representation by means of single transferable vote has been inserted in the clause is clear enough. If this method of election were not introduced here in Clause 3, the result would be that a person would be elected as Deputy Governor by less than one half of the members voting. If it is by proportional representation, then by transfer of second vote, whoever succeeds will get one half *plus* one votes more than the number of votes cast for the others. That is why this system has become necessary.

As regards the difficulty put forward by Rev. Nichols-Roy, about both the Governor and the Deputy Governor disappearing from the scene simultaneously, it is very difficult to conceive of such a contingency at this stage. Even if we had a third man, he too may disappear. Therefore, at this stage, we can only fix the general principle. If by some sudden stroke of calamity, the Governor, the Deputy Governor and all the rest disappear, then the whole machinery will collapse. But we need not think of such far-fetched events. We hope the Governor will continue, if not, the Deputy Governor at least will continue, till the end of the term.

Srijut Rohini Kumar Chaudhury (Assam: General): Mr. President, Sir, the Committee which produced this Report was presided over by no less a person than the distinguished and revered Sardar Vallabhbhai Patel and we think full opportunity was given for discussion of each matter so that when the Report was before the House there would be no need for any change. I should not be understood to be opposing Pandit Pant or to criticise him, because physically, morally and intellectually I would not be equal to that task. (*Laughter*). But I think it would be better and more helpful to us if we know what would be the normal functions of the Deputy Governor, when the Governor is not absent. Would his function consist simply in longing and praying for the absence of the Governor or for him to be incapacitated *i.e.*, for a casual vacancy? (*Laughter*). That question, Sir, may please be borne in mind and duly considered.

Then, Sir, it is obligatory according to his amendment that there shall be a Deputy Governor in every province. Will this Deputy Governor be honorary or will he be paid? If he is a salaried man why do you compel a poor province like Assam or Orissa to maintain a Deputy Governor with all the costly paraphernalia which will be there?

Then, Sir, I am speaking on behalf of those who may aspire to become Governor of a province—but if—God forbid—a Governor should die immediately after the election (*laughter*) will the Deputy Governor who is elected only indirectly by the votes of a few people enjoy the same position as the Governor who was elected to the office by all the adult votes? It may be said that the Vice-President of the U.S.A. enjoys all the powers of the President but there he is elected by the whole country. So why should you give such extensive power to your Deputy Governor who is

[Srijut Rohini Kumar Chaudhury]

not elected by the entire adult votes but only by a few people? These are points to be considered and I hope a suitable reply will be given to these questions.

Mr. Debi Prosad Khaitan (Bengal: General): Sir, in trying to understand the various clauses of the draft Bill that has been placed before us we should remember what the Mover, Sardar Patel, said in the beginning that these clauses are not complete and final drafts but only enunciation of principles which we can approve of. And the principles that we approve of will again be brought before another Drafting Committee which will put them in proper shape and fill such lacuna as may remain after the draft passes this House at the present sitting. In the original draft as placed before us it was stated that "the Governor shall be deemed to have vacated his office by continued absence from duty or continued incapacity or failure to discharge his functions for a period exceeding four months".

This was thought to be very uncertain and very vague, as to when and in what manner the Governor is to be deemed to be in continued incapacity to discharge his functions. Similarly what was meant by the expression "failure to discharge his functions"? It became very difficult to decide what authority would declare that a Governor was in continued incapacity, except in the case of illness. Similarly, "failure to discharge his functions" is again a very vague expression. One may consider that the Governor was failing to discharge his functions while a large body of other persons and the Governor himself may think that he was not failing to discharge his functions. This has again to be read with sub-clauses (1) and (2) of Clause 3. There it was stated:

"Casual vacancies in the office of Governor shall be filled by election by the Provincial Legislature."

That is to say, there will not be a ready-made person capable of filling the office of Governor when a casual vacancy would arise. The election by the provincial legislature would necessarily take some time to carry out, and in the meantime the office of Governor would remain vacant without anybody to perform the functions of that high office. In Sub-clause (2) again, which is to be read with Clause 2(3):

"In the event of the Governor's absence from duty or incapacity or failure to discharge his functions for a period not exceeding four months, etc."

Supposing a Governor becomes ill and wants to take a holiday to some place and thinks that he will recover within three months but does not, it becomes very uncertain as to when the period will exceed four months and when it would not exceed four months. All these questions had to be seriously considered and a remedy was to be found, or at least it was thought that another remedy should be put before this House; and that is just what Pandit Pant has done, namely that after each general election when the provincial legislature meets it would elect a Deputy Governor according to a certain process. Even now some lacuna still remains, namely, it is said that the Deputy Governor will fill a casual vacancy in the office of the Governor for the remainder of the term of the office of the Governor. It has not been stated here as to what will be a casual vacancy, and who would determine whether there is a casual vacancy or not; whether it is the Governor himself that will determine it or some other authority will have to be duly considered by the expert draftsmen that are serving the Constituent Assembly.

An Honourable Member: Sir, is the Honourable Member in order in reading a written speech.

Mr. Debi Prosad Khaitan: I have no written speech; I am only looking at the clauses and the amendments and have to read them because I have not committed them to memory.

As I said, the expert draftsmen will have to consider when a casual vacancy occurs, which authority will determine whether a casual vacancy has occurred or not and whether the Deputy Governor—if this amendment is accepted—will fill the office of the Governor for the remainder of the term of his office or will simply act for the Governor in his absence for a short period. All these are difficult matters to consider; and if the principle that has been put forward by Pandit Pant is accepted the remaining details will have to be filled in and again brought up before this House for consideration. In the circumstances, I think the amendment of Pandit Pant is a good substitute for Clause 2 (3) and sub-clauses (1) and (2) of Clause 3, and I hope the House will accept it.

Mr. H. V. Kamath: Sir, in order to meet the difficulty visualised by Mr. Rohini Kumar Chaudhury, we might, as we have proposed in the case of the Upper House, direct that members of the Constituent Assembly from each Province shall vote separately and decide whether a Deputy Governor should be appointed for their province or not.

Mr. President: The Mover may reply.

The Honourable Sardar Vallabhbhai Patel: Sir, there is not much to be said by me, because subsequent speakers have replied to the previous speakers. This is a simple clause relating to how usual vacancies in the office of Governor are to be filled and the proposal has been improved upon by the amendment that has been moved by Pandit Govind Ballabh Pant. Doubts have been raised as to what would happen in case both the Governor and the Deputy Governor disappear. In any constitution difficulties of this kind may arise but human ingenuity always finds a remedy when such abnormalities occur. The House may also be aware that this constitution will be adjusted or revised in the first three years whenever necessity arose. Therefore, if any such unexpected or unforeseen difficulty arises, the legislature at that time will take care of itself and make provision in time to meet such contingencies. Therefore, I see no difficulty in accepting the amendment moved by Pandit Govind Ballabh Pant and I do not think it is necessary to make any more suggestions.

Mr. President: An amendment to Clause 3 has been moved. The question is:

“That for Clause 3, the following be substituted:

‘There shall be a Deputy Governor for every province. He will be elected by the Provincial Legislature on the system of proportional representation by single transferable vote after every general election. The Deputy Governor will fill a casual vacancy in the office of the Governor for the remainder of the term of office of the Governor and he will also act for the Governor in his absence. The motion was adopted.’”

Mr. President: The question is:

“That Clause 3, as amended, be passed.”

The motion was adopted.

CLAUSE 4

The Honourable Sardar Vallabhbhai Patel: Sir, I beg to move:

“Every citizen of the Federation of India who has reached his 35th year of age shall be eligible for election as Governor.”

This is a very simple clause.

Mr. President: There are several amendments to this Clause.

Mr. H. V. Kamath: Sir, I am told on the highest authority that a man, or for the matter of that, a woman also,—as she too is eligible for election as Governor,—may attain to maturity and mellow wisdom even before the 40th year! I do not therefore wish to press my amendment.

Shri V. C. Kesava Rao (Madras: General): Sir, I do not wish to move my amendment.

Shri M. Ananthasayanam Ayyangar: Sir, I beg to move:

“That the following be added as sub-clause (2) of Clause 4 and the existing Clauses be renumbered as Clause 4(1):

‘(2) No person holding any office or position of emolument in the regular services of the Provincial Government or the Union Government or any local authority subordinate to the same shall be eligible for election as Governor.’”

Sir, it is one of the generally accepted principles that a public servant shall not stand for any elected office and hence the need for incorporating this provision in the constitution. It is likely that for such an eminent office sometimes an over-zealous public servant may stand for election and some people may also allow him to stand. As a matter of fact, I wanted that even a person who retired from public service during the previous five years ought not to be allowed to stand for election as a Governor. That will be a proper safeguard. I do not think that a public servant, how-ever, great he might be as an administrator, is as competent as a public man devoted to public service will be and is expected to serve his province as a Governor. However, that amendment is not before the House and I am moving a lesser and more innocuous amendment that a public servant should not be allowed to stand for election as a Governor. Sir, I move.

(Messrs. Shibbanlal Saksena and Biswanath Das did not move their amendments.)

The Honourable Sardar Vallabhbhai Patel: Sir, I accept the amendment moved by Mr. Ananthasayanam Ayyangar.

Mr. Debi Prosad Khaitan: Sir, an age limit has been fixed for the Governor. May I know if there is any age limit for the Deputy governor also?

(No answer was given.)

Mr. President: The question is:

“That the following be added as sub-clause (2) of Clause 4 and the existing Clause 4 be renumbered as Clause 4(1):

‘(2) No person holding any office, position of emolument in the regular services of the Provincial Government or the Union Government or any local authority subordinate to the same shall be eligible for election as Governor.’”

The amendment was adopted.

Mr. President: The question is:

“That Clause 4, as amended, be passed.”

The motion was adopted.

CLAUSE 5

The Honourable Sardar Vallabhbhai Patel: Sir, I beg to move:

“Disputes regarding the election of a Governor shall be inquired into and determined by the Supreme Court of the Federation.”

I do not think this is a controversial clause and there is no amendment to it.

The motion was adopted.

Mr. H. V. Kamath: Sir, would it be too much to request you for a little recess, say, half an hour to enable members to have tea?

The Honourable Sardar Vallabhbhai Patel: Is that an amendment? The House is only sitting for three hours and members could have had their tea and come.

Mr. H. V. Kamath: If we had a recess of half an hour for tea, we could sit till 6-30.

Mr. President: Members can go and take their tea as the proceedings of the House go on.

CLAUSE 6

The Honourable Sardar Vallabhbhai Patel: Sir, I move:

“6.(1) The Governor shall not be a member of the Provincial Legislature and if a member of the Provincial Legislature be elected Governor, he shall be deemed to have vacated his seat in that Legislature.

(2) The Governor shall not hold any other office or position of emolument.

(3) The Governor shall have an official residence and shall receive such emoluments and allowances as may be determined by Act of the Provincial Legislature and until then such as are prescribed in Schedule.....

(4) The emoluments and allowances of the Governor shall not be diminished during his term of office.”

You will see that sub-clause (1) provides that in case a person who stands for election as Governor and is a member, is elected, he has no option but to vacate his seat in the legislature. He automatically comes out of the Legislature and becomes the Governor. I think it is a proper provision. There can be no dispute about it.

Sub-clause (2) refers to the holding of other offices by the, Governor. It forbids it. This is also necessary. We, have provided for the acceptance of Mr. Ananthasayanam Ayyangars’ amendment to the previous clause prescribing the qualifications necessary. This sub-clause is therefore very necessary.

Sub-clause (3) provides simply for residence and emoluments. It is not necessary to say anything about it. Provisional arrangement is made till it is fixed by the legislature.

Dr. P. S. Deshmukh: I do not wish to move my amendment.

Mr. M. S. Aney (Deccan States): May I make a few observations on this motion?

Mr. President: Yes, after the amendments have been moved.

Mr. R. K. Sidhwa: Sir, the amendment that stands in my name states that the salary of the Governor should form part of the Constitution. I am strongly of the view, particularly for maintaining the dignity, the prestige and honour of the Governors who will be Indians themselves hereafter, that fixation of the salary should not be left to the caprices and whims of the provincial legislatures. Again, under the circumstances in which the Governors will be elected by adult franchise, it will be undignified to let the provincial legislatures, where party politics will prevail, sit upon the fixation of the salary of the Governors. I do feel, therefore, Sir, that the Constitution itself should provide as to what should be the salary and other emoluments of the Governors. I am quite prepared to grant that small provinces like Assam and Orissa need not pay their Governors the same salaries as the other provinces. This too may be put down in the Schedule. I feel that this matter should be reconsidered by the Provincial Committee. In this connection, I would point out that the Schedule stated to be there is not in fact there. The Schedule, has to be considered by the Provincial Committee. I have mentioned in the amendment that the Schedule should state what salaries should be incorporated in the constitution. I have been told that my point will be considered by the Provincial Constitution Committee. Under the circumstances, I do not move this, but I desire to emphasise this point so that the Provincial Constitution Committee may bear it in mind when they consider the Schedule. I repeat, Sir, that in view of the fact that party politics will prevail in the provincial assemblies, we should see that the salaries of the Governors form part of the Constitution.

Mr. President: The Provincial Constitution Committee has already reported. I do not know if this point would be going back to it. I take it, it will be taken into consideration when this matter comes up again in the final form when the final Constitution is considered.

Mr. R. K. Sidhwa: Yes, Sir. I have been told also that it will be borne in mind.

Mr. President: As there are no amendments moved to this Clause, I call upon Mr. Aney to speak.

Mr. M. S. Aney: Sir, I have only a few observations to make in regard to this Clause. Sub-clause (1) says that the Governor shall not be a member of the Provincial Legislature and if a member of the Provincial Legislature be elected Governor, he shall be deemed to have vacated his seat in that Legislature. This applies not merely to the Governor who is elected but also to anybody, the Deputy Governor for instance who might happen to be in the position of the Governor, in view of the provision made therefore in an amendment given notice of by my friend Mr. Govind Ballabh Pant. The case of the Deputy Governor who acts as Governor will also be covered by this Clause. But it is not, so stated in the proposed amendment. It is not stated in the aforesaid amendment that the person who acts as Governor shall not be a member of the Legislature, although by virtue of his becoming a Governor he will be taken to have vacated his seat and a vacancy will arise and it will have to be filled. That is a consequence of this amendment. We should think over the matter and see if something can be done to make this position more clear. I have nothing more to add. This is one of the points that struck me.

Mr. President : Is there any other member who wishes to speak about this?

Mr. Naziruddin Ahmad : Mr. President, Sir I feel some difficulty about Clause 6 which is under consideration. The first sub-clause says that the Governor should not be a member of the legislature, and if so after, election, he should be deemed to have vacated his seat. Coming to sub-clause (2), it is provided that the Governor shall not hold any other office or position of emolument. We have already provided through an amendment moved on the floor of, the House, of which enough notice was not given, that a candidate for Governorship should not hold any position of emolument, anywhere, even under Government or even under a local authority. To that extent, sub-clause (2) seems unnecessary.

Then, Sir, I am speaking on behalf of those who may aspire to become immediately after the election (*laughter*) will the Deputy Governor who is elected only indirectly by the votes of a few people enjoy the same position as the Governor who was elected to the office by all the adult votes?. It may be said that the Vice-President of the U.S.A. enjoys all the Powers of the President but there he is elected by the whole country. So why should you give such extensive power to your Deputy Governor who is not elected by the entire adult votes but only by a few people?

Then, Sir it is obligatory according to his amendment that there shall be a Deputy Governor in every province. Will this Deputy Governor be honorary or will he be paid? If he is a salaried man why do you compel a poor province like Assam or Orissa to maintain a Deputy. There are points to be considered and I hope a suitable reply will stand the various clauses of the draft Bill that has been placed before us we should remember what the Mover, Sardar Patel, said in the beginning that these clause are not complete and final drafts but only enunciation of principles which we can approve of. And the principles that we approve of will again be brought before another Drafting Committee which will put them in proper shape and fill such lacuna as may remain after the draft passes this House at the present sitting. In the original final draft would diminish the dignity and value attaching to that high office. With regard to the amendment moved to this clause, I think I should support that amendment that the legislature should have nothing to do with the fixation of the salary of the Governor.

Mr. K. M. Munshi: It has been withdrawn.

Mr. Naziruddin Ahmad: That was a good amendment, but I need not say anything further on the subject. This is a point, however which the Drafting Committee may keep before their mind.

These are some of the points which require careful consideration. Although I feel that this is not proper time to go into great details. I make these suggestions for the consideration of the Drafting Committee.

Sri M. Ananthasayanam Ayyangar: I want to say a few words about what Mr. Aney said about this clause. He thought that when the Deputy Governor becomes the Governor during the latter's temporary absence, he would lose his seat in the legislature. The Deputy Governor becomes the Governor only when the Governor vacates his office. Under the amendment moved by Pandit Govind Ballabh Pant, the Deputy Governor will fill a casual vacancy in the office of the Governor for the remainder of the term of office of the Governor and he will also act for the Governor

[Sri M. Ananthasayanam Ayyangar]

his absence. Should the Governor die or resign, the Deputy Governor becomes the Governor in which case he has no right to continue to be a member of the legislature. If on account of illness or absence, the Governor does not discharge his duties, the Deputy Governor will act in the Governor's place as Deputy Governor and not as Governor and therefore his place in the legislature is not vacated.

Then as regards the observations made by the previous speaker in regard to sub-clause (2) which says the Governor shall not hold any other office or position of emolument. He says that the amendment moved that no public servant can be eligible for candidature as Governor is comprehensive and therefore this sub-clause is not necessary. He has forgotten the difference between the eligibility of a candidate for Governorship and, after becoming Governor, his holding any other office. He may not be a public servant at the time of his election but he may hold any other office thereafter. The idea is that the Governor should be a full-time servant and must not hold any other office. That is the reason for this sub-clause.

Then as regards sub-clause (4). Very often a legislature which is opposed to the Governor will try to diminish and not increase his salary. Anyhow, I would prefer the word "change" substituted for the word "diminished" in this sub-clause.

The clause, as it stands, may be accepted.

Mr. President: I put the clause to the vote. No amendment has been moved.

The motion was adopted.

CLAUSE 7

The Honourable Sardar Vallabhbhai Patel: I move:

"7. The executive authority of the Province shall be exercised by the Governor either directly or through officers subordinate to him, but this shall not prevent the Federal Parliament or the Provincial Legislature from conferring functions upon subordinate authorities, nor shall it be deemed to transfer to the Governor any functions conferred by any existing Indian law on any court, judge or officer or local or other authority."

I move this proposition for the acceptance of the House.

Mr. President: Mr. Ananthasayanam Ayyangar, you have got an amendment?

Sri M. Ananthasayanam Ayyangar: I have dropped it, I will reserve it for some other clause.

Mr. President: You are not moving so far as this clause is concerned. Very good.

Shri Biswanath Das: Sir, I move:

"That to Clause 7, the following proviso be added:

'Provided that the Federal Legislature shall contribute for such functions discharged in its behalf'."

This is an ordinary amendment and was probably left out owing to oversight. Honourable Members are aware of the fact that the Provincial and Federal Constitutions clearly lay down the respective function and

responsibilities. In the present clause the federation is authorised to call upon the Provincial Executive to discharge certain functions over and above their own work. In such cases it is but fair that the Federal Parliament should pay for the work done in their behalf by the Provincial Executive as the agents of the Federal Parliament. I claim this on two accounts. It is just and fair that the principal should pay for the agent in discharge of its agency work. Secondly, its responsibility cannot be complete unless the Federal Legislature finds its agency to carry on its work with its expense. The work in contemplation may relate to directions by the Federal Parliament or to work imposed on the Provincial Executive by means of Federal statutes. In such cases it is but fair that the principal must pay for the agency work. True it is that the Government of India Act had a similar section for discharge of its work by the Provincial Executive without any payment, but we are substituting a Federal system of Government in place of a Unitary type. I therefore hold that it is fair and necessary that this agency work should be paid for.

Mr. President: Clause 7 has been moved and the amendment to it is also moved. The original proposition and the amendment are open for discussion. Members who wish to make any remarks may do so now.

Shri Ajit Prasad Jain (United Provinces: General): The present clause says that the Executive authority of the province shall be exercised by the Governor either directly or through officers subordinate to him. There is a corresponding clause as recommended by the Union Constitution Committee which says "subject to the provisions of this Constitution the executive authority of the Federation shall be vested in the President". The present clause, that is the one recommended by the Provincial Constitution Committee, follows more or less the lines of the Government of India Act, 1935, and there was a reason for this. Under the Government of India Act, 1935, there are some services which were under the control of the Secretary of State and they had to function under the authority of the Government but that distinction will cease to exist under the new Constitution. I do not think that this phraseology is meant to perpetuate any distinction, but, at any rate, I believe that the recommendation made by the Union Constitution Committee is simple and much better worded and perhaps we shall be wise in adopting that phraseology.

The Honourable Sardar Vallabhbhai Patel: There is only one amendment which Mr. Biswanath Das has moved, that the Federal Legislature shall contribute for such functions discharged in its behalf. I am afraid there is some misunderstanding about this. Otherwise, the amendment would not have been moved. He is under the impression that the functions refer to the Federation authority. What the clause contemplates is that the executive authority of the province shall be exercised by the Governor either directly or indirectly or through officers subordinate to him. It is only the executive authority of the province and not of the Federation. Therefore there is no question of the Federal authority being called upon to pay. It is only a misunderstanding or misreading of the clause which has actuated the amendment. Further this is practically a non-controversial clause. Therefore, I hope the House will accept it.

Mr. President: The amendment to clause 7 has been moved. The question is:

"That to clause 7, the following proviso be added:

'Provided that the Federal Legislature shall contribute for functions discharged in its behalf'."

The amendment was negatived.

Mr. President: I now put the clause as originally moved:

“The executive authority of the province shall be exercised by the Governor either directly or through officers subordinate to him, but this shall not prevent the Federal Parliament or the Provincial Legislature from conferring functions upon subordinate authorities, nor shall it be deemed to transfer to the Governor any functions conferred by an existing Indian law on any court, judge or officer or local or other authority.”

The motion was adopted.

CLAUSE 8

The Honourable Sardar Vallabhbhai Patel: I move:

“8. Subject to the provisions of this Constitution and of any special agreement, the executive authority of each province shall extend to the matters with respect to which the provincial legislature has power to make laws.

(NOTE.—The reference to special agreements in this provision requires a word of explanation. It is possible that in the future there may be Indian States or groups of Indian States desiring to have a common administration with a neighbouring province in certain specified matters of common interest. In such cases, the Rulers concerned may by a special agreement cede the necessary jurisdiction to the Province. Needless to say this will not interfere with the accession of the State or states concerned to the Federation, because the accession to the Federation will be in respect of Federal subjects, whereas the cession of jurisdiction contemplated here is in respect of Provincial subjects.)”

I move this for the acceptance of the House.

Mr. President: Mr. Santhanam, you have given notice of an amendment.

Sir Alladi Krishnaswami Ayyar (Madras: General): Sir, I think that this clause requires fuller consideration. So far as the main clause is concerned, namely that the executive authority of each province shall extend to the matters with respect to which the Provincial Legislature has power to make laws, no exception can be taken.

Mr. President : Shall we not take this up after the amendments have been moved?

Sir Alladi Krishnaswami Ayyar: What I was going to move was a postponement of the consideration of this clause for tomorrow morning, if that is possible.

Mr. President: That may be possible. But I think it would be better that the amendments are moved so that the members may have an opportunity of considering the main clause and the amendments.

Sir Alladi Krishnaswami Ayyar: I shall then reserve any remarks.

Mr. President: Yes.

Shri K. Santhanam: I beg to move:

“That in Clause 8, for the words ‘Subject to the provisions of this Constitution and of any special agreement’ the following be substituted:

‘Subject to such restrictions and extensions as may be provided in this Constitution’.”

Sir, as Sir Alladi has already remarked, ordinarily the executive authority of each province extends only to those matters with respect to which the provincial legislature has power to make laws. The point of my amendment is that an extension should not be done by the province on

its own authority. It should be done only through a provision specially inserted in the federal part of the constitution, as to how far a province can enter into agreement, with a State or a neighbouring province and make an extension of its authority. Otherwise the whole Union will be reduced to chaos. The Central Ministry may not have power to prevent it and may be in great difficulty. Therefore, I want to restrict the power and scope of any such agreement to the limitations imposed by the constitution and therefore the agreement should be subject to such restrictions as may be provided within the Constitution. Beyond the constitution, there should be no power to any province to make any agreement with a state or even a neighbouring province. It is only to draw attention to this important point that I have tabled my amendment.

Of course, if as Sir Alladi has suggested, this is postponed and a better draft provided, I have no objection. I only want that this clause should not be left as it is so that the provinces may think that they can deal with the neighbouring States just as they please and come to any agreement with them with or without the consent of the Federal Government. In such a case, the permission of the Federal Government should be necessary. Not only permission of the Federal Government, but even the permission of the Federal Legislature in certain matters should be necessary. In what cases agreements should be subject to the approval of the Federal Government and in what cases it should be subject to the authority of the Federal Legislature, all these things should be provided in the Federal part of the constitution. It is only to draw attention to this important point that I have tabled my amendment.

Sir Alladi Krishnaswami Ayyar: Sir, I have got a draft ready. Mr. Santhanam's amendment is an innocuous amendment. You may make any agreement or provision you like. It does not finally settle the question. There may not be any objection to that form because it commits us to no particular principle. But if really, the object is to tackle the question and to enable the provincial executive to take up the administration of subjects under the sanction or in pursuance of any agreement with the States special provision may have to be made. If you will permit me, Sir I shall move an amendment, or at any rate, I will make my position clear with reference to the substance of what I have noted down even if it be not moved.

Mr. President: I will give you an opportunity. There is only one more amendment and after that amendment has been moved, I will give you an opportunity.

Shri Gokulbhai D. Bhatt (Eastern Rajputana States Group):
[Mr. President, the amendment which I am going to move is to Clause 8. The note connected with the said clause says at one place: "In such cases, the rulers concerned may by a special agreement cede the necessary Jurisdiction to the Provinces". I desire that wherever the word "Rulers" appears in the note the word "State" should be substituted. So far, the word "State" has been used everywhere in this note. Now when the States are going to have responsible government and in some States it is being established, I wish that the word "Rulers" should not be used, but the word "State" instead, for this word includes both the Rulers and the ruled. The contemplated agreement should be made with the consent of both the Rulers and the people. This is the purpose of my amendment. I think Sardar Patel will have no objection to this, for the word "State" is more dignified here than the word "Rulers"]

[] English translation of Hindustani Speech.

Mr. Gopikrishna Vijayavargia (Gwalior): *[The amendment moved by Mr. Gokulbhai Bhatt, seeking to substitute the word "Rulers" by "State" is necessary and ought to be accepted.]*

The Honourable Pandit Govind Ballabh Pant: Mr. President although this is a very trivial point, still as it is relevant, and I would like to be enlightened on that. Mr. Bhatt's amendment relates to a word which appears in a note annexed to Clause 8. Is the note a part of this memorandum? Is it open to the members to move amendments to the wording of the note or to anything appearing in the note? I have not considered the note as an integral part of the clause. It is nothing but explanatory. I personally think that one need not worry too much about the language of the note. If the original clause is deleted, the note will fall. If the original clause is amplified, the note may not remain consistent with the amended clause. I would like to know whether you consider that amendments to notes are admissible and can be considered.

Mr. K. M. Munshi: Sir, I support my friend Sir Alladi that this clause requires reconsideration. As it is, it reads:

"Subject to the provisions of this Constitution and of any special agreement, the executive authority of each Province shall extend to the matters with respect to which the Provincial Legislature has power to make laws."

But the insertion of the word 'of any special agreement' without any further qualification would go to show that it would be competent to the Provincial Legislature to acquire the power to make laws, not by virtue of this Constitution, but by any special agreement it may enter into. That might conceivably lead to great complications. Therefore, I submit that this requires consideration, and time should be given till tomorrow to put this into shape. It may possibly touch External Affairs too.

Mr. President: As here is a desire expressed by some members that further consideration of this clause be postponed till tomorrow, I would like to have the views of other members if they wish to say anything on that point. I would not like to rush with it if there is a wish on the part of any considerable number of members to postpone discussion.

Sir Alladi Krishnaswami Ayyar: Sir, I support the motion of Mr. Munshi that the consideration of this matter be adjourned till tomorrow. But I would like to say a word in support of my proposition. It is this, Sir, that the Province as a unit, has certain defined rights and duties under the Constitution. You provide for the Province taking upon itself the administration of certain subjects at the instance of a State. It is an extra-Provincial sphere. If that is so, is it to extend to the Legislative, Executive or the Judicial sphere and to what extent is that agreement to be supported? In a case like this, it is matter for Federal intervention, which is necessary. These are matters which require very careful consideration and we cannot merely by adding a clause 'subject to some agreement' give a *carte blanche* for any agreement that might be entered into between Provinces and States in the Legislative, administrative or judicial sphere. Therefore, Sir, I support the motion of Mr. Munshi that the consideration of the whole matter may be adjourned until tomorrow morning. I have given notice of an amendment. I hope that will be treated as being in time because I gave it at 2 O'clock this afternoon. It reads as follows:

1. In paragraph 8 of Chapter 1, *delete* the words 'and of any special agreement'.
2. After paragraph 8 of Chapter I, *insert* the following paragraph:—

[] English translation of Hindustani Speech.

'8-A. It shall be competent for a Province to undertake the legislative, executive or judicial functions vested in an Indian State under an arrangement made in that behalf with the State concerned, provided, however, that the arrangement relates to the class of subjects falling within the jurisdiction of the Province as a member of the Indian Union.

On such an arrangement being concluded, the Province may, subject to the terms of the agreement, exercise the legislative, executive and judicial functions through the appropriate authorities of the Province."

If you want to have a provision, it should be a full provision on these lines. If on the other hand, the idea is to postpone until the whole question of Union Constitution is considered, then it is another matter but I do not think it will be possible to provide for it by means of a phrase or addition of a sub-clause in the body of the section. That is my idea of the matter and I have already stated that the consideration of the whole matter may be adjourned till tomorrow morning.

The Honourable Sardar Vallabhbhai Patel: May I suggest that this involves some complicated points of law and requires further consideration as suggested by Sir Alladi? I suggest that a Committee of two or three lawyers might be appointed to consider this question and thrash out if an amendment to or modification of the present clause is necessary so that we may find it easy to tackle it tomorrow when it comes up.

Chaudhuri Khaliquzzaman (United Provinces: Muslim): I support it.

Mr. President: Will you suggest the names?

The Honourable Sardar Vallabhbhai Patel: Sir Alladi, Dr. Ambedkar, Mr. Munshi and Mr. Chundrigar.

An Honourable Member: May I request that as the subject relates to Indian States, States Representatives also might be included?

Mr. K. M. Munshi: I propose the name of Sir B. L. Mitter.

Mr. Mohammad Sheriff (Mysore): I propose that Sir Arcot Ramaswamy Mudaliar's name may be included in the proposed Committee. This matter requires very careful consideration as it involves the interest of the States and since we represent the States, we would like to have a considered say in the matter. I request the consideration of this matter be postponed for the present and the Committee which is to be constituted should thrash out all the points and for this purpose I suggest that the name of the Mysore Dewan be included in the Committee.

Mr. President: We have got six names altogether, four suggested originally and two other names have been added—Sir B. L. Mitter and Sir A. Ramaswamy Mudaliar. I take it that the House accepts the suggestion that this clause be referred to a Sub-Committee and the report of the Sub-Committee be put up day after tomorrow. We shall go on with the other clauses and take this up day after tomorrow. There was one question raised by a member with regard to the notes whether the note also forms part of a clause. I do not think the notes form part of a clause. That is for explanatory purposes and no amendment need be moved to any of the notes.

Mr. Debi Prosad Khaitan: I want to make one suggestion. With regard to your Ruling that the notes are not considered to be part of a Resolution, may I draw your attention to the note to Clause 9 and perhaps that may have to be considered as part of the Resolution. It reads—"For the most part, the Governor will act on advice, but he is

[Mr. Debi Prosad Khaitan]

required to act in his discretion. in the following matter”—I would submit that the general statement need not be made and it may apply only with regard to this note.

The Honourable Pandit Govind Ballabh Pant: The note in Clause 9 refers to certain sections which are to follow thereafter. It is not part of the clause at all.

Mr. C. V. Krishnaswamy Rao (Mysore): Sir, while this Committee considers this Clause 8 tomorrow, will it take into consideration the obverse possibility of certain Provinces entering into agreements with a State in respect of certain matters and cede certain powers to the State in administration of those matters? Will the Committee consider this aspect of the question also?

Mr. President: Whenever that question arises, we shall consider it. The consideration of this clause is adjourned today after tomorrow and we shall now pass on to the next clause.

Mr. N. V. Gadgil (Bombay: General): It is already past 5-30, and it will be better if we adjourn now and meet tomorrow. We have done good work today.

Mr. President: Is it the wish of the House that we adjourn now? (*Honourable Members* 'Yes'.) The House seems to be in a holiday mood. We adjourn till 3 pm. tomorrow.

Before we disperse, I would like to make an announcement. It has been brought to my notice that the time I have given for sending in amendment to the Union constitution, *i.e.*, till 5 P.M. tomorrow is too short, and some members want this time to be extended. So I extend the time till Friday evening at 5 o'clock.

The Assembly then adjourned till 3 P.M. on Thursday, the 17th July, 1947.

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 17th July, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi at 3 P.M., Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

REPORT ON THE PRINCIPLES OF A MODEL PROVINCIAL CONSTITUTION—*contd.*

Mr. President: Yesterday we referred Clause 8 of the Report on the Principles of a Model Provincial Constitution to a small Committee. I understand the Committee has been able to arrive at some conclusion and it has made a report. The Report will be circulated today and the clause will be taken up tomorrow. We will now take up Clause 9.

CLAUSE 9

The Honourable Sardar Vallabhbhai Patel (Bombay: General): I move clause 9. It reads:

“There shall be a Council of Ministers to aid and advise the Governor in the exercise of his functions except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.”

This clause provides that there shall be a Council of Ministers who will aid and advise the Governor in the exercise of his functions, but there is an exception in which certain reservations are made—where, according to the constitution proposed, he is required to exercise the functions or any of them under his discretion. About those matters there will be reference in subsequent clauses and therefore the Note is merely explanatory. I shall therefore simply move Clause 9 without the Note or clauses under the Note because they are provided for in the other clauses. Sir, I move Clause 9.

Mr. President: I have received notice of a number of amendments to this clause. I would like to know how many are proposed to be moved.

Shri V. I. Muniswami Pillay (Madras: General): The Minority Committee's Report has not yet come and I am not therefore moving my amendment, just now.

(Messrs. R. K. Sidhwa, H. J. Khandekar and H. V. Kamath did not move their amendments, and other members who had given notice of amendments were absent.)

Mr. President: As regards the amendment given notice of by Mr. Pocker Saheb Bahadur, it is an amendment to an amendment which has not been moved. It cannot therefore be moved. As none of the amendments has been moved, the original clause which has been moved is open for discussion (*After a pause*). As no one desires to speak on it I will put the clause to vote.

[Mr. President]

The question is:

“That Clause 9 be adopted.”

The motion was adopted.

CLAUSE 10

The Honourable Sardar Vallabhbhai Patel: Sir, I move that Clause 10 be adopted. It runs as follows:

“If any question arises whether a matter is one for the Governor’s discretion or not, the decision of the Governor in his discretion shall be final.”

Some doubts have been raised about the language, but I think if the principle is accepted the question of language may be attended to at the time when the final draft is made. I think there will be no objection on the ground of any defect in the proposition as a principle. Sir, I move.

The motion was adopted.

CLAUSE 11

The Honourable Sardar Vallabhbhai Patel: Sir, I move that Clause 11, be adopted. It runs as follows:

“The question whether any, and if so, what advice was tendered by the ministers to the Governor shall not be enquired into in any court.”

Obviously the advice tendered by a Minister to the Governor cannot be a matter to be taken into the judicial court. So it is a simple clause which requires no explanation. Sir, I move.

The motion was adopted.

CLAUSE 12

The Honourable Sardar Vallabhbhai Patel: Sir, I move that Clause 12 be adopted. It runs:

“The Governor’s Ministers shall be chosen and summoned by him and shall hold office during his pleasure.”

This also is a proposition which requires no elucidation and I think there will be no controversy on it. Sir, I move.

Mr. Aziz Ahmad Khan (United Provinces: Muslim): *[Mr. President, the Resolution which is before you says that the Governor shall appoint his own Ministers and they shall continue as such at his pleasure. I move the amendment to the Resolution that the Governor’s Ministers shall be elected by the Assembly by means of the single non-transferable Vote. The Resolution moved by the Honourable Sardar Patel does not follow the English Parliamentary system of appointing the Ministers. According

*[English translation of Hindustani speech begins.

to the English Constitution, after the general elections are over, the number of parties in the House of Commons is ascertained and they try to find out which is the largest single party; or whether there is any such party which combining with other parties can become dominant. This is the party which is authorized to appoint the Prime Minister. He recommends the names of his colleagues, who on his recommendation form the Cabinet. This is the method which has been proposed for our constitution as well. But the method which I am advocating in my amendment, is not a novel method. There are many places in the world, where this method is prevalent. For instance, Sir, if you enquire, it would be found that today this system is prevalent even in America. The appointment of Ministers is not made by nomination. Here individual vote is taken and this is the way in which Ministers are elected. Similarly, Ministers are elected in Switzerland and Austria. Sir, if you think over it, you will find that in all countries where religious groups and sectional interests exist, this system has been adopted, in order that all the parties on whose behalf the Ministers would govern should have a hand in their appointment, to secure the confidence of every party in the Cabinet. After mature consideration, I am convinced that the English system of democracy does not suit India. We have witnessed the result of this system of democracy, which has caused disturbances and bloodshed in this country. Had the system of Government been the product of our own genius, most probably such mutual hatred and differences would not have been created or intensified. Therefore it is in the fitness of things that the Ministers should be elected by general votes. This system will have the advantage that the Ministers will have sympathies of their voters. This system will be consistent with the principles of democracy. But if this is not accepted and the English system is adopted then I am afraid it would not suit us.

Sir, very few of the present parties are based on any political principles. Most of them depend on religious faith. These religious groups have existed for centuries and have continued as such from time immemorial. It is known to one and all that the untouchables are living here for scores of centuries. It is absurd to think that no sooner the constitution is framed, the religious groups will disappear and parties will be formed on political and economic principles. It would be a dangerous experiment to think of planting English system of democracy, where Party affiliations are based exclusively on political principles or of creating those conditions here. Countries like Austria and Switzerland, where they had their differences, have adopted this system of election for the Cabinet with success.

Naturally, whenever a person votes for electing a particular candidate as Minister, he has at least some expectations from him for the future and he (the Minister) in return shall do at least same good to him. Therefore, it would be much better to adopt such a system for India. Due to English education, we could not develop any system of our own. The English people thought that the system with which they have achieved this end, should be applied to India also to attain its object. They acted accordingly and succeeded in their endeavour. We should discontinue the methods adopted by the English people and should try to adopt a better system. I am sure, that the election of the Ministers by general votes would be much better. Therefore, I hope that my amendment will be accepted by the House.

One word more. When the Resolution was about to be move we were not given opportunity to give much thought over it otherwise the amendment could be more properly drafted. Therefore, you need not care for the words of my amendment. As a matter of fact you should not look to the details of my amendment. If you agree with the principles underlying my amendment, the confusion about the details will auto-

[Mr. Aziz Ahmad Khan]

matically disappear. Please look to the principles of the amendment. In the original Resolution, there is no mention of the nomination of the Ministers, nor is there any mention of their election in the amendment Sir, if you would approve the principles underlying my amendment, then at the time of the final draft, the whole thing can be put in proper form.]*

K.T.M. Ahmed Ibrahim Sahib Bahadur (Madras: Muslim): Mr. President, Sir, I beg to move:

“That at the end of the amendment to Clause 12 (just proposed by Mr. Aziz Ahmed Khan), the words ‘and shall be responsible to the Provincial Legislature’ be added.”

This is a very simple amendment based on the fundamental principles of all democracies. The Ministers, Sir, should be responsible to the Legislature. That is a very fundamental principle affecting the rights of the entire population.

Now, the principles enunciated in the Report are such as to invest the Governor with all powers of the State. In short, all the powers of the State are concentrated in one single person and, I submit that such concentration of power in one single person is dangerous to the State, however eminent he may be and by whatever democratic methods he may be elected. It is true that it is stated in the Note to Clause 9 that the Governor, in the proposed constitution, is to be elected by the people, so that he is not likely to abuse his discretionary powers. But it must be admitted that it is dangerous to invest one single person with an such powers, whatever may be the method by which he is to be elected.

Further, it is also stated in Clause 13 that generally the Governor will be guided by the conventions of responsible government; but there is no compelling necessity on his part to follow any such convention. And, if there is any difference of opinion as to whether he has followed the conventions or not, the Governor’s act cannot be called in question. It is obvious that the relationship of the Ministers with the Governor and their dealings with him should not be left to the entire discretion of the Governor. I would point out that such a procedure is entirely foreign to all principles of democracy. If this is allowed to stand, then the Ministers will be only advisers and the Legislature will be only an advisory body. Therefore it is that we want that the Ministers should be responsible to the Provincial Legislature and that they should be elected by the Provincial Legislature concerned. There is otherwise every possibility of the Governor abusing his powers and encroaching upon the rights of the people in more ways than one. It is to ensure that proper democratic government may be carried on that we want that the Ministers should be responsible to the legislature and through the legislature to the electorate, and not to one single man. The principle is that the Ministers should be responsible ultimately to the electorate through the legislature and not to one single man by whatever method or majority he may be elected. I hope the House will accept this amendment as it is based on fundamental principles.

Sri M. Ananthasayanam Ayyangar (Madras: General): I am not moving my amendment, but wish to speak.

] *English translation of Hindustani Speech ends.

Mr. President: The Honourable Member may speak later.

There is another amendment of Begum Aizaz Rasul to this amendment of Mr. Aziz Ahmad Khan. Will you please move it?

Begum Aizaz Rasul (United Provinces: Muslim): Sir, I wish to move that at the end of the amendment moved by Mr. Aziz Ahmad Khan to Clause 12 the following words be added:

“and shall hold office during the life of the Assembly.”

Sir, my purpose in moving this amendment is that the Ministry should be a strong and stable Ministry and that it should not be subject to the whims and fancies of the party or legislature to which it is responsible. Sir, in England and France the Ministry is responsible to the legislature. We see what happens in France every day. The Ministry is weak and the Cabinet has fallen several times. That always happens where there are more than two parties in the legislature, and therefore in India which is so young in democracy, where the sense of responsibility is neither ingrained nor so well developed, we should have a strong and stable Ministry which can initiate long-range policies and be uninfluenced daily by the repercussions in its party. We do not want a repetition of what is happening in France in our country. Sir, my experience of the last ten years after the introduction of the Government of India Act of 1935 has been that in the provinces where the Ministers are responsible to the legislature and are liable to fall on a vote of no-confidence by their party or the provincial legislature, they cannot put forward any long-range policies. As I said before, often they are influenced daily by party feelings and are therefore necessarily weak. I therefore feel that a Ministry that has been elected by the legislature should have a long life in which it can formulate its policies and not be influenced by party factions. We may have the American system under which the President nominates his executive, but our country may not be ready for that. But the Swiss system under which the Legislature elects the executive for a certain period during which it is irremovable is to my mind the best form of government for the provinces, because the Ministers who have once been elected by the legislature cannot be removed by a vote of no confidence in it by the legislature. I feel therefore that the Swiss system is the best *via media* that can be accepted by us in this country, keeping in view the political and other conditions that are prevailing here and will continue for a long time to come. The system of the single non-transferable vote is to my mind the best system that can be adopted for the appointment of the executive because in that all interests will be represented and no party in the legislature will have any occasion to feel that it is not represented, and therefore I strongly support the amendment that has been moved by Mr. Aziz Ahmad Khan.

I also wish to point out that the best thing for a Ministry is to have its life synchronous with the life-time of the Assembly so that it can be an irremovable executive.

My other point is that in the constitution we are framing, we are giving such strong and wide powers to the Governor who will be an elected Governor, that there is no need for another head of the State, because the Governor is there and will be in a position to allot portfolios, to represent the State on ceremonial occasions and to preside at meetings and to co-ordinate the work of the Ministers. All these things will come under the duties of the Governor and the Ministers who will be responsible men elected by the legislature will be able to initiate their policies

[Begum Aizaz Rasul]

and work out their long-range policies not at the whim of the party but from their own strong positions. My experience is that where the Ministers are the representatives of a party, it is impossible for them to carry on the day to day work and the administrative work of the province uninfluenced by their party members. This necessarily means that the Ministry is weak and the administration suffers on this account because it is natural that Ministers who have to keep their party men pleased, have to do many things which are not good from the administrative point of view. Therefore I hope that this amendment of mine which is moved with a view to having a strong and stable government in the provinces will be accepted.

(Mr. B. M. Gupta did not move his amendment.)

Mr. President: I think these are all the amendments. Now, the clause and the amendments are open to discussion.

Seth Govind Das (C. P. and Berar: General): *[Mr. President, I oppose Mr. Aziz Ahmad's amendment and also the two amendments to his amendment. He has cited the example of America where Ministers are elected and has suggested to us to adopt, not the British, but the American democratic system. I would like to point out that the Ministers in America are not responsible to the legislature. If we look at the constitutions of those countries where a system of responsible government is prevalent we shall find that the Prime Minister is chosen there by the majority party of the legislature and he chooses his colleagues. The Governor approves the list of the personnel of the Cabinet submitted to him by the Prime Minister.

The conditions in the countries, where the system of responsible government exists, clearly indicate that responsible government cannot function unless there is joint responsibility. And there cannot be joint responsibility until and unless the Premier chooses his colleagues. Mr. Aziz Ahmad has stated that it is the English system of government which is responsible for all the strife in this country. I venture to tell him that a system which has not yet been put in operation here cannot be held responsible for the conditions prevailing in our country. This system of government can be adopted only in independent countries and so long our country is not free it is wrong to say that the said system is at the root of these troubles. If anybody is responsible for what is happening in the country it is the Muslim League that advocates the two nation theory, that from time to time raises the cries of 'Islam in danger' and proclaims that there are two civilizations and two cultures in the country. It is wrong to say that the system of responsible government which we intend to establish here is responsible for these serious disturbances in our country. And then Mr. Aziz Ahmad should look to the system adopted so far by the Muslim League. The President of the Muslim League is elected—Qaid-i-Azam is elected. But the personnel of the League Working Committee is chosen by the President. The general body of the League does not elect the working committee. The Congress too follows the same system: We elect our Rashtrapati (Congress President). The provincial Congress committees elect their presidents. We authorise the Rashtrapati and the presidents of the provincial Congress committees to choose the personnel of their working committees. Having all these in view, I beg to advise that we must not follow the American system of government, if we desire to establish responsible government here. The Ministers in America are not responsible to the legislature—the House of Representatives or the Senate. We want

*[English translation of Hindustani Speech begins.]

responsible government. We want our Ministers to be responsible to our legislature. If we desire to have this system, it is essential that Ministers should not be elected on the principle of proportional representation by single transferable vote.

The other two amendments to this amendment are amazing. One of them says that the Ministers so elected by single transferable votes should be responsible to their legislature. I do understand how the Ministers will be individually responsible to the legislature.

The other amendment put forward by one of our sisters is that the Ministers should hold office during the life time of the Assembly. I fail to understand how the Ministry can hold office during the life time of the Assembly when the majority of the members of the legislature have no confidence in them or the Premier. The amendment and the amendments to it are contradictory.

Therefore, concluding my speech I would again say that the system of Government prevalent in Britain must be followed here if we have to establish responsible government on the eve of our getting independence.]*

Mr. President: A request has been made to me by a Madras Member that all the speeches which are delivered here in Hindustani should be translated into English for his benefit, because he is the mover of one of the amendments. I am afraid it is not possible to comply with that request because, in the first place, we have got no arrangement for an interpreter who would be able to translate all these speeches which are delivered in Hindustani, and I also know that there are certain members who do not know English and they would insist upon English speeches being rendered into their language, whatever that language may be. I think we had better to take the limitation of individual members as the limitation exists and proceed with the debate as it has been going on, in the language in which the speaker wishes to speak.

The Honourable Mr. Jaipal Singh (Bihar: General): Mr. President, I feel very much like a Madrassi. Much of what has been said by my predecessor on the other side and the immediate predecessor in this side has been lost on me. I fully agree with them that, as far as possible, the speakers should speak in the language understood best by the majority of the members of this Assembly, but, if it were left to me to speak in a language in which I could express myself best, I do not think there is any one at all here who would understand me. I would definitely prefer to speak in my own language *i.e.*, in an Adibasi language. There is no member here at all who would understand me. Mr. President, you, coming from the same Province as I do, would find it difficult to discover an interpreter. I do hope that in deference to the need very strongly felt and in the light of what has been said on the floor of the House, it will be appreciated that it is better to talk in a language which the majority of us could understand.

I come here to oppose the amendment. But before I oppose the amendment I would like to say a word about a note, despite the advice given by the Honourable Sardar Vallabhbhai Patel that we are not to talk on any of the notes,—I know that you will permit me to say that it is most unfortunate that a paragraph such as this should ever appear on a serious document.

I will read it:

“It is to be noted that the Governor, under the proposed constitution, is to be elected by the people, so that he is not likely to abuse his ‘discretionary’ powers.”

] *English translation of Hindustani speech ends.

[Mr. Jaipal Singh]

My elementary logic fails to understand the argument of this. That a man who is elected on a popular vote will not abuse his discretionary powers is beyond by comprehension. I shall now proceed to the arguments that have been advanced by the proposer and the seconder of the amendment. It is unfortunate that the serial arrangement of these clauses are as they are. I think the proposer and his charming supporter would have thought otherwise had Clause 14 come in the place of Clause 2. In Clause 14 you will see that the Schedule which is to be equivalent of the Instrument of Instructions is provided for. I think a great deal of the apprehension would be completely removed were we to know what the Schedule or the Instrument of Instructions would be.

Hitherto we have been talking about responsible Government. What is responsible government but that the head of the executive of the province would be bound by the technique and methods of responsible government? There will be no question whatever of his being arbitrary. Admittedly, as far as the language of the clauses that we have so far considered goes, it looks, as though arbitrary powers were going to be vested in the Chief executive of the province. Surely, Mr. President, that is not to be the case if we consider that there is such a thing as the Instrument of Instructions, the Schedule as we prefer to call it now, by which he is bound. That being the case, the fears that have been expressed by my friends who have spoken from the other side would be remote.

Sir, I myself have been wondering what our constitutional experts have been up to. I have been, as a layman, trying to understand whether they were drafting, even for this intermediate stage, a constitution which was to be democratic. Up to date, I have not been convinced,—at least the language has been such that I have not felt that somehow or other the technique or this democracy was going to be democratic. But as far as this particular clause is concerned, I have no doubt whatever in my mind that the Governor must act in a responsible way.

Mr. Mahomed Sheriff (Mysore State): (Began to speak in Hindustani).

B. Pocker Sahib Bahadur (Madras: Muslim): On a point of order, Mr. President, may I request you to ask the speaker who knows English to speak in English, Sir?

Mr. Mahomed Sheriff: You have already given the ruling Sir.

Mr. President: I am afraid I cannot force any speaker in a particular language. It is left to him to choose the language in which he wishes to speak.

B. Pocker Sahib Bahadur: In that case, may I appeal to the Honourable speaker to speak in English with which he is very familiar, I know?

Mr. Mahomed Sheriff: I would prefer to talk in Urdu. * [Mr. President, I fully support the amendments moved by Maulvi Aziz Ahmad Saheb, Ibrahim Saheb and Begum Aizaz Rasul Saheba. The purpose of these amendments is to limit the powers of the Governors and to give the Legislative Assembly a preference in the election of the Ministers. The main purpose of these amendments is to introduce democratic principles in administration. Almost every day we repeat our allegiance to the democratic principles by proclaiming that in all things we should always try to popularize them. In the light of this, it seems necessary to see that the Governor's powers are limited. You might be knowing what is the system prevalent in Switzerland and other progressive countries. I beg to submit that probably in the opinion of

*[English translation of Hindustani Speech begins.

Sardar Patel Saheb there is no harm in giving full powers to the Governors who are elected by the people. I would submit that a Governor, however, powerful he may be, must be in a position to carry out the wishes of the people. The principles to which the movers of the amendments have referred, are really the best principles and in the name of these democratic principles, I appeal to you all to become ardent supporters of democracy and standard-bearers of its principles. I strongly support these amendments and appeal to you to support them]*

Mr. N. V. Gadgil (Bombay: General): Mr. President, I want to oppose this amendment. I have heard that this amendment is calculated to secure a better prospect for democracy. As I understand, democracy is not an end in itself. It is a method, a mechanism to secure certain desired and desirable results.

Now what are the objectives for which we are framing this constitution? These objectives have been defined in the resolution that has been passed. Apart from that, I take it that there will be several parties in the country and each party will be defining its own aims and objectives. These aims and objectives will constitute the programme of that party. Obviously, these aims and objectives are not embodied in the programme for the mere sake of telling the public that these are our aims and objects. The idea is to implement them when the party gets into power. If the party gets into power, that party cannot execute it, cannot implement it, unless that party is charged with the full executive responsibility of the Government.

Apart from this, I submit to this House that so far as the political trends in this country are concerned, we have been brought up in an atmosphere which has been most conducive to the establishment of what we are generally accustomed to term as Parliamentary Responsible Government. That Government can only function in certain given conditions. One of the conditions is that there must be at least two big parties and the Leader of the House must have the confidence of that party which is in the majority in the House. In other words, the Leader is really the man who counts and if you do not give him any chance to choose his colleagues, if you do not throw on his shoulders the responsibility of implementing the programme on which the electorate has returned that party. I think it is destructive not only of democracy, but of the few chances of any progress. Any coalition is not calculated to help progress in the country; much more so is the case if we accept the amendment. A coalition follows some understanding, some agreement, whereas under the amendment, strange and even mutually exclusive elements may be brought into the executive.

Apart from that, just consider what will be the effect if Ministers are chosen by the process of single transferable or non-transferable vote. What is there to guide the Governor for the purpose of allocation of portfolios? On the one hand, we are all anxious to see that he must be merely a constitutional head. On the other hand, if you accept this amendment, you will be giving him unlimited powers which he can use, not for the benefit to democracy but for the benefit of his own autocratic rule. Suppose out of nine people who constitute the executive, the majority party may get four, another party may get two, a third party may get one and two other groups may get one each. If the Governor is so powerful, he can certainly allocate the most important portfolios to those who belong to the minority groups. Is that position calculated to the better progress of this country? Is it calculated to further the programme on which the majority party has been returned? I think, if you accept this amendment, you will be doing the greatest injustice to the

] *English translation of Hindustani Speech ends.

[Mr. N.V. Gadgil]

electorate, to the party that has put its programme before the electorate and on which it has been returned. The electorate is justified in expecting that that programme will be implemented and if you make that implementation impossible by accepting such an amendment, I think you will not be doing justice to the electorate. In other words, I wish respectfully to submit that it is dangerous from every point of view. It is unfair to the electorate. It is unworkable. It is giving too much power to the Governor. There is nothing in this amendment to which I can bring myself to reconcile.

One of the supporters of the amendment said that it will secure a strong and stable government. So far as the strong government is concerned, I think it cannot be secured. That it will be a weak government there is no doubt. In the absence of collective responsibility there will neither be continuity nor consistency in administration. If you accept the amendment that they will hold the office till the life of the Assembly, it may be stable but it will not be progressive. The very idea of a democratic government and a responsible government is that if the elected members even during the statutory period do something, act in a manner which is calculated to forfeit the confidence of the country, there is some provision in the constitution whereby dissolution is possible but that also is considerably affected. I therefore submit that the House will be perfectly justified in throwing out this amendment.

Kazi Syed Karimuddin (Berar: Muslim): *[Mr. President, I support the amendments moved by Mr. Aziz Ahmad and Begum Aizaz Rasul. For the last three days I am seeing that whenever a Leaguer makes a speech, in reply he is told that till the other day he was raising the slogan of religion in danger and so we (the Leaguers) can never support socialism and democracy. Mr. Kamath has even said that socialism need not be taught to Gandhiji and Pandit Jawaharlal Nehru. I say to Mr. Kamath that since long he has been trying to teach it to them but probably they understand it too well. Notwithstanding all this, Mr. Kamath needs to be told what an Urdu poet has said:

“Dead drunk, during the night and penitent in the morning; I continued to be a drunkard. Yet did not lose Heaven.”

Mr. Kamath can play a hero but not by maligning the Muslim League. Besides this there is one other noteworthy fact, and it is this: whenever a proposal is put forth from the Congress side, you are always disposed to accept it but whenever any thing comes from the Muslim Leaguers, howsoever beneficial it might be, it is discarded on the pretext that nothing emanating from Pakistanwallahs can be accepted. This Constituent Assembly is no political platform; it is a constitutional body. Here, the Muslim League can put forth its point of view and every member has the right to do so. The amendment before us is “that the Ministers may be elected by the House”. The British are quitting India, but their shadow is not leaving us. You say that British rule and the British executive is based on democracy. This is quite wrong. You should look to the Constitution of U.S.A. and Switzerland. Since 1921 and particularly after the Act of 1935, what I have seen is that the majority party always shows scant regard for the opposition. I maintain that the result of majority rule has been that the Ministry tends to be prejudiced against the opposition parties—be it communist party or any other. For keeping the Ministry in the saddle, the majority party needs cajoling. I say majority rule is accompanied by nepotism and favouritism. With these evils eradicated it is difficult to keep the party supporters intact. Hence to say that majority rule is based on democracy is quite wrong.

*[English translation of Hindustani Speech begins.]

Mr. Aziz Ahmad's amendment is to the effect that the Ministers should be elected. What we want in India is a constitution of the type by which she may be classed as one of the Progressive States of the world. India is passing through a very delicate phase when our mutual differences need to be settled. Mutual conflict should be stopped, and there is only one way of doing it. It is this: the representatives of every party in the House should be included in the Ministry.

The majority party will get greater representation, while the minorities will get less number of seats. Under these circumstances, as Begum Sahiba has observed, the House should last as long as the Ministry continues in office. There is nothing new in it. This has been made plain in the constitution of U.S.A. By doing this, executive judiciary and legislature would be divided into three parts. Legislature would lay down the policy. The function of the judiciary would be to check the executive from exceeding its limits, and the duty of the executive is to carry out the policies laid down by the legislature.

What we find today is that there are different religions, various parties and numerous classes of people in the country. The best method is that each and every party should be represented in the government. That would ensure the stability of the government and mutual conflict would also be eliminated. Therefore I support the amendment which has just now been moved and hope that the House will accept it.]*

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): Mr. President, Sir, I have very great pleasure in supporting the amendments moved by my friend Mr. Aziz Ahmed Khan Saheb and the further amendment by Begum Aizaz Rasul. In doing so, it will not be out of place if I observe that the constitution, the draft of it, the report of it which is placed before us, except for a few questions such as the election of the Governor and the term of office of the Advocate General, looks as if it has been copied from the 1935 Constitution in regard to the Provincial Autonomy. Sir, if we want our constitution to be democratic, we should see that the legislature, the Cabinet and the Executive, reflect the several sections of the people.

If we are relying upon what is called the parliamentary system of democracy, it is the considered opinion of the pandits of constitutions that that is not a democratic system of government. The model that ought to be before us is the model of the Swiss Government. A system of government can be called democratic only when all the sections of the people are represented in the legislature. We are now suffering from a handicap, because we do not really know what would be the method of election, what would be the constituencies and so on and so forth. Anyhow, I take it the constituencies will be territorial constituencies, and that at the same time some reservations will be made in regard to communities or interests which will enable them to return their men to the legislature. Now, Sir, if that is the method you are going to employ, and that is necessary in the peculiar circumstances of the provinces in India, then people from all sections of the province and persons of different interests will be elected to the legislature. If you are accepting that method of representation of people to the legislature, with reservations of seats by whatever method, by weightage or by some other way—it does not matter at all by which method it is done, it does not arise now—then it necessarily follows that in the Cabinet also the minorities or different sections should find a place. That is what is obtaining in the Swiss Government, and that is the reason

] *English translation of Hindustani speech ends.

[Mahboob Ali Baig Sahib Bahadur]

why it is said that the Swiss Constitution is the most democratic, because it represents all sections and all parts of the country in its Legislature, and not only in its Legislature, but also in its Cabinet. The method followed in Switzerland is this. The Legislature elects its Ministers by a certain method which ensure that all the minorities are represented. The method is called proportional representation by non-transferable vote. That is what we want here also in order that the constitution may be democratic, and provisions should be made for the return of certain interests and minorities. Then it necessarily must follow that these people must find a place in the Cabinet also.

The amendment of Begum Sahiba is a consequential one to the resolution moved by Maulvi Sahib. We are not asking for any nomination to the Cabinet. We are only asking for election by a certain method which will enable minorities and interests to be returned to the Cabinet. This method of election by proportional representation is considered to be the best. When the Legislature consists of say 50 to 500 or 300 members this would not be a cumbersome method. By adopting this method you will be following up the principle that you have enunciated, that minorities and certain sections of the People must be represented and the constitution must be a democratic one. To say that, when a Minister has been elected, that he can be removed on a vote of no confidence goes against that very principle. There is some conflict which has not been observed, between the amendment of my friend Mr. Ibrahim and the amendment of Begum Sahiba. Mr. Ibrahim says that the Ministers must be made responsible. If the amendment of Maulvi Sahib is accepted, then it means the Minister can be removed. But it is very necessary, Sir, that those Ministers who are elected by the Legislature and who are elected in order that the Cabinet may reflect the various sections, Christians, Muslims, or whoever they are, different interests, the tribal areas and so forth, all these sections, then they must continue for the term of the Legislature. That is consequential.

I expected, Sir, that there would be some innovations in the constitution that is going to govern us in the future. But I find that except for the provision that the Governor shall be elected, there is nothing new. I appeal to the House through you, Sir, that in order to lay the foundation of that confidence which you intend to create in the minds of all sections of the people, Muslims, Hindus, Tribals etc., this democratic method of framing the constitution should be given full consideration by this House.

Sri S. Nagappa (Madras: General): Mr. President, Sir, I support the original clause moved by the Honourable President of the Committee that the Governor's Ministers shall be chosen and summoned by him and shall hold office during his pleasure. While doing so, I have very few remarks to make. Clause 14 lays down that in the appointment of his Ministers and his relations with them, the Governor shall be generally guided by the convention of responsible Government as set out in Schedule so and so. In the latter part of this Clause 14, it is said that the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with these conventions. Now, Sir, especially for minorities instead of keeping power in the hands of the Governor to choose his Ministers it would have been better if it had been kept in the hands of the Legislature. For instance the Governor or the Premier may select Ministers of his own choice, men who will implicitly obey the Premier, or the Governor. But such people will not command the confidence of the particular section of the people whom they are expected to represent. Therefore if it had been something like the Swiss model, leaving the Executive to be formed by the Legislature, then every

group and every member of the Legislature will have a chance to select their own representatives. Such representatives will be true and effective representatives. But there comes the trouble. If the Cabinet is formed in this manner, then in the Cabinet there will be divergent elements, one pulling on one side and another pulling on a different side and so there will not be homogeneity in the Cabinet. I do see the point. In order to avoid that situation the Cabinet must be made to select its Premier, because then the Ministers of the Cabinet cannot but follow the Premier.

Now, Sir, no doubt in the draft constitution it is said that the Governor will choose his ministers but it has not been said that the Governor must choose his Executive or the Ministers in consultation with the leader of the majority party. For instance, under the 1935 Act you are aware what the Governor of Sind did. He did not call the party which had a slight majority. There were two parties practically equal but the Governor took his own choice. He selected whom he thought fit. He did not call the really representative and majority party. Therefore such powers vested in the hands of the Governor are sometimes dangerous. No doubt these Governors are elected by adult suffrage and yet that is exactly the reason why a Governor should not be vested with this power. As he is elected by adult suffrage he might belong to a majority party. It is not human nature to be above party politics. He may be a Governor, but yet he is a human being. He knows that he has been elected by the people and he knows which party supported him in the elections and which did not. Therefore there is ample scope for the Governor to abuse or misuse his powers. So by this means you will be not only taking out some of his powers in forming the Cabinet but at the same time you will be going a long way to placate the minorities. They will have their say and they will have their true and effective representation by means of the single transferable vote. Otherwise, if it is left to the choice of the Governor, if there are two equal parties or if there is a slight difference, instead of calling for the party which is slightly in the majority, the Governor may call, as the Governor of Sind did, the other party to form the Cabinet. If such Cabinets are formed where is the guarantee that they will be steady and strong governments? Day after day the Government will be interested only in safeguarding their position and will not be in a position to lay down policies nor be able to see that the people of the country are benefited by them. In my opinion, I think the powers vested in the Governor are so large that it gives cause to suspect. I do not say that the Governor who has been, elected under adult franchise will misuse his powers. People will not go to the extent of selecting such people but we should remember that after all a Governor is a human being and has also his own likes and dislikes. So there is scope for him to err and that is what I want to point out.

The other point is, as I said in the beginning, it would have been better that instead of allowing the Cabinet to be formed by the Governor the Legislature forms the Cabinet. Then every member in the Legislature will have the right to elect his own representative. The question in that case will be whether such a constitution will work. All sorts of elements will be there in the Cabinet and the question is whether there will be individual or collective responsibility. No doubt in every cabinet or team work they are expected to have joint responsibility. If the members of the Cabinet selected their own Premier, to that extent at least they will be responsible and will be having joint responsibility.

Hitherto the Governor used to act in selecting members of the minority communities according to the Instrument of Instructions. Under Clause 14 there is a note which says that this schedule will take the place of the

[Sri S. Nagappa]

Instrument of Instructions now issued to Governors. I am glad that that provision is there and I hope that this clause under this schedule will give some scope but it would have been better if it had been otherwise.

Dr. B. Pattabhi Sitaramayya (Madras: General): Mr. President, a sudden impulse has overtaken me as, I have been following the debate with great interest and I am particularly glad that our reverted old friend from U.P., Mr. Aziz Ahmad Khan has inaugurated this discussion. He has given us an opportunity for a full-dress debate upon the question of responsible government versus fixed executive and the simple lacuna that he left in his amendment has been filled up by our extremely learned lady Begum Aizaz Rasul Saheba. I am therefore tempted to take part in this discussion, not upon the lower plane upon which it has been inaugurated but I want to take the whole discussion up, if I may mention it boastfully, to a higher plane.

We all judge on facts and conditions as they have existed during the last few years how that Provincial Autonomy which had been introduced by the Act of 1935 has been working. Unfortunately or fortunately the historical conditions of the present day are an inheritance of the past 30 or 40 years. We have inherited certain conditions and we have been the victims of those conditions. We have not been able to escape from the tyranny of those conditions we have not been able to write upon a *tabula rasa* or to begin afresh with a clean slate or with clean hearts. We have inherited these things which have been the creation of the British Government. You are fully aware how in 1906 during Lord Minto's time His Highness the Aga Khan had led a deputation and negotiated for separate electorates. The vicious seed grew big and bore fruit in 1916 in the form of the League-Congress concordat which was more or less incorporated in the Montagu Reforms. We were hoping that with the lapse of a decade these vicious separate electorates would come to an end, but we have not succeeded. Every time we had an opportunity of revising the political system the tree took its roots deeper and deeper and bore worse and worse fruit; at last we have reaped the final fruit, the final stage in which India functions as a corporate body and Pakistan is destined to function, let us hope only for the present, as a separate *Sthan*.

Under the circumstances it is for us to think afresh to bring a new outlook upon the whole problem and see whether these separate electorates should continue. What purpose do separate electorates serve now? The whole political question has to be taken together as a comprehensive problem for fresh consideration. How are they going to serve the purpose of the 7 per cent. of people in Madras, the 9 per cent. in Bombay, the 4½ per cent. in C.P. and the 14 per cent. in the U.P.? They will only provide ground for perpetual complaint. We are therefore looking to joint electorates. Let us forget all the antagonisms created—and inevitably created, and created for no fault of ours—in the past. Let us forget the very words—the two names, Congress and League. Let us have a Congress League Organisation. Or let us drop both these names and have a democratic, republican or socialistic organisation any appellation that you can adopt—based entirely on political grounds. It will eschew all religious predilections.

Indeed the “minorities” have always addressed themselves abroad to the three questions of freedom of religious worship, faith and customs and preservation of language script and culture. It is in this unfortunate land through the intervention of the British Government that the Minority question has been complicated by mixing it with political matters. But

now that period is over. We are entering upon a new period in the development of our country. Therefore, when new joint electorates are formed and when you and I have the same political programme and the bone of contention is "agricultural income" vs. "limitation of land", that is to say economic questions hold the field, then we shall have common ground to tread upon. Then I can go to Janab Mahboob Ali Baig's house and address his mother and he may come to my house and address my wife, we can invite each other to dinner, we can exchange the best of cordialities in life and become brothers once again. Then there will be no question of the Congress people alone exclusively monopolising the seats in the Government. There will be Christians, Muslims and Parsees in our Government. Anybody worthy of being selected will be selected by virtue of his service to the country—not only by virtue of his jail going; this will be forgotten very soon; it is almost being forgotten. Indeed the old traditions had better be created. Let us not judge the future by the past. Let us draw a veil upon the past, and begin the future anew. Let us be able to form political organizations on a new basis so that it will not be said that the Muslims as a minority have been neglected and ignored. No such thing will happen in the future. The complaints that have been advanced from this rostrum have been absolutely unassailable. It is a pity that people should be compelled to speak in such tones. But that is a consequence of the inevitable past for which we were not wholly responsible though it must be admitted we were partly responsible. We have all come together again under one banner and on one platform. We shall pursue one programme and there will be no difficulty whatever hereafter.

Chaudhri Khaliqzaman (U.P. Muslim): On what point is the Honourable Member speaking, may I know? I do not think the amendment refers to any matter about which he is speaking.

Dr. B. Pattabhi Sitaramayya: I am much obliged to my friend for having pointed out this little matter. The relevancy of the question is that the whole amendment is based upon the complaint that the Muslims form a small minority—it refers to all other minorities—and that therefore one section being in a vast majority by sweeping the polls, will on the principle of responsible government sweep the Ministries and that the minorities will suffer. I say that no such thing will be allowed to come into existence when the parties are formed on political principles and a new alignment has taken place.

Kazi Syed Karimuddin: But none of the speakers supporting the amendment has referred to the suffering of the minorities whereas my friend is referring to it.

Shri Balkrishna Sharma (United Provinces): He has seen through your game.

Dr. B. Pattabhi Sitaramayya: We shall have new conditions to deal with and we shall not be influenced by our unfortunate experiences in the past. I would therefore suggest that this question should be looked at altogether from a new angle of vision. It will then be possible for us to see how we can form political parties on purely political principles without any communal bias and see how we shall be able to work out a new formula which is really based upon responsible government. This proposal which has been made is based on the bad experience of the past. That experience is a forgotten dream and we shall inaugurate a new chapter in our political development which will visualize conditions of an

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altogether different character. I therefore urge, Sir, that this amendment may be thrown out.

[Shri D. Govinda Doss (Madras : General): then spoke in Telugu.]

B. Pocker Sahib Bahadur: Mr. President, in what language is the Honourable Member speaking?

Mr. Ram Narayan Singh (Bihar : General): I rise to a point of order. I want to know whether the Honourable the President understands the language in which Mr. Govinda Doss is speaking and if not, how he controls the speaker.

Mr. President: I do not think it is necessary for me to control the speaker. I think he is speaking within bounds. (*Laughter.*)

An Honourable Member: I want to know from you, Sir, whether the Honourable Member is supporting or opposing the motion. I do not understand him and I do not think any Honourable Member knows or understands whether he is in favour or against the motion before the House.

Mr. President: The speaker suffers from one kind of limitation and other members suffer from some other kind of limitation. The speaker is ignorant of some languages and others are ignorant of his language. All suffer. I will allow him to speak under the rules in the language in which he is speaking. I take it he is unable to express himself in English and so wishes to speak in his own language.

[Shri D. Govinda Doss, finished his speech in Telugu, thanking the President for upholding his right.]

Chaudhri Khaliquzzaman : Mr. President, Sir, the amendment which has been proposed by Mr. Aziz Ahmad Khan consists, to my mind, of two parts. One refers to the election of Ministers and the other, to the method of election of those Ministers. Unfortunately, it appears to me that some of my friends here have overlooked the principle altogether and have applied their minds only to the other portion of the amendment which refers to the method of election of Ministers. I can assure Members here that, so far as the question of minority rights are concerned, we know that there is a Minorities Committee and that we shall have the opportunity of discussing our rights there. Having seen and gone through the Report of the Provincial Constitution Committee, we came to the conclusion that every possible effort was made by the Minorities Committee submitted to see that nothing was said in the Report which may be repugnant or inconsistent with the recommendations of that Minority Committee. We are to that extent grateful to the Members of the Provincial Constitution Committee whose Report is under consideration. And I would beg of you all to discard from your mind the feeling that there is any hidden motive behind this amendment. It may be that once the principle of election of the Ministers is agreed upon, whether it should be by non-transferable or single transferable vote or otherwise it will present no difficulty. But here is a question of principle. We feel that having given wide powers to the Governor, we must have an irremovable Ministry. I shall, for that proposition, not refer to the American Constitution or the Swiss or any other Constitution. To my mind the question must be looked at purely from the point of view of the genius of the people, from the point of view of what will suit the genius of the people better.

Now, we have not for long enough worked the Constitution of 1935 which really gave us some power in the provinces. When for the first time the Congress assumed power, it worked there only for two and a half years, and this time it has only just taken over power. We have some experience in other fields of activities. For instance in the local bodies, the method of election has been tried in a different form. What has been happening to the municipal and district boards? Everyday there is a vote of no-confidence against the chairman of district boards and municipalities. One does not know what to do with the powers given to them. The Governors of the provinces are themselves tried of it all. Therefore they want to go back on that system. First two-thirds majority has been introduced, and I do not know whether the legislatures within provinces may not have to introduce three-fourths majority. Otherwise the spectacle of the chairmen of the municipalities and presidents of local boards going out everyday will be witnessed. Within these few days one Ministry in Madras has fallen. This experience of ours leads us to conclude that it would be in our interests to have an irremovable executive. Otherwise, with the change of slogans there may be change of Ministry. Our people are apt to be taken in by slogans. You say that the cry of Pakistan. Two nation. theory and all that was caught by the masses. This shows that your people are apt to follow any lead and any slogan. For this reason I say you should make provision to protect your Ministers. You should protect them against these shifting parties and predilections of the groups in the legislatures. This is a pure and simple proposition which we have placed before you for your consideration. To think that it is merely a case of single transferable or non-transferable vote which stinks in the nostrils of some of my friends is not right. I can assure you that if you accept the principle, we shall accept any alternative method of election. Therefore do not make that method of election the test for the acceptance or non-acceptance of this amendment. It may be that you are dissatisfied with this amendment. You may reject it. But, to say that this amendment has been moved because we want to get over some particular mode of election or representation is to misjudge it. I can assure you that, personally, I believe that no Governor who has been chosen by the vote of the people will ever have a Ministry without representatives of the people, whoever they may be, Muslims or non-Muslims. I believe it. Therefore it is not from that point of view that we have asked for the consideration of this amendment.

With these few words I support the amendment moved by Mr. Aziz Ahmad Khan.

Mr. K. M. Munshi (Bombay : General): Mr. President, Sir, I have only a few words to say with regard to the views expressed by my friend, Mr. Khaliqzaman. Mr. Aziz Ahmad Khan's amendment, as the House has seen, wants the ministry to be elected by proportional representation. The two amendments that have been moved are mutually contradictory. Mr. Ahmed Ibrahim Sahib says that the Ministers shall be responsible to the provincial legislature. That means that the ministry elected on the basis of proportional representation would be responsible to the legislature, which in other words, means that after a vote of censure that Minister should resign. On the other hand, the amendment moved by Begum Aizaz Rasul wants that the Minister chosen by proportional representation should continue during the life of the Assembly. The intention of the second amendment is that the Minister should be elected by proportional representation and should continue till the end of the life of the Assembly. Now I want the House, Sir, to envisage the implications of this scheme. The system of proportional representation, as everyone knows, is this that instead of having the support of the majority in the House, you must get the first vote of a small group, and nothing fragments the political life of

[Mr. K.M. Munshi]

a country as proportional representation in the selection of ministries. I will give a concrete instance. If there is a House of 300 members, the majority party of, say, 151 must support all the ministers in order that they may retain office, but under P. R. if there are seven ministers and you have got a voting strength of 300 anyone who gets the first votes of 35 or 40 members will be entitled to become a minister. Therefore the House will not look at the ministry as a consolidated body of representatives elected on the general principles and policies which the ministry has to carry out, but it will be fragmented into sections, each trying to get as many first votes as possible. I am not saying this as a matter of theory. After the Treaty of Versailles at the end of World War I, on account of President Wilson's partiality for proportional representation, several of the Central European countries introduced proportional re-representation and lived to be sorry for it. Instead of putting the national good before them, the ministers were more busy securing the first votes of a small group by raising a very narrow isolated cry. Therefore, the nett result of proportional representation will be that the ministry instead of being broadbased on general principles, all ministers standing together and having collective responsibility and interested in doing good to the province as a whole, it will consist of representatives of different groups having different ideologies and different policies. This will invariably result—the 35 votes will fluctuate—in a coalition with practically differing policies, and when a coalition comes, we know the result. Perhaps, members know what happened and what is happening in France during the last 25 years. In France, it has been more or less the fashion to have coalition ministries and the result has been that ministries have been falling like castles of cards. During the last eight or ten years there have been more than twenty-two ministries. Some ministries have lasted only for eight or nine days. At the time when Hitler entered Austria, there was no ministry in France. When he entered the Rhineland, there was a care-taker ministry in France, and nobody would become the Prime Minister. This is the situation where you get coalition ministries. This is the greatest danger to which democracy is prone,—this danger of coalition ministries. There is only one way in which democracy can be practised effectively and that is by having a majority party. If we have majority party, we must have one, and that can only be done first by having the group of ministers selected by the majority party, secondly by collective responsibility and lastly by the control which the Prime Minister exercises over that homogenous ministry. As the House knows very well Sir, in England the power of the Prime Minister is absolute and that is what has made the British Government so very strong. It is the Prime Minister who decides as to who should be a minister, and can dismiss a minister, and can control his party by saying: "I will get the House dissolved and go to the country unless the party supports me". The mechanism of responsible government which we have therefore been following to a large extent in this country is the British model, and a departure of this kind will weaken the ministry to a large extent and the provincial legislature will be nothing else but a fragmented house which cannot devote itself to the good of the province. Therefore. Though the system of proportional representation looks so innocent that some people have got a fascination for it, it has led to the unmaking of democratic institutions in more than one country in the world. This amendment of Mr. Aziz Ahmad Khan is really speaking destructive of democracy. If you have a democratic system, then you must carry it out to this extent that if the House passes a vote of censure against the ministry, the ministry must be prepared to resign. If it continues, the ministry will be naturally unresponsive to the fluctuations of public opinion.

There is only one argument which my friend, Mr. Khaliqzaman placed before the House of which I would like to refer. He says, 'Large

powers are going to be given to the Governor. If so, give the ministers much larger powers". There is no doubt that under Clause 9 which the House has adopted, certain discretionary powers have been given to the Governor. What the House has not yet before it, is the full extent and scope of these discretionary powers. It must be realised that in democracies which are young, which are yet to gain experience times of grave menace to public tranquillity would require a steadying factor, a strong steadying factor, and the discretionary powers that are sought to be given to the Governor are only in times of grave menace to public tranquillity. If democratic institutions run their normal course if public tranquillity is not disturbed in a very serious manner, then there is no difficulty at all; the ministry will function. The Governor will step in only when there is a grave menace to public tranquillity. Then everything must be subordinated to the supreme need of public tranquillity in the province. At that stage the Governor who will have the added authority of being returned on the basis of adult franchise will step in and say "my first and last function is to restore peace and tranquillity". This country has suffered immensely by the failure of the supreme authority in certain provinces to exercise their power in moments when public tranquillity has not only been threatened, but has been destroyed. It is only for that contingency that the discretionary power is given. Till that event, which will be very rare—let us hope it will never occur at all—the ministry will function as a responsible ministry and there is no reason why these amendments should be accepted by the House.

Shri Phool Singh (United Provinces : General): *[Mr. President, after the speech of Mr. Munshi, I have not much more to say against these amendments except that the elections should not be held by proportional representation. Such a ministry can never be dubbed as a Coalition Government, which is always based upon a compromise between different parties, but when the ministry is elected by its own men on the votes of its own party, it rests with the ministers whether they act jointly or not. The proposal of Maulvi Aziz Ahmad Sahib and the amendment of Begum Sahiba have filled in the gap, if any. That is, if ministers, so elected, take to quarrelling among themselves, and the actions of one are negated by the other, then the legislature would not have even the power of removing such ministry. In other words, ministers may do good or evil but they would continue for the full term of the legislature. This is something beyond my comprehension. As I have said earlier, I do not wish to waste any more time of the House. Party government may be a progressive government. Coalition Government may be suitable for any particular objective, but a Government which is neither a party government nor a Coalition Government cannot fulfil any object, rather it can succeed in defeating it. I do not hesitate to say that such a government can be of no use to any country. I dare say that the movers of these amendments have taken their "clue" from the present Interim Government.

If we do not want to entangle the provinces in the difficulties of which this Interim Government has been the victim, then it becomes the duty of each one of us to vehemently oppose these amendments. There is no time to be lost in such foolish experiments. We have had enough of sacrifices, and now it is only the party government which can be beneficial for this country. With these words I oppose both these amendments.]*

*[English translation of Hindustani Speech begins.

] *English translation of Hindustani speech ends.

[Mr. Phool Singh]

Mr. Shankar Dattatraya Deo (Bombay: General): I move closure.

Mr. President: I have the names of half a dozen of more members who have expressed their desire to speak.

Many Honourable Members: Closure, closure.

Mr. President: But if the House wishes to close the discussion, I shall have no objection. There is a motion for closure. I cannot make an exception in favour of one member. There is a closure already moved. I put the motion for closure.

The motion was adopted.

The Honourable Sardar Vallabhbhai Patel: Sir, this innocent clause has covered a very wide and controversial field of debate and yet I think appetite of some of the speakers has not been satisfied. I thought that this would be passed without any debate. The principal amendment which has been suggested would cut at the root of the whole structure of the constitution. We have adopted the British parliamentary model—cabinet system—in this model provincial constitution. The Mover of the amendment contemplates a different model which would, if passed, probably, require us to reconsider the whole constitution. It has been suggested that during the last few years we have considerable experience of the present type of constitution. I do not know whether that is a correct statement of fact, because the constitution under which we were working was a complicated constitution in which the elective system, the services, the Governor's powers, the checks and counter-checks provided in the constitution were such that when the constitution was passed, it was suggested in the debate that it was humanly impossible to work that constitution and even the angles would fail. In spite of that they worked that constitution. The difficulties experienced in the working of that constitution and the bitter experience which some of us had to go through was not due to this particular system of selection of ministers or the prime minister being authorised to select his ministers but to various other causes which need not detain us. I have no intention of touching upon those questions. Somehow or other, some speakers have touched on that question, but I do not propose to enter into that controversy. Election by proportional representation of ministers is a system which is contrary to the whole framework of this constitution. It cuts at the very root of democracy and therefore does not fit in here. The experience which we would gain in the working of such a constitution would be much worse than the experience that we have gained in the working of the present constitution. Therefore, I suggest that it is a very dangerous innovation to introduce in this constitution and we should not have it here.

Then, the question of the electorate, separate or joint, and other questions are to be considered by separate committee, as I have already explained in my introductory speech. Therefore, I do not propose to touch on those questions.

It has been suggested that the Governor has got very wide powers I do not think that in this constitution, the Governor has got such wide powers as under the present constitution the foreign Governors have got. The present constitution was such that we had not only no elected Governor, by adult franchise, representing the will of the people, but a foreign Governor with an Instrument of Instructions, designed to protect

foreign interests. The experience derived from the working of that constitution cannot be compared with the constitution that we have proposed here. Whether in the working of this constitution that we propose we will have pleasant experience and smooth working or not, will depend much upon the manner in which we work the constitution. Constitutions are always broken by the people who have got a desire or a will to do so. We are not wanting in instances where if the constitution was worked in such a manner that a Prime Minister or a Minister was found irremovable by a vote of the House, he could be removed by the bullet. So, it is no use saying that an irremovable executive will be safe. If the irremovable executive functions in such a manner, then the want is real goodwill to work a good constitution and a spirit to work any constitution that you have got.

Here, we have contemplated collective responsibility, joint responsibility. Any election of Ministers by the method suggested by the Mover of the amendment would mean individual responsibilities and individual Ministers who would go their own way. Each Minister has only to work for five, seven or ten votes which he can probably obtain by means which may not be very desirable and the whole machinery would be liable to be corrupted. Therefore, I purpose that the motion that I have moved should be adopted.

I do not wish to deal with the other amendments because they are contrary to the main amendment, as has been already explained by some of the speakers and therefore, the amendments should be rejected and the proposition that I have moved should be accepted.

Mr. President: It has been moved:

“That the Governor’s Ministers shall be chosen and summoned by him and shall hold office during his pleasure.”

To this an amendment has been moved that for Clause 12 the following be substituted:

“The Governor’s Ministers shall be elected by members of the Provincial Assembly by the system of proportional representation by single non-transferable vote.”

There are two amendments to this amendment. The first amendment is that at the end of the amendment to Clause 12 by Mr. Aziz Ahmad Khan (Item 57), the following words be added.

“and shall be responsible to the Provincial Legislature.”

The second amendment is that at the end of the amendment moved by Mr. Aziz Ahmad Khan to clause 12 (Item 57), the following be ended:

“and shall hold office during the life of the Assembly.”

The procedure which I propose to follow is, in the first instance to take vote on the amendments to the amendment. If any of these two amendments is accepted, that becomes the principal amendment. Then I shall put to vote the amended amendment and if it is accepted, it becomes part of the clause. Then, I shall put the clause as amended before the House.

I now put to vote the amendment to the amendment, namely that the following words be added at the end of the amendment:

“and shall be responsible to the Provincial Legislature.”

The amendment was negatived.

Mr. President: I now put to vote the second amendment to the amendment, namely, that the following words be added at the end of the amendment:

“and shall hold office during the life of the Assembly.”

The amendment was negatived.

Mr. President: I now put the original amendment of Mr. Aziz Ahmad Khan to vote.

The motion was negatived.

Mr. President: I now put the original clause to vote.

The motion was adopted.

Mr. President: We will now go to Clause 13.

CLAUSE 13

The Honourable Sardar Vallabhbhai Patel: I move Clause 13.

“13. (1) A Minister who for any period of six consecutive months is not a member of the provincial legislature shall at the expiration of that period cease to be a Minister.

(2) The salaries of ministers shall be such as the Provincial Legislature may from time to time by Act determine, and, until the provincial legislature so determine, shall be determined by the Governor:

Provided that the salary of a Minister shall not be varied during his term of office.”

This is a proposition which is hardly controversial and I do not think there will be any debate on it. I move this proposition for the acceptance of the House.

Mr. President: There are several amendments of which I have received notice. I will call on the Movers to move their amendments.

(Messrs. R. K. Sidhwa, V. C. Kesava Rao and H. V. Pataskar did not move their Amendments Nos. 59, 60 and 61.)

Mr. R. K. Sidhwa (C. P. and Berar: General): My amendment No. 62 states that the salary of the Ministers shall not be more than the Governor's salary or even the same as the salary of the Governor. It is very appropriate that we passed yesterday that the Governor should be elected on adult franchise and also that he should be given some powers. Therefore, he will be the first citizen of the province and his dignity should certainly be considered to have increased. Therefore it is desirable that the Ministers' salary should be less than the salary of the Governor. I am told that this is a very healthy amendment, but it would not be proper to put it in the constitution. Therefore, Sir, I do not move it.

(Mr. Biswanath Das' amendment was not moved.)

Mr. President. These are all the amendments of which I have received notice. The original proposition is now open for discussion. Those who wish to say anything on it will do so now. (*After a pause*).

No one wishes to say anything. I now put it to vote.

Clause 13 was adopted.

Mr. President. We go to Clause 14.

CLAUSE 14

The Hon'ble Sardar Vallabhbhai Patel : Sir, I move that:

“In the appointment of his ministers; and his relations with them, the Governor shall be generally guided by the conventions of responsible Government as set out in Schedule..... ; but the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with these conventions.”

Now a Schedule according to the traditions of responsible Government will be framed and put in. This also is a non-controversial thing and I move the proposition for the acceptance of the House.

Mr. President: I have received no notice of amendment to this clause. I shall put it to vote, unless any member wants to speak.

B. Pocker Sahib Bahadur: On a point of order. Is it not necessary that the Schedule should be before the House before this clause is passed.

Mr. President: The idea is that the Drafting Committee will prepare the Schedule and it will come before the House. This is only to lay down the principle here.

B. Pocker Sahib Bahadur: The clause refers to a Schedule and in the absence of the Schedule, are we in order in passing the clause with reference to a Schedule which we have not seen?

Sri M. Ananthasayanam Ayyangar: Sir, when we pass this clause, we only approve of the principle that a number of things may be regulated by convention. That is all that is now put before the Assembly. So far as the schedule is concerned, it is open to some members to object that there should be no convention whatever. But the object here is that the conventions may be changed from time to time according to the exigencies and in the light of experience; otherwise we can say later on that it is a cumbersome or a lengthy procedure and we can modify the constitution as a whole. It is intended that the schedule may be modified even without the modification of the constitution. So far as the conventions are concerned, the schedule will certainly be placed before the Assembly and there will be opportunity for the members to strike out or add anything. At this stage the object is to ask the acceptance of the House for the principle that some conventions are to be put there in the form of a schedule which may be modified in the light of experience. The schedule will not be passed without the knowledge of the Assembly.

Haji Abdul Sathar Haji Ishaq Sait (Madras: Muslim): I do not think the argument that my friend has raised can be accepted. If we pass this clause just as it is, it means that we pass the schedule also. The schedule is mentioned there. I say if somebody wants to write down a schedule and attach it, it certainly will mean that the schedule has been passed. It is alright when he says it will be brought here. There is nothing to prevent somebody to write down a schedule and attach. That is why I suggest, that the schedule should not be mentioned at all. The sentence runs like this:

“In the appointment of his ministers and his relations with them, the Governor shall be generally guided by the conventions of responsible Government.”

Stop there. Do not mention ‘as set out in the schedule’. Then you go on to say:

“but the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with these conventions.”

Do not mention the schedule at all. When it is ready it can be placed before the House so this difficulty can be obviated and I suggest that this should be done.

Mr. M. S. Aney (Decan States): Mr. President, Sir, I really find it somewhat difficult to support the proposition as it stands here. It is an accepted rule that any proposition that is put before the House for consideration should be self-sufficient and self-explanatory. It must explain what it means and it should not stand in need of something else to be found somewhere and not placed before the House. I know what is wanted is that there should be a recognition to the principle that certain conventions

[Mr. M. S. Aney]

have to be observed but you cannot put the proposition before the House and say 'I want the consent of the House that certain conventions will have to be observed in connection with the relation between the Minister and the Governor and so on'. The word 'certain' makes the whole thing ambiguous and an ambiguous proposition cannot be put before the House. That is the difficulty. Therefore, the best thing would be, and it would not be difficult to get the consent of the House when the schedule will be properly prepared, that the schedule may be attached to this and then the proposition can be brought at a later stage. Then it will be complete in itself and I do not think this House, after reading the schedule, will find it difficult to give its consent but to put the proposition as it is to ask them to sign what may be called a kind of black cheque. What that schedule will contain we do not know. It is stated here that the present Instrument of Instructions will take the place of this schedule. I do not know whether the Committee sitting there will consider all the conditions contained in the present Instrument of Instructions. That has yet to be considered. The Committee was appointed to draft this Report and I think the Committee must have considered even the Instrument of Instructions. If it was satisfied with that, it would have added it as a Schedule. The very fact that that is not done means that the Committee did not think it worth while to embody the whole thing as it is and if that is so, we do not know what part of that Instrument of Instructions is going to be added.

Under these circumstances, this proposition means nothing more than taking the consent of the House to the conventions which at present are supposed to be Contained in the Instrument of Instructions. The draft to be prepared by the Committee is, of course, not known to this House. It is therefore unfair to the House to be asked to give its consent to the proposition as it stands. I therefore submit that it is better if the Honourable mover will withdraw this proposition for the present and reserves his right to bring in the proposition for consideration when the schedule is completed.

Mahboob Ali Baig Sahib Bahadur: Sir, this Clause 14 does not provide for the Schedule to which it refers, to come before this Assembly. It simply states:

"In the appointment of his ministers and his relations with them, the Governor shall be generally guided by the conventions of responsible Government as set out in Schedule....."

Therefore, in the first place, there is no guarantee that this Schedule will at all come before us. Further, in the margin, it is noted that the conventions of responsible Government should be observed. We should at least know what are the conventions and the conventions of which Government are to be observed. Are they to be conventions of the Swiss Government or the British Government or the conventions established by Indian Governments? Or are they to be conventions that may be established hereafter?

Further, in the note it is stated:

"Schedule..... will take the place of the Instrument of Instructions now issued to Governors."

We find there is no definiteness about the whole thing. We are asked to vote upon or to consider a question, the most important and most relevant part of which—the Schedule—we are not aware of. And what is more, there is not even the guarantee that this Schedule will ever come before us. I submit, Sir, that it is not fair that we should be asked to consider such a question at this stage. I submit that this clause may be

taken up after the Schedule has been prepared. As it is, we are not told that the Schedule will be the same or similar to the Instrument of Instructions; if we had been told that, then there would have been some guidance for us. We could at least have referred to the instrument of Instructions, and there might have been something definite to go by. Members who have the necessary patience, could have gone through the Instrument of Instructions and helped in the discussions. But as it is, the present proposition is bad because of its indefiniteness and it is vague, and also it is not self-contained and self-explanatory, as my predecessor has submitted.

Dr. P.S. Deshmukh (C. P. and Berar : General): Sir, I think there is considerable substance in the objections that have been raised against the clause as it stands. It is impossible to pass it in the shape in which we find it. We cannot possibly agree to the clause even as a matter of principle, without the Schedule being there. But this does not mean that the whole clause should be withdrawn or brought before this Assembly on some other occasion, as suggested by Mr. Aney. I suggest that the omission of a few words near about the word "Schedule" may meet the situation. We could say:

".....conventions of responsible Government as may hereafter be set out...."

If this suggestion is accepted the consequent change in the wording is very little. This, I think, will meet the situation completely, and we will not then be forced to the position of having to agree to a Schedule which is not before us. This will also provide that hereafter, whatever we may like to have in the Instrument of Instructions shall come before us, and then there will be ample opportunity, to consider them. This slight amendment that I have suggested, will, I think, meet the objections that have been raised here. Without it, we are entitled to object to it. We should not I think, Sir, permit anything so vague and uncertain as the present proposition to pass.

Rai Bahadur Syamanandan Sahaya (Bihar : General): Sir, I do not see where is the indefiniteness about the proposition contained in Clause 14, which we are discussing now. While introducing this Report, the Honourable Mover made it quite clear that the purpose generally was to get the House to accept the main principles on which the Provincial Constitution will be framed. So far as this particular clause is concerned, it is clearly laid down that the Governor shall be generally guided by the conventions of responsible government as set out in Schedule so and so. Then it goes on further to say that the Schedule so and so will take the place of the Instrument of Instructions now issued to Governors. Now, Sir, this Instrument of Instructions is already in existence and those of us who have gone through these instructions will agree that there are directions in it as to how Ministers are to be chosen. It is all in the Act of 1935. (*An Honourable Member*: "That Act is not before the House.") It is not a question of the Act being before the House or not. The purpose of this Report is only to lay down the general principles and is intended to ascertain the wish of the House with regard to them. We can later raise the point whether they are a departure from. We can later raise the point whether they are a departure from the existing ones. But as long as we accept the proposition that the majority party must be called upon to form the Ministry, I do not think there is any objection to our considering this Clause 14.

B. Pocker Sahib Bahadur : Sir, I wish that this House is taken more seriously than for its sanction, saying that the Schedule will come later and asking for its sanction, saying that the Schedule will come later on, I think, the matter is not given the seriousness that it deserves. I know there are matters in which this House is not taken seriously because we are here asked to sit down and listen to speeches which we do

[B. Pocker Sahib Bahadur]

not understand and are asked to pass things which we do not understand. In the same manner this clause has been brought here and we are told that the schedule will be coming later on, but the clause may be passed. Even the Mover of the motion does not know what the Schedule is. I say this is absolutely irregular, and it is for you, Sir, to rule it as out of order.

I would just refer to two suggestions made by two members. One is by Mr. Haji Abdul Sattar, to remove the word Schedule, and retain the word conventions. But without knowing what the conventions are, and their nature, it will be absolutely improper and irresponsible for this House to pass this clause. The same remark applies to the modifications suggested to this clause by the previous speaker. I would therefore appeal to you, Sir, as President of this House, to protect the honour and self-respect of this House by acceding to the request of Mr. Aney to adjourn consideration of this clause.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir we are asked in short to agree to a Schedule that is not in existence, one of the speakers has pointed out that the Schedule will be on the lines of the Instrument of Instructions to follow. But the Note, to the clause if I may be permitted to refer to it, merely says that the Schedule will take the place of the 'Instrument of Instructions'. There is no indication that this Schedule will be on the lines of the Instrument of Instructions, or will be similar to it. I submit, Sir, that it will be asking the House to agree to something which is undefined and unknown. It will be just like asking a bridegroom to agree to go through a marriage ceremony without the bride being present or even being known, on the promise she will be found and selected later.

Prof. Shibban Lal Saksena (United Provinces: General): Sir, already the House has passed sub-clause (3) of Clause 6 which mentions a Schedule which is not reproduced there. Nobody raised any objection at this time. Besides, the Honourable Mover said at the very beginning that these are only principles to be accepted and the details will follow later. So I do not think there is anything to object to in the clause. We should not waste the time of the House in raising such frivolous objections.

Shri Mahavir Tyagi (United Provinces: General): Sir, I think Honourable Members on both sides have made out a good case. In the absence of the Schedule which will take the place of the Instrument of Instructions now issued to Governors I think the proposal is incomplete. We must consider a complete proposal. I therefore submit that the Mover, Sardar Patel, may be pleased to tell us if any Instrument of Instructions have been "now issued to the Governors". The word "now" introduces, a new complication. I know the Instrument of Instructions issued to Governors before the popular ministries came into power in 1937. Is that what is referred to or has any new Instrument of Instructions been issued to Governors now with the change of Government? The word "how" seems to show that some new Instrument of Instructions may have been issued, though I have heard of none. I think the old one is meant here, and the word "now" has either crept in by chance or perhaps I am reading a wrong meaning into it. Anyway in the absence of details as regards the Instrument of Instructions it will be not proper to pass this as it is. My proposal therefore is that we should pass the proposal but not the note below it, and in place of this note we may say that the Schedule will be considered later. Since we are passing only the principles of our provincial constitution we can say that the Governors will have such and such powers as are mentioned in the Schedule, and of course the Schedule part of it we can consider later. No Schedule will be a regularly

recognised schedule unless it is passed by this House. And that we can consider afterwards. But we can give these powers to the Governor and we do not complete that here; we will say that the Schedule will follow. So I think we can pass this *minus* the note which may be taken out and another note may be substituted or the whole clause may be postponed. I think my friends are right when they ask to give your ruling. It is no part of the Mover's duty to withdraw or to press the motion. It is a point of order which you have to decide, whether in the absence of the Schedule it will be fair for the majority in the House to press this to a vote, because the House will have to vote without knowing the exact words of the Instrument of Instructions. I therefore submit that you, Sir, will have to decide this point of order.

Mr. President: I have said on a previous occasion when a question was raised with regard to these notes that these notes were not formally put to the House and they were not accepted by the House. They were only intended to give an indication of the meaning of the clauses that were moved and we need not in any way be bound by what is contained in the notes. The clauses have therefore to be considered on their own merits without reference to the notes.

An Honourable Member: It is not the note; it is the clause itself.

Shri Raj Krushna Bose (Orissa : General): Sir, since we have heard so many objections to the passing of this clause and since there is some force in many of these objections I suggest that the Schedule should not be passed without the contents being known to the House. I submit therefore that, as we did in the case of Clause 8, this clause also may be referred back, redrafted and brought up tomorrow before the House so that the objections raised by the dissentient members may be met.

The Honourable Sardar Vallabhbhai Patel: Sir, I am afraid the preliminary observations, that I made while moving my motion for consideration of this memorandum have not been followed; otherwise, I do not see any point in the objection that has been raised. I said more than once that this memorandum contains only the principles and if these principles are adopted the drafting will take place afterwards. It has been suggested that there is no guarantee that the Schedule will come. There is as much guarantee about it as the guarantee that the House will meet tomorrow. The clause says that there will be a Schedule; and that will come afterwards when the whole thing is ready. The Schedule will accompany the draft that will be put before the House when there will be ample opportunity to scrutinise the Schedule, to add to it or modify it. I do not see how this principle can be called imperfect, you have to adopt a principle which is perfect in itself as the clause stands. Now you cannot have a guarantee for everything; this is a very simple thing and there can be no guarantee for it. One Honourable Member said that the House should be taken seriously. I think the debate should be taken more seriously. And if the debate had been followed more seriously I think all this debate on this clause would not have taken place. It is a simple proposition in which it is stated that the Governor will follow the conventions and for that a Schedule will be put hereafter. You know that the Governor is liable to impeachment and he must know that he acts under a specific responsibility and he will know his duties. Therefore, the Schedule must contain the specific duties that he has to perform. Therefore what the conventions are should be specified fully and in detail. When fixing these general principles we have not gone into the details of these conventions and therefore they will follow later, when you will have ample opportunity to discuss them. I see no reason why this clause should now be postponed at all. The note does not form part of that clause: it is only an explanation which you can ignore you need not take it into account at all.

Shri Mahavir Tyagi: Now that the note stands cancelled there is no point of order, as the misunderstanding was due to the note.

Mr. President: As a matter of fact, no note which is contained in these papers forms part of the resolution before the House.

The question is:

“That Clause 14 be passed.”

B. Pocker Sahib Bahadur: Sir, I made a request to you on this matter. The question that I raised was as a point of order and it is your duty to give a ruling as to whether this motion is in order or not. I want a ruling from you on this point before you put the clause to vote.

Mr. President: I do not think any question of a point of order arises. The question has been put.

The motion was adopted.

The Honourable Sardar Vallabhbhai Patel: Sir, I seek your permission that Clause 15 do stand over until such time as Clauses 20 and 22 are considered, because it would be more appropriate to take it at that time. I therefore ask your permission that Clause 15 stand over.

Mr. President: Clause 15 shall stand over.

The Honourable Sardar Vallabhbhai Patel: Sir I move Clause 16.

“(1) The Governor shall appoint a person, being one qualified to be a judge of a High Court, to be Advocate-General for the Province to give advice to the Provincial Government upon legal matters.

(2) The Advocate-General shall retire from office upon the resignation of the Prime Minister, but may continue to carry on his duties until a new Advocate-General shall have been appointed.

(3) The Advocate-General shall receive such remuneration as the Governor may determine.”

(Messrs. P. Kakkan, M. Ananthasayanam Ayyangar, H. V. Pateskar K. Santhanam and Gupta Nath Singh did not move their amendments.)

Mr. President: The question is:

“That Clause 16 be passed.”

The motion was adopted.

CLAUSE 17

The Honourable Sardar Vallabhbhai Patel: Sir, I beg to move Clause 17:

“All executive action of the Government of a Province shall be expressed to be taken in the name of the Governor.”

This is only a formal motion and I move it for the acceptance of the House.

Sri M. Ananthasayanam Ayyangar: Sir, I do not propose to move my amendment.

Mr. President: The question is:

“That Clause 17 be passed.”

The motion was adopted.

CLAUSE 18

The Honourable Sardar Vallabhbhai Patel: Sir, I beg to move Clause 18:

“The Governor shall make rules for the more convenient transaction of the business of the Provincial Government and for the allocation of duties among Ministers.”

(Messrs. Kala Venkata Rao, M. Ananthasayanam Ayyangar and R. K. Sidhwa did not move their amendments.)

Mr. President: The question is:

“That Clause 18 be passed.”

The motion was adopted.

The Assembly then adjourned till 3 p.m. on Friday, the 18th July 1947.

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 18th July 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at 3 p.m., Mr. President (The Hon'ble Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The following Member presented his Credentials and signed the Register :

Dr. Raghunandan Prasad (Bihar: General).

REPORT ON THE PRINCIPLES OF A MODEL PROVINCIAL CONSTITUTION-*Contd.*

Mr. President: The House will now proceed with the consideration of Clause 8 which was passed over yesterday.

Mr. H. J. Khandekar (C. P. and Berar: General): *[Mr. President, Guru Agam Das, one of the members of C.P., is a member of the Constituent Assembly. He has not received the notice of this session as yet. The reason is that the address which has been given in the list is wrong. He lives in Raipur District, but Bilaspur District has been mentioned in the list. He has not received the letter by now.

I would request the President to issue him the notice of this session by telegram.]*

Sir B. L. Mitter (Baroda State): Mr. President, you appointed a Committee to examine Clause 8 of the Provincial Constitution. The Committee have unanimously made a Report⁺ and they have re-drafted that clause in these terms :

“It shall be competent for a Province, with the previous sanction of the Federal Government, to undertake, by an agreement made in that behalf with any Indian State, any legislative, executive or Judicial functions vested in that State, provided that the agreement relates to a subject included in the Provincial or Concurrent Legislative List.

On such an agreement being concluded, the Province may, subject to the terms thereof, exercise the legislative, executive or judicial functions specified therein through the appropriate authorities of the Province.”

*[]*English translation of Hindustani speech.

⁺Appendix.

[Sir Brajendra Lal Mitter]

Sir, I will say a few words in explanation. It is well-known that the authority of a provincial government, whether executive, Judicial or legislative, cannot extend beyond the boundaries of the province; that is to say there is no extra-territorial authority vested in any province. This clause gives a province extra-territorial jurisdiction by agreement with a State. The reason for it is this: Suppose a very backward State adjoining a province has some executive or judicial functions but has no machinery to exercise those functions. Then it can come to an agreement with a neighbouring province so that the machinery of the neighbouring province may be available to that backward State for the benefit of both. But it may be that such an agreement, if made between two parties, may act prejudicially to a third State or a third Province, and in order to safeguard against that possible risk, the words "with the previous sanction of the Federal Government" have been inserted, so that the Federal Government will know that here is an agreement between a province and a State and that the agreement is beneficial to both and injurious to none, before the Federal Government gives its sanction to the agreement. By this draft the authority of a province is extended beyond its territorial jurisdiction. The redraft has been necessary by reason of some objections raised by Sir Alladi Krishnaswami Ayyar which were found to be valid objections. I hope this redraft avoids all ambiguities. Sir, I move.

Mr. President: Does anyone wish to say anything about this clause?

Sir Alladi Krishnaswami Ayyar (Madras: General): I gave notice of an amendment.

Mr. President: There is an amendment by Mr. Gupte to be moved, I will give you an opportunity, Sir Alladi.

Mr. B. M. Gupte (Bombay: General): I beg to move that the following new clause.....

Mr. President: Sir Alladi Krishnaswami Ayyar, you wanted to speak about the resolution. I thought Mr. Gupte's was an amendment but it is altogether a new proposition.

Sir Alladi Krishnaswami Ayyar: Mr. President, Sir, in supporting this amendment, I just want to make a few observations. I gave notice of an amendment substantially in these terms. The Committee that was appointed by this House was pleased to substantially adopt that amendment with the modification that the consent of the Central Government should be obtained. Now, as this House is aware, there are quite a large number of minor or small States spread over India which may find it difficult to provide adequate or efficient machinery for the exercise of certain administrative or judicial functions. So, in the interests of both economy and efficiency, it is but fit and proper to provide that the neighbouring provinces should be in a position to undertake the exercise of certain administrative and judicial functions of these States under arrangements entered into with them and to give legal sanction to such arrangements. From the very nature of things, the provinces can not undertake functions different from the normal functions vested in them as units of the Indian Union. Accordingly, the clause provides for the exercise only of functions vested in the provinces under the Provincial and Concurrent list. In view of the importance of the task undertaken and the relation of the provinces to the Indian Union, provision is made for obtaining the previous sanction of the Union Government. It is hoped that when the Constitution is finally settled, the Union Constitution may also provide for the government of the federation exercising plenary jurisdiction in territories ceded to, or coming under the

control of, the Union Government, similar to the jurisdiction exercised by the agencies of the British Crown under the British Foreign Jurisdiction Act. The provision now inserted is, of course, without prejudice to any such general provision being made.

I might mention, Sir, that some suggestion has been made in certain quarters that provision may also be made for provinces ceding jurisdiction to the States. We are not dealing with States constitution, but when the States come into the Union, in regard to any outlying tracts I have no doubt that this Assembly will favourably consider any such suggestion and see if it is possible to concede any jurisdiction in regard to any outlying tracts in favour of States which are in a position to undertake that responsibility.

With these words, I beg to support the resolution before the House moved by my Honourable friend, Sir B. L. Mitter.

Mr. A. P. Pattani (Western India States Group): Mr. President, Sir, I was not able to hear quite clearly what the Honourable Member said but I understood him to say that outlying tracts of British Indian territory falling within the area of an Indian State should similarly come under the jurisdiction of that State with the permission of the Central Government. Such acquiring of jurisdiction should not be only one-sided. I believe there will be in time to come during the discussions, over the federal constitution something in the shape of a constitution for groups of States, but part from that what I wish to say now is that it should be possible for a State which is able to exercise functions on behalf of a province to obtain those powers under agreement with a provincial government and with the consent of the federal authority.

Sir B. L. Mitter: Mr. President ; this question of reciprocal arrangement between a province and a state was considered by the committee appointed by you and the committee came to the conclusion that since they were dealing with the provincial constitution, jurisdiction of States would be inappropriate in that place. It was decided that we should say nothing about the reciprocal arrangement at this stage. Then the question arises at what stage or in what place this reciprocal arrangement could be made. Well, there may be various answers. If any acceding States are intended to be given extra-territorial jurisdiction over any tract which is now British India, then by means of a similar clause, that is with the consent of the Union Government, an arrangement may be made between a State and a province giving the State extra-territorial jurisdiction over that tract. The State itself in its own legislature may make such law. This point has not been over-looked and I hope this House will agree to a reciprocal arrangement being made in favour of a state as it is now asked to make in favour of a Province.

Mr. President: The question is that Clause 8 be redrafted as follows:

“8. It shall be competent—for a province, with the previous sanction of the Federal Government, to undertake by an agreement made in that behalf with any Indian State, any legislative, executive or judicial functions vested that State, provided that the agreement relates to a subject included in the Provincial or Concurrent Legislative List.

On such an agreement being concluded, the Province may, subject to, the terms thereof exercise the legislative, executive, or judicial functions specified therein through the appropriate authorities of the Province.”

The motion was adopted.

Mr. B. M. Gupte : Sir, I beg to move that the following new clause be added after Clause 8 as proposed by the *ad hoc* Committee appointed to redraft the clause.

“8-A. Subject to the provisions of the Constitution, and of any special agreement referred to in Clause 8, the executive authority of each Province, shall extend to the matters, with respect to which the Provincial Legislature has power to make laws.”

The *ad hoc* Committee that was appointed to redraft this clause has put forward its report and we have just adopted that clause as clause 8 as redrafted by the Committee. The original clause 8 referred to ‘executive authority’, but unfortunately through oversight the redraft failed to incorporate that portion of it as it stood originally. Therefore my amendment supplies that deficiency. The redraft as it is now passed refers only to the special agreement; while this new clause includes the executive authority of the province. I therefore command my amendment for acceptance; because it actually supplies only a deficiency acceptable to the Committee and, I am sure, the Mover.

The Honourable Sardar Vallabhbhai Patel (Bombay: General): I accept the amendment moved by Sir B. L. Mitter and the addition moved by Mr. B. M. Gupte because in the original clause there was a reference to agreement which now has been specified by the amendment of Sir B. L. Mitter, But the original clause must remain. Therefore Mr. Gupte has moved that the additional clause may be added after Sir B. L. Mitter’s amendment. Therefore, I accept Sir B. L. Mitter’s amendment as added to by Mr. Gupte.

Mr. President : Does anyone wish to speak about the amendment to this clause moved by Mr. Gupte?

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I do not think this amendment is necessary. The matter should, if necessary, be inserted in the Provincial or Concurrent Legislative Lists. To the extent as may be provided in this Legislative List the authority of the province regarding legislative and executive action would be complete. If there is any lacuna here, it is a matter for amendment of the Legislative Lists. There is no need, in my humble judgment to adopt a clause like this. I only make this submission to the House so that the same may be considered, and if necessary, it may be passed, but if unnecessary, it should not be passed.

The Honourable Sir N. Gopaldaswami Ayyangar (Madras: General): It seems to me, Sir, that a word of explanation is necessary, particularly with reference to the remarks made by the last speaker. He seemed to think that this amendment which has been numbered as Clause 8-A would be unnecessary. I should say, Sir, on the contrary it is very necessary for this reason. We no doubt distinguish between the powers of the federation and of the units in the constitution. Those powers refer only to legislative powers. Legislative powers are divided between the Centre and the units but we have got also to define the scope of the executive authority of the province. We shall define it in the case of the federation also. Unless we say that the executive authority of the province will, subject to the exception mentioned here, be co-extensive with the legislative authority of the province, we shall, not be indicating how far executive action can go at all. I therefore think, Sir, that it is a very necessary amendment.

Sir B. L. Mitter: Sir, I think there is a certain amount of confusion in the minds of some members. When I said that we had re-drafted this clause, that re-draft refers to the extra-territorial part of the jurisdiction. But the main clause deals with the normal territorial extent of provincial jurisdiction. You must say somewhere in the constitution on what matters or within what territorial limits the provincial government has to function. Clause 8 says:—"Subject to the provisions of this constitution and of any special agreement, the executive authority of each province shall extend to the matters with respect to which the Provincial Legislature has power to make laws". Now, we know that under the 1935 Act, the provincial jurisdiction extends over the provincial list and the concurrent list and not on the federal list. Here also it is said, "with respect to which the Provincial Legislature has power to make laws". That is so far as the subject matter jurisdiction is concerned. There must be some territorial jurisdiction also. It is stated that the territorial jurisdiction of the executive power is coterminous with that of legislative power. We have to have territorial limits of provincial jurisdiction as well as subject jurisdiction. Therefore, this is necessary. What I moved in the first instance was with regard to the extra-territorial jurisdiction of a province. Therefore, I submit, Sir, that it is necessary to have Clause 8 as printed, in the constitution.

Mr. President: I do not know if there was any misunderstanding in the minds of the members when the clause was put to vote. I take it that what Sir B. L. Mitter means is that the clause as it stood in the original should remain there and what he has moved today must be added to it. All the three clause are to remain.

Gupte wants to replace the original Clause 8? I see.

I will put the clause just now moved by Mr. Gupte to vote.

Clause 8-A was adopted.

Mr. President: We will now pass on to Chapter II. We left over Clause 15. Are we ready ?

The Honourable Sardar Vallabhbhai Patel: No.

Mr. President: We will then go on with Chapter II—Rule 19.

CHAPTER II—RULE 19

The Honourable Sardar Vallabhbhai Patel: I move:

"19. (1) There shall for every province be a Provincial Legislature which will consist of the Governor and the Legislative Assembly; in the following provinces, there shall, in addition, be a Legislative Council."

I would suggest, Sir, that so far as the Upper House is concerned, we shall have to consult the leaders of the Provinces to settle amongst themselves as to what provinces require a Second Chamber and request you, Sir, to appoint a Committee of the Provincial Premiers to meet and give us a list so that the list may be added hereto.

"(2) The representation of the different territorial constituencies in the Legislative Assembly shall be on the basis of population and shall be on a scale of not more than one representative for every lakh of the population, subject to a minimum of 50 for any province.

The election to the Legislative Assembly shall be on the basis of adult suffrage, an adult being a person of not less than 21 years of age.

(3) Every Legislative Assembly of every province, unless sooner dissolved shall continue for four years from the date appointed for its first meeting.

[Sardar Vallabhbhai Patel]

(4) In any Province where the Legislature has an Upper House, the composition of that House shall be as follows :

- (a) The total numerical strength of the Upper House should not exceed 25 per cent. of that of the Lower House.
- (b) There should be within certain limits functional representation in the Upper House on the lines of the Irish Constitution the distribution being as follows:
 - One-half to be elected by functional representation on the Irish model;
 - One-third to be elected by the Lower House by proportional representation;
 - One-sixth to be nominated by the Governor on the advice of his Ministers."

I move this clause for the acceptance of the House. We have decided that there shall be a Legislative Assembly for every province and wherever there is to be a bicameral system, the provinces will give a list which will be attached here. At present, as you all know, there are about five or six provinces in which there is only one House such as Orissa, Punjab, Sind and the N. W. Frontier. In the other provinces there are two Houses. Now, the provinces of Bengal and the Punjab have been divided. It is a question whether in the small provinces or whether in Bengal when divided, we want an Upper House. We are concerned with West Bengal alone. It appears there is a big European representation which from August 15 will disappear.

The representation of the different territorial constituencies will be on a scale of not more than one representative for every lakh of the population. This may perhaps in some provinces be increased; where the Provinces are smaller, this proportion will be less. Therefore, we have fixed a minimum. A suggestion may be made for fixing a maximum also. Now, elections are to be held on the basis of adult franchise. We have already settled about that and the age limit is also fixed as 21 years. The life of the Legislature will be four years.

Wherever there is an Upper House, we have adopted the Irish model for the composition of the members; a proportion shall be by functional representation; one-half to be elected by such representation, one-third to be elected by the Lower House by proportional representation and one-sixth to be nominated by the Governor on the advice of his Ministers.

I move this proposition for the acceptance of the House.

Mr. President: I have got notice of a number of amendments. I request the members to move them one by one.

(Messrs. K. Santhanam, P. Kakkan and H. J. Khandekar (did not move their amendments.)

Saiyid Muhammad Saadulla (Assam : Muslim) : Mr. President, Sir, I beg to move:

"That in sub-clause (2) of Clause 19, for the word 'lakh' the words '2 lakhs' be Substituted; and

"That in sub-clause (2) of Clause 19, after the words 'any province', the words 'and a maximum of 300' be inserted."

My first amendment is only a means to an end and the end is to fix a maximum. A minimum has been suggested in the report. For smaller provinces, the recommendation in the report may work very well, that is, under the new constitution, representation should be one member for every lakh. But if we apply this principle to the bigger provinces, in my opinion, the legislative bodies will be so unwieldy

that work will suffer. Take for example the most populated of the Provinces, the United Provinces which have a population of more than five and half crores according to the census of 1941. If we are to give as recommended in this Draft Constitution one representative for each lakh, the House will have at least 550 members. We know that in every census the population in India increases on an average by 15 per cent. So after 1951 we will have increase this big number by another 15 per cent. or in other words, U. P. will have a Provincial Assembly of more than 600 persons. Well, the same will occur in the Madras Presidency which has now 49,300,000 population and so will have a House of 493. Even Bihar which has got a population of 36,300,000 will have at least 363 members in its Provincial Legislative Assembly. In my opinion, Sir, these are very substantial numbers. It has been the experience of almost everyone that the larger the number in a body the less the interest of parties concerned therein. In order to make these constitution of the provinces not unwieldy, I have proposed that a maximum should be fixed and the maximum should be 300. In the present constitution of 1935 we had adopted similar reduction and therefore there is nothing novel in my suggestion, *e.g.*, Bengal which till lately had a House of 250 members counted over 6 crores of people in the last census, Madras which now counts 49,300,000 people has a House of 216, U.P. 268, and Bihar 152.

There is another aspect to the same question. In the report or rather the Draft Constitution which is going to be placed before this Assembly for the Union Parliament.

“The House of the People, [it says in Clause 14 (1) (c) I shall consist of representatives of the people of the territories of the Federation in the proportion of not less than 1 representative for every million of the population and not more than 1 representative for every 750,000 of the population.”

Now, that the Indian Constitution will be functioning for a population of 30 crores, under this computation the House of the People will have a minimum number of 300 representatives and a maximum of 400. It is needless for me to emphasize that this National Assembly will be the centre of all political and executive authorities of the Federation of India. If we are satisfied with a representation ranging between 300 to 400, I think the Provincial Legislative Assembly which will be limited in its jurisdiction to the territories of the Unit only should not have a higher number of representation in their Assembly. It is for this purpose, Sir, that I recommend that as we have provided for a minimum of representation to 50 similarly we should provide a maximum also and according to my humble opinion, an assembly of 300 will give a wide scope for all provincial activities.

(Messrs. V. I. Muniswami Pillay, Gokulbhai D. Bhatt, R. K. Sidhwa, P. Khaitan, and H. J. Khandekar did not move their amendments.)

Mr. R. K. Sidhwa (C. P. and Berar: General): Sir, in the note to this clause you will kindly find a sentence as follows:

“There is to be no special representation in the Legislative Assembly either for universities, or for labour, or for women.”

So far so good. But no mention has been made regarding trade, commerce and industry. I have moved an amendment:

“That there should be no special representation to Trade, Industries or Commerce.”

I do not know whether this is an omission. If there is to be no special representation to any special interest, then I do not wish to

[Mr. R.K. Sidhwa]

move my amendment. I therefore desire that none of the interests will be given preference.

Mr. President: That is only a note. It is not a part of the clause.

Mr. R. K. Sidhwa: The intention of the Committee is indicated in this note. I entirely agree with what the Committee has stated because now everybody has to come from the front door having franchise extended to all interests and no special preference to any interest. I do not know why trade, commerce and industry have been omitted. I request that the Honourable Mover will please make it clear in his reply that all special representation will go away.

Mr. President: I take it, Mr. Sidhwa, that you have not moved your amendment because there cannot be an amendment to a note. Mr. Desai.

Shri Khandubhai K. Desai (Bombay: General): My amendment* is almost on the same lines as that of Mr. Sidhwa, and as I understand that hereafter we are going to have only territorial constituencies and there will not be any special constituencies, I do not wish to move my amendment.

Mr. President: Mr. Omeo Kumar Das.

Shriyut Omeo Kumar Das (Assam: General): Mr. President, Sir, I beg to move :

“That in sub-clause (2) of Clause 19, for the word ‘lakh’ the words ‘seventy-five thousand’ be substituted.”

Though my Honourable friend Sir Saadulla has moved an amendment to raise the scale of population from one lakh to two lakhs, I am sorry I have, coming from the same province of Assam, to differ from him. It is the universal demand in Assam that the scale of population in relation to the delimitation of the constituencies should be lowered to the figure of seventy-five thousand. As you may know, Sir, there are many backward communities in Assam, and these communities will have no chance of being elected in bigger constituencies. Many of us Congress-men, though we have not met in the Assam Provincial Congress Committee, have come to a decision about it. The President of the Assam Provincial Congress Committee has already, Submitted a memorandum to the Honourable Sardar Patel on this very point for his consideration. I trust the Drafting Committee which will be formed hereafter will also take this point into consideration.

I want to press before this House another point. The Honourable Sardar Patel has just now told us that Assam has no Upper House. In fact, we do have an Upper House which we want to abolish. We are almost unanimous with regard to this demand. We are not going to have any Upper House in future, which we have been having so long. It is but just and proper that the backward communities of our province should be given the chance of being elected to this only House. I mean the Lower House. I want to press before this House in particular that when you fix the maximum number of members for the legislature there can be no difficulty in the case of major provinces like Madras or U.P. of having unwieldy House by lowering the scale. This difficulty can be met by fixing the maximum,—as Sir Saadulla has already suggested limiting the maximum number to 300,—and to

*That at the end of the Note under Clause 19, the following be added:
“or for landholders, or for commerce and industry.”

my knowledge the Honourable Mover will accept this amendment. In view of this I think the House may have no difficulty in accepting my amendment.

With this I commend my motion for the acceptance of the House.

Mr. President: Rev. Nichols-Roy.

The Honourable Rev. J. J. M. Nichols-Roy (Assam: General): Mr. President, Sir, I beg to move my amendment which stands as follows:

“That the following proviso be added to sub-clause (2) of Clause 19:

‘Provided that in giving representation to any territorial area or areas inhabited by hill tribes, the Provincial Government may determine a lower basis of population than one lakh and the total representation of the Province shall be increased accordingly.’”

My reason for giving this amendment is this that the language of sub-clause (2) of Clause 19 seems to prevent any province from having a number of representatives in the Legislative Assembly that will be more than the proportional number of one man for every lakh of the population. If that is the meaning of the language of this clause, then it will be a real hardship on the people of the hills in Assam. In the hill areas of my Province we have large territories which are inhabited by a proportionately small number of people. For example, in the Lushai Hills we have an area of over 8,000 sq. miles, but inhabited by a people called Lushais—(they call themselves Mizoos)—numbering only a little over a lakh and a half. In one of the plains district, however, there is an area of about 3,800 sq. miles with a population of 12,54,000. This being so, if the basis of population of one lakh per-member is applied to the hill areas also, it will clearly be a great and terrible hardship to the people of the hills.

Then, Sir, there is another area—the North Cachar hills—with an area of about 2,000 sq. miles which is inhabited by hill tribes, with a population of only about 37,000. This morning just before we came here we got a letter from the people of that area saying thus :

“Going through the papers, I find that the Model Provincial Constitution Committee has recommended that representation to the Provincial Legislatures shall be on the basis of population of not more than one man for one lakh, subject to the minimum of 50. This, if adopted without a proviso for special cases, will permanently deny representation to North Cachar hills which has a population of only 37,000. To deny representation to a whole sub-division on the ground of population would be an injustice and even absurd.”

Sir, this is the feeling among the hill people of Assam, and it applies not only to this particular hill area, but it applies to all the hill areas in Assam.

Even now, Sir, there is representation to the Assembly of Assam from the hill areas with a much lower population basis than one lakh. There is an area represented by one representative, but having a population of only about 85,000; there is another with a population of about 70,000 sending one representative. Now, if this clause means that no representative can be sent from a territory which has a population of less than a lakh then it means that these constituencies will have to be abolished. When we are talking about the coming of freedom for India, these will mean slavery to the hill people which the hill people cannot accept as justice at all. Therefore, Sir, I request that the drafting of this clause should not prevent a lower basis of population in a province which needs such a lower basis of population for one member in the Legislature. I am told by someone that this clause probably allows all this.

[Rev. J.J.M. Nicholos-Roy]

It allows that a province should have representation between 50 and, if a maximum is put, 300 or 400. But it seems to me that the language may be interpreted in a different way altogether. If the interpretation is that a province is free to fix the number of representatives then it will be all right. But if it is fixed only on a basis of one representative for 1 lakh it will be a great hardship and its operation will work to the detriment of the people of the hills area. We must also consider the fact that there are some people in the hill areas of Assam now who want to be independent altogether and stand as a separate State, some who want to join Burma and some others who probably want to join Pakistan too. If this kind of representation be forced upon the hill people of Assam, it will help that propaganda and will cause a great deal of trouble to India. Therefore I would request that the Mover of the resolution may enlighten the House whether the province will be able to give representation on a lower basis to the peoples of the hill areas where in a large territory the population is small. And these territories are sources of potential wealth and are therefore very important to the province of Assam. If that is not considered it will be a great hardship indeed. Sir, I commend my motion for the acceptance of the House.

(Messrs. M. Ananthasayanam Ayyangar, Shibbanlal Saksena and Biswanath Das did not move their amendments.)

Mr. Lakshminarayan Sahu (Orissa: General): Mr. President, Sir I want to add a sub-clause at the end of sub-clause (1) of Clause 19: "Orissa may have an Upper House when Orissa States will join the Province of Orissa". Half of Orissa is practically Orissa States and there is a great prospect now that the Orissa States will be joined to the present political Orissa. As such, in order to bring about some good feeling among the Rajahs of the Orissa States I think an Upper House will be a great need in Orissa. That Upper House will act as a good check upon the democratic outbursts. They generally have the fear that there will be too much of democracy and that they will be swept away. Therefore I think there should be a definite sub-clause like this in Clause 19.

Besides, there is a prospect of revision of boundaries and in that case the boundary of Orissa will be extended in different directions. That is what we hope, and the population will also increase. The new population that will come into our fold will gradually be one with us only when they feel assured that there is an Upper House where all the legislation that will be passed in the Lower House will be revised and the legislative actions properly done. That is another reason why there should be a provision like this.

The Mover of the resolution, Sardar Vallabhbhai Patel, has said that it is left to the province which may choose to have an Upper House if it so likes. It is very good. But at the same time I want to point out to the whole House here that there is really great need for an Upper House. I therefore move:

"That the following be added at the end of sub-clause (1) of Clause 19:

'Orissa may have an Upper House when Orissa States will join the province of Orissa'."

I move my next amendment also, *viz.*

"That after item (b) in sub-clause (4) of Clause 19, the following new item be added:

'(c) There should be the power of recall for voters of every constituency in case in any situation they want to recall their elected member or members'."

This is essentially necessary because we feel that at times situations arise when voters want to remove a member from the Legislative Assembly but cannot do so because there is no such provision in the Act. When we are going to have a new Act, I think we should provide for this new clause, namely, recall.

As regards the difficulty of how to operate it, I think there will not be much difficulty because the constituency will be very small. Then we may provide that if two-thirds, or some such proportion, of the voters vote against a member whom they do not like, in that case the member goes out. As regards the full procedure I am not conversant with it and it may be found out.

Moreover I think a provision like recall is necessary when we are going in full force towards democracy, and without a provision for recall our legislation will not be complete because it is being gradually provided in other places, as for instance in Switzerland and in some American States. As early as in 1922 in the Bihar and Orissa Legislative Council, when Mr. Madhusudan Das of Orissa was the Minister for Local Self Government, he introduced this provision of recall in the local Legislative Act there. If there be a fear that the provision may be misused and it will be difficult for the people to work it, I do not think there is much in that fear, because though there is provision for this recall in the Bihar and Orissa Local Self-Government Act it has not been used although people have begun to talk about it. It is not very easy to take advantage of this. Therefore there should be no such fear that if there is a provision of recall people will rush into it and there will be various parties trying to oust one member and put in another. Even if that be so I would welcome it because that will be a sort of education for our people. Our people generally after giving their vote once do not think about it afterwards, but if there be such a thing they will begin to think and the people will be more active and agile. I therefore move that these two sub-clauses should be inserted in this clause.

Then I will touch on another point as regards population. My friends Mr. Omeo Kumar Das and Mr. Nichols Roy have said that the constituencies should be small. I also feel like that, because in Orissa there are many aboriginal people and they are all different groups. The people can send in one of their own people if the constituency is small. For instance the *Amanatvas* are only 60,000 people; now they cannot send their own representative because their number is small. Then there are other hill tribes who generally number twenty or thirty thousand. Of course we cannot extend this legislative power to all of the groups but we should still have the desire that those people on the hills who have been neglected so long should be given powers in such a way that they may be politically educated as quickly as possible, so that we may be able to bring them up to our level. Sir, I move.

Mr. R. K. Sidhwa: Sir, I beg to move that in sub-clause (2) of Clause 19 for the figure "50" the figure "60" be substituted. In the new constitution we are going to have a wider franchise which means a larger number of representatives in the Legislature. It is very desirable that following the democratic spirit we should have in the coming constitution a larger number of members in the Legislature. I do not share the views of Mr. Saadulla that a bigger Assembly is cumbersome and unwieldy. These stock arguments are often advanced when people do not want a bigger Assembly. Here is the Constituent Assembly consisting of about 225 members. Is it cumbersome and unwieldy? The debates are attentively listened to and we are conducting the business smoothly and rapidly. Even in the Central Legislative Assembly or in the Provincial Assemblies with only about a hundred members I have

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sometimes seen a want of a quorum and the Speaker or President had to go on ringing the bell. But here we have such a large number of members but still they are attentive to their duties and we get the benefit of their knowledge and experience out of which will be framed a very useful constitution. So I support the Mover's proposition that in the Assembly there should be one member for every lakh of the population.

Then, Sir, coming to the minimum, I have suggested 60 for 50, and the reason is this. The smallest province in the Indian Union today is Orissa with a population of 84 lakhs and they have a House of 60 with an electorate which is narrower than what it will be hereafter. With a larger electorate to come we cannot cut that down to 50. The two new provinces of East Punjab and West Bengal will each have a population of 2 crores and 50 lakhs. They are big provinces and we should see that they get full representation. Therefore I suggest that for provinces like Assam or Orissa, etc., the minimum should be 60 as at present.

Mr. President: I think Mr. Sidhwa has misunderstood the clause. That is only the minimum. If the population is 84 lakhs the number will be 84 according to this clause. The amendment does not touch those cases; it touches only those where the number is less than 50.

Mr. R. K. Sidhwa: But if there is to be a minimum I want it to be 60. That is my amendment and I hope the House will accept it. The more members there are I think the better it is because it would be well to have the benefit of their intelligence, knowledge and experience. Sir, I move.

Mr. President: The Resolution and the amendment are now open to discussion.

The Honourable Mr. Gopinath Bardoloi (Assam: General): Mr. President, I did not want to participate in this debate. But since my friend Mr. Nichols-Roy has placed certain issues before the House, I consider it necessary to make certain observations.

Sir, I have the privilege of being the Chairman of the Eastern Tribal and Excluded and Partially Excluded Areas Sub-Committee. In that connection we had not merely an opportunity of touring the hill areas but also of studying the conditions of the people in the hills. From a broad point of view it can definitely be stated that the method of representation proposed to be introduced for the general population cannot be made to apply to the people in the hills.

It will be seen that Assam today, with Sylhet gone, has a population of 71 lakhs and the extent of the province as it stands is only 62,000 square miles. Most of the people live in an area of about 30,000 sq. miles in the plains. With the hills, Assam comprises now 62,000 sq. miles. If you deduct 30,000 sq. miles, you will find that thirteen lakhs of hills people live in 32,000 sq. miles. What is more important for us to know is that they live as separate tribes and not as we do in the plains in a common pattern. Therefore, if any representation is proposed to be given to these people, it must be different from the manner in which representation is proposed to be given to the people in the plains. In view of this state of affairs, I think that the proposition that has been put before the House by Rev. Nichols-Roy should be supported by us generally. But I do not know whether it is necessary at all to accept the amendment as it stands. It is possible known to all of you that the

Advisory Sub-Committee will be making some recommendations in respect of representation also. Now what can be done here is that we can agree to accept the general principle so far as all other areas than the plains are concerned. I am not discussing here what that representation ought to be and whether it should be one representation for a unit of 75,000 or 1,00,000 or even 2,00,000 of the population, although in my opinion this should vary according to the population and area of the different provinces. But the broad fact should be accepted that these areas should be represented under some special plan. Mr. Nichols-Roy's recommendation is that this matter should be left to the provincial governments concerned to determine. I think the better course would be to leave this matter in the hands of the Advisory Sub-Committee and await their recommendations. The House can then consider the matter. The House should also bear in mind that in the present constitution, these hill people enjoy considerable weightage in representation. With these observations that the spirit of Rev. Nichols-Roy's amendment should be accepted, I resume my seat.

Mr. H. V. Kamath (C. P. and Berar: General): Mr. President, Sir, the second half of the first sub-clause of this clause reads thus: "in the following provinces, there shall, in addition, be a Legislative Council" and then in brackets it lays down "(here enumerate those Provinces, if any, which desire to have an Upper House)". I am glad that the words "if any" have found a place here. I hope to God that no province will elect to have an Upper House. But the possibility cannot be entirely ruled out of certain provinces choosing to have an Upper House. Therefore I stand before this House today to put in a plea for the abolition of the existing second chambers and against the creation of new ones.

Sir, in modern political practice, the second chamber is fast becoming an anachronism. In a federal democracy the structure which we have envisaged for our Hind, our Bharatavarsha—we may visualise a second chamber for the Centre, but it would be pernicious and vicious to have a second chamber in the constituent units of our federal democracy.

Various motives have actuated the creation of second chambers all over the world. In the last century, it was stated more or less as a political axiom that no democracy should be without a second chamber. But in the 20th century this practice is fast fading out and giving way to unicameral legislatures. Various motives have, as I said, led to the creation of second chambers. Firstly, there has been the desire to maintain the old tradition. I am glad that in India at least we do not have any such tradition. In the first decade of this century the British Government created second chambers mostly as a hang-over from the last century. But in the middle of this century this system stands discredited.

The second motive which has actuated the creation of second chambers is the desire to safeguard the interests of the propertied classes and vested interests. If we have second chambers in every province of our Federation, then I am afraid, these very classes which propped up British rule in our country, which buttressed and bolstered up British rule in the days of its decline, will find a place in those bodies. I for one would not support such a development in our country.

The third motive which has actuated the creation of second chambers is that they would act as a sort of check on the impulsive and hasty tendencies of the Lower House. Well, Sir, in modern democracies the practice is for legislation to pass through a very elaborate process, and as such there is no need for any multiplicity of legislative checks, specially considering the times through which we are passing. When we are aspiring to build a strong Union, we cannot afford this luxury of a second chamber which I am afraid will hamstring the Government in the

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provinces and render the Government static or at any rate less dynamic. We want these Governments should be dynamic and I am certain that second chambers would act as a drag on them in every province. These are the considerations which impel me to oppose the creation of second chambers. I hope that the constituent units of the Federation will not elect to have second chambers in our Hind, our Bharatavarsha.

Mrs. Renuka Ray (West Bengal: General): Mr. President, Sir, I rise to support Clause 19 and in particular section (2) of this clause which provides for territorial representation without reservation of seats. We are particularly opposed to the reservation of seats for women. Ever since the start of the Womens' Movement in this country, women have been fundamentally opposed to special privileges and reservations (*hear, hear*). Through the centuries of our decadence, subjection and degradation, the position of women too has gone down until she has gradually lost all her rights both in law and in society. Nonetheless, with the first stirring of consciousness amongst women, there never arose any narrow suffragist movement that has been so common in so many so-called enlightened nations. Women in his country have striven for their rights, for equality of status, for justice and fair play and most of all to be able to take their part in responsible work in the service of their country. The social backwardness of women has been sought to be exploited in the same manner as backwardness of so many sections in this country by those who wanted to deny the country its freedom.

Before the 1935 Act came in, the representatives of India's women made it very clear that they were against the reservation of seats or any special privileges for women. They made this clear through the All India Women's Conference. Our representatives, the three women who gave evidence before the Joint Parliamentary Committee, made it clear in unequivocal terms—(I may say that Rajkumari Amrit Kaur was one of the three women)—that we did not want reservation, but in spite of our protests, and in direct contravention to our desire, reservation of seats was brought into the 1935 Act. This act has been so great a factor in bringing dissensions in our fold and has at last divided the country. But where the heart is strong, where there is sound judgment, no machinations can divide and the women did not allow themselves to be caught in the tray. It would be wrong to say that all the credit for our attitude goes to women. From the very start of our national awakening in this country, enlightened men have encouraged women to come forward as equal partners in the struggle for freedom and to do service for national regeneration in the different walks of life. When Mahatma Gandhi gave his call so specifically to the women of this country to take part in the national movement, all the social barriers of centuries broke down. There are no words to convey the gratitude of the women of this country to this Great man—who has today brought the country to the very threshold of freedom (*hear, hear*). Sir, it is not only the inherent qualities of women but more particularly I should say the qualities of our men that is responsible for the fact that in our country, there has never been any strife between men and women.

When the Hindu Law Reform Bills were put in the Central Assembly, women were naturally anxious that these bills which conceded certain rights to them should be adopted, but we found an opposition which was not so great in numerical strength but which was very formidable because of the fact that it was from a reactionary group who were the erstwhile supporters of the then Government and who were also betraying the country at every turn. The alien Government could not afford to displease them, and unless we too were willing to barter away our souls and our birthright, we could not fight that opposition.

Sir, what we have upheld so long has come to pass today. We always held that when the men who have fought and struggled for their country's freedom came to power, the rights and liberties of women too would be guaranteed. We already see the evidence of this today. No reservation of seats was required to induce the men who are today in power to select a woman as Ambassador, the second in the history of any nation. Vijayalakshmi Pandit has not been selected because she is a woman nor was sex made a bar to the appointment. It is her proven worth that has been responsible for her appointment to the high office of ambassador to a land which is admittedly one of the greatest forces in the world today. This has vindicated our position and women are indeed proud of this. I am confident that it will not be only women of exceptional ability who in future will be called upon to occupy positions of responsibility, but all women who are equally capable, equally able as men will be considered irrespective of sex.

In the Legislatures of India, we have some women, but there are few women who have come from general constituencies. I think that the psychological factor comes into play when there is reservation of seats for women. When there is reservation of seats for women, the question of their consideration for general seats, however competent they may be, does not usually arise. We feel that women will get more chances in the future to come forward and work in the free India, if the consideration is of ability alone.

With these words, Sir, I should like to support this clause which has done away once and for all with reservation of seats for women, which we consider to be an impediment to our growth and an insult to our very intelligence and capacity.

Mr. Sarangdhar Das (Eastern States): Mr. President. Sir, I stand here to oppose the amendment of Mr. Lakshminarayan Sahu for creating an upper chamber in the Orissa Legislature in anticipation of the Rajas that is, the Rulers of Orissa, coming into the province at some future time. An upper chamber anywhere is an anachronism in these days of democracy. With adult franchise, when all the legislation necessary, and all the safeguarding of interests necessary, are done in one chamber the members of which are elected by the whole people, there is no necessity for an upper chamber and as such I would request the Mover of this clause to see that there is no loophole left for the creation of an upper chamber in future, and particularly in Orissa. I represent here a group of small States in Orissa. At the same time, I am a member of the Orissa Legislative Assembly, and I know the feeling of the people of Orissa Province.

There is never any talk anywhere of an upper chamber and it will be disastrous to create one simply to perpetuate the vested interests of the Rajahs. So long, there had been this vested interests created by the British Government in India. But now, by creating an upper chamber in the province we shall be perpetuating that vested interest in another shape. I therefore strongly oppose this amendment and I hope the House will not in any way support this kind of reactionary measure.

Saiyid Muhammad Saddulla: Mr. Speaker, Sir I hope this Honourable House would give me the indulgence to make a special plea for the smaller units of the Indian Federation and especially Assam. Assam was the Cinderella of all India Provinces till the Simon Reforms came into operation. Then she stepped up a bit and came over in the list of provinces from the bottom to three of four steps upwards. for smaller

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states than Assam came into existence like Orissa, Sind and North-West Frontier Provinces. But with the present set up and with the result of the referendum in the district of Sylhet of the Province of Assam she has again been relegated to the Cinderella Province of the Indian Federation. Conditions in Assam are not known to most of the Honourable Members of this House. Assam is a land of wide distances and very sparse population. In extent it was very nearly equal to the province of Bengal as it existed three months ago, but in population it has only one-sixth the population of Bengal. As has been stated earlier by two of my compatriots, we have very primitive and aboriginal people within our areas which were excluded from the Ministerial influence under the scheme of the Simon Reforms. But the then authorities took into consideration the undeveloped state of Assam and of our peoples, and gave us not merely the Provincial Legislative Assembly with a membership of 108 but also, in spite of the opposition of the peoples, an Upper Chamber was imposed on them. I am not concerned here with the Upper Chamber for Honourable Members will be glad to know that all the Members from Assam present in the Constituent Assembly have sent a joint letter to the Honourable the President expressing the views of Assam, not merely of the Congress and the Muslim League but the entire population of Assam, that we do not want any Second Chamber in the future constitution. When I say that Assam has 108 members when its population was only 92 lakhs in the 1931 census, I am not disclosing the fact that one third of Assam was unrepresented in this Legislative Assembly. For Assam has three frontier areas, the biggest one is called the Sadiya Frontier, the next one is the Balipara Frontier and the third is the Tirap Frontier. All these were excluded from the Reforms of 1935. One may say that these being Frontier areas they were right to exclude it. But insular districts like the Naga Hills, the North Cachar Hills and the Lushai Hills also were excluded from participating in the Reforms of 1935. My plea before this August Assembly is that you will have to give your careful consideration if you want backward provinces, undeveloped provinces like Assam—I would not mention any others, because they may not think themselves backward—should be treated separately in the future constitution. I therefore have great pleasure in supporting the motion that has been placed before the House by my Honourable friends Sjt. Omeo Kumar Das and Rev. J. J. Nichols-Roy. Rev. Nichols-Roy has placed before the House the fact that a very large area called the North Cachar Hills with an area of 2,000 square miles but with a population of 37,000 wants to get representation in the future constitution of Assam. But he does not say what should be the limit of population which should entitle the area for representation in the Provincial Constitution. My Honourable friend Sjt. Omeo Kumar Das wants that the population basis should be reduced from one lakh to seventy-five thousand. Some speakers who spoke after I moved my own motion have misunderstood me. I do not want that the representation should be reduced. As a matter of fact I now openly make the plea that the smaller provinces should get a weightage as regards the number of people on the Provincial Legislature. What I wanted was just to place before the House my own humble opinion that there should be a maximum number fixed for such representation and I placed it at 300. One Honourable Member, I refer to my friend Mr. Sidhwa from Sind, fell foul of me and said that even in this House which consists of 228 members, we do not feel that this is unwieldy and that every one listens to the speeches with rapt attention. This is as it should be. For, this Constituent Assembly represents the *intelligentia*, the patriots, those who have sacrificed their all in the service of the country. No wonder, Sir, that we all listen so attentively and with rapt attention when we have men like Mr. Sidhwa who have to be given a place in this Constituent Assembly although under his physical domicile he was not entitled to sit in this House.

Mr. President: My Kakkan wants to speak in Tamil. I do not know if many members will be able to understand Tamil.

Shri P. Kakkan (Madras: General): Mr. President, I want to speak in Tamil which is my mother tongue. If I speak in Tamil, I can express my ideas clearly. So, I want to speak in Tamil which is my mother tongue.

(The Honourable Member then spoke in Tamil)

Shri Raj Krushna Bose (Orissa: General): Sir, I would not have taken the time of the House and spoken on this motion had not one of my colleagues in the Provincial Legislature moved an amendment to the effect that Orissa may have an Upper House if the Orissa States will join the Province of Orissa.

In opposing the amendment, I should like to point out to the Mover that probably before giving notice of the amendment, he has not closely studied Clause 19 of the Provincial Constitution. Clause 19(4) says: "In any province where the Legislature has an Upper House, the composition of the House shall be as follows": Then the procedure with regard to the composition has been enumerated. Then, the note says: "It was agreed that the members of the Constituent Assembly from each Province should vote separately and decide whether an Upper House should be instituted for the Province." I should like to point out to my Honourable friend that if at all he desired to move the amendment, it would have been proper on his part to consult his colleagues here, who are members of the Orissa Legislature as to the effect the amendment would have on the province itself. I would not have opposed it if the effect would not be to commit the province to have an Upper House.

Evidently, Mr. Sahu's object on moving the amendment is to facilitate the Orissa States to join the Province of Orissa. If that is his object, let me tell him that they can do so even without an amendment like this, as this has been provided for in Clause 3 of the Draft Constitution of the Union whereby the States who want to merge themselves in the provinces can do so, and for this an Act of Parliament will be necessary. Clause 3 of the Draft Union Constitution says:

"The Parliament of the Federation may by Act, with the consent of the Legislature of every Province and the Legislature of every Indian State affected thereof.

- (a) create a new unit;
- (b) increase the area of any unit;
- (c) diminish the area of any unit;
- (d) alter the boundaries of any unit;

and may with the like consent make such incidental and consequential provisions as it may deem necessary or proper.

"Sir, I do not know whether what Mr. Sahu contemplates is going to happen, or when or how it is going to happen, because I know attempts have been made by leading men of Orissa, not for a few months, but for the last few years, for the amalgamation of the States of Orissa numbering as many as 26, with the Orissa Province but till now they could not be persuaded to do so. Supposing these attempts bear fruit and some or all the States agree to merge in the Province of Orissa. Clause 3 of the Draft Union Constitution contains a provision for such an union by an Act of Parliament of the Federation. In that case, the Legislature of every Indian State which is affected thereby will have to give their consent to such a union. I do not see any reason, Sir, when there is such a provision, in the Union Constitution, why Mr. Sahu chose to move this

[Shri Raj Krushna Bose]

amendment. The amendment will, in effect, commit the province to create an Upper House where there is no need for it. The amendment is therefore redundant. Another amendment which provides for the recall of members by the voters in case such a situation arises has been moved by Mr. Sahu. He said that in Switzerland such a provision exists. I am sure no such provision exists in Switzerland. If there are any, there are such provisions in some of the American States but in the present state of our country where democracy is but in its infancy, it would be improper to provide for such a thing and render the constituencies a battle ground between candidates unnecessarily and make them victims of rival political parties. I would therefore oppose both the amendments and would request him to withdraw both his amendments.

The Honourable Mr. Jaipal Singh (Bihar: General): Mr. President, I have great pleasure in supporting Clause 19 as it is. At the same time I feel somewhat inclined favourably to the picture that has been depicted by members from Assam where the problem of the hilliness, inaccessibility, sparseness of population and all similar physical difficulties have been pointed out. I am quite definite the amendment that has been moved to the effect that, instead of one lakh, two lakhs of people should send a representative should not be accepted by this Assembly. If anything, we should go in the other direction and make representation as broad-based as possible and reduce the figure one lakh to something less. I do not say it should be 35,000, or 10,000 or 50,000. I think we have to look to the practicability in the present set up. If we are going to be democratic at all, we should be as representative, make representation as broad-based as possible and we shall not be doing that by increasing the figure higher than one lakh. We have been given a good picture of the difficult and mountainous character of the Province of Assam. That is true, that is a feature which is characteristic of most of the Adibasi tracts throughout India. I come from the Chhota Nagpur Plateau, Jharkhand, which is equally mountainous, equally inaccessible as some of the territories that have been described by my friend Mr. Gopinath Bardoloi from Assam. Unless the delimitation of the constituencies is done on a much smaller population basis, it will simply mean that elections will have no strong appeal to the people. It would be difficult for the people whose votes we want and whose opinions we seek, to be interested. Sir Muhammad Saadullah, in his amendment, pointed out that he did not want that any House should be too unwieldy. He gave us a figure which he wanted not to be exceeded. That is all very well but Mr. President, I have been reading, I have been hearing a great deal from the agents of the Indian National Congress, expressions about a re-distribution, a re-alignment of provinces on a cultural and linguistic basis. There is the famous Karachi Minority Resolution, 16 years old and, recently, we have had vociferous demands from various areas such as Andhra, Kerala, Karnataka, Maharashtra, Mahakoshal, Mithila and Jharkhand. I do not know whether I have left out any but there are these areas which have been demanding that there should be a re-alignment of the present unwieldy and unnatural provinces. Well, I do hope that there will be a re-alignment, that, the Indian National Congress will honour its word, honour the Karachi Minority Resolution and set about it quickly to get this dream realized. In that case, I think, arithmetically, Sir Muhammad Saadulla's fears will disappear altogether. Then on the basis of one per lakh the representation will never exceed the figure he has mentioned.

Sir, I fell in rather an awkward position in regard to the point that *Padre* Nichols-Roy has raised. Being a tribal myself, realizing that Adibasis must get effective representation in the future democracy of

this country, I find myself confronted with a problem of there being something like 177 listed tribes in the decennial census of 1941. Now if we were to accept that, every pocket of the tribe should be represented—this is roughly the picture *Padre* Nichols-Roy has given up; he has mentioned a figure, that figure is meant to include particular pockets of the Assam tribes now if we are to work on that basis, I *am afraid even a figure as low as a thousand, if one thousand people were to send representatives, it would mean that somebody will be left out.* I think we have to draw the line somewhere and for the present I do feel that the figure that the Honourable Mover has stated in his clause as it stands *i.e.*, one per lakh of population, is good enough and I have great pleasure in supporting it.

Mr. Khandubhai K. Desai: Sir, I move that the question may now be put.

Mr. President: Closure has been moved. Now I ask the Mover of the Resolution to reply to the debate.

The Honourable Sardar Vallabhbhai Patel: Sir, several amendments have been moved and in the course of the discussion, some amendments have been opposed by some speakers. The sum total of the discussion results in an impression on me that there are two amendments which may be accepted. One is from Mr. Sidhwa which provides for the minimum number in Clause 2 to be raised from 50 to 60. Another amendment is from Sir Saadulla which provides for the maximum number to be fixed at 300. Except for these two amendments which I propose to accept, the rest, I would like to oppose.

There is an amendment moved by a friend from Orissa suggesting that there should be an Upper House in that province. I do not think that any amendment is necessary for that, because, in the Resolution itself it has been provided that it is the option of the province to have an Upper House or not. He will, of course have his say in that Provincial Assembly. He wants an amendment here, probably because he is afraid of not succeeding in that Provincial Assembly. But we do not propose to impose an Upper House on a province against its own will. Of course, there is no Upper House in the Province of Orissa to-day, and I see that this proposal to have one has been opposed by another friend from Orissa in this very House. Probably there is no chance of his succeeding in that attempt. I do not see why we should accept it.

He has moved another amendment in which he suggests that power should be given in the Constitution to the voters to recall a member who has lost the confidence of his constituency. I do not see why such a provision should be made. I think it should be left to the honour of the member elected. When he feels that he has lost the confidence of his constituency, he must resign of his own accord, instead of having to be called upon to do so, and having a provision to that effect made in the Constitution. A wise member will always keep his finger on the pulse of his constituency and I think instead of putting in such a provision, we should try to develop, a healthy sense of responsibility and sense of honour in the members. If there are any stray instances or some black-sheep who having lost the confidence of their constituency still want to continue to represent that constituency in the House, for some such bad instances we should not disfigure our Constitution. We should leave it as it is, to the good sense of the members concerned.

[Sardar Vallabhbhai Patel]

Then, it has been suggested by some friend from Assam who seems to have developed a sense of inferiority complex, that Assam must always have some special treatment. It is a matter for congratulation that women have come forward to say that they do not want any special treatment. But at the same time, it is a matter of regret that men have not yet come up to that standard. Let us hope that nothing will be provided in this Constitution which would make exception in favour of men where women object.

It has been said that for tribal areas or for some such areas some concession should be made in the matter of representation. In the first instance I would suggest that this is a matter which would primarily be considered by the special committee appointed for that purpose. We have not yet got the report of the Tribal and Excluded Areas Sub Committee and we would not like to hamper their work or their discretion. We will not encroach upon their rights to make a free and unfettered report. I therefore, suggest that we should not take this point into consideration now, but that the general principle as enunciated in this clause be accepted. If it is seen that after the report of this Sub-Committee is received, this clause requires some modification, that will be incorporated in the clause.

I do not think there is much that I should say now. We have had a full discussion for more than two hours and many arguments that were advanced have been replied to by contrary arguments. Therefore I now move the clause for the acceptance of the House, with the two amendments I have referred to.

Saiyid Muhammad Saadulla: Sir, I beg leave to withdraw my first amendment.*

The amendment was, by leave of the Assembly, withdrawn.

Shriyut Omeo Kumar Das: Sir, I beg leave to withdraw my amendment also.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Now we come to the second amendment moved by Sir Saadulla:

“That in sub-clause (2) of Clause 19, after the words ‘any Province’, the words ‘and a maximum of 300’ be inserted.”

This, I understand, has been accepted by the Mover, but must be accepted by the House also.

The amendment was adopted.

Mr. President: Then there is the amendment moved by Mr. Sidhwa:

“That in sub-clause (2) of Clause 19 the figure ‘60’ be substituted for the figure ‘50’ ”.

This amendment also, I understand, has been accepted by the Mover, but it has to be accepted by the House also.

The amendment was adopted.

*That in sub-clause (2) of Clause 19 for the word “lakh” the words “2 lakhs” be substituted.

Mr. President: Then there is the amendment moved by Rev. Nichols-Roy:

“That the following proviso be added to sub-clause (2) of Clause 19:

‘Provided that in giving representation to any territorial area or areas inhabited by hill tribes the Provincial Government may determine a lower basis of population than one lakh, and the total representation of the Province shall be increased accordingly.’”

Shri K. Santhanam (Madras: General): On a point of order, Sir, this is a matter which should be referred to the Advisory Committee.

Mr. President: I think it is too late now. The amendment has been moved here and discussed. I take it that if the Advisory Committee has to make any suggestions on this point, it will be taken into consideration by the House.

The Honourable Rev. J. J. M. Nichols-Roy: Sir, as the Honourable Mover Sardar Patel, says that this question will be considered by the Advisory Sub-Committee now dealing with the Excluded and Partially Excluded Areas, and that the recommendations of that Sub-Committee will be discussed by this House, and that this clause will be subject to the recommendations of that Sub-Committee, I do not see any necessity to press my amendment. I want to withdraw it.

Mr. President: I think this matter will be considered by the Advisory Committee and its recommendations will come up before this House. I take it that the House permits Mr. Nichols-Roy to withdraw his amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: There are two amendments by Mr. Lakshminarayan Sahu. Does the Honourable Member desire to press them?

Mr. Lakshminarayan Sahu: Sir, I desire to withdraw both of them.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President: I shall now put the clause as amended to vote. I suppose it is not necessary for me to read out the clause as amended.

Maulana Hasrat Mohani (United Provinces: Muslim): Sir, I oppose the whole clause and in this connection I want to give expression to some of my views. Will you permit me to do that?

Mr. President: We have already had a long discussion on the clause and the amendments thereon.

Maulana Hasrat Mohani: Certain misunderstandings have been created about my political views by Sardar Patel and Pandit Nehru. I had no occasion to remove those misunderstandings. If you would allow me only a few minutes I shall express those views.

Mr. President: I am afraid it is too late to have any further discussion. If the Maulana had been listening to the speeches and not talking to other members he would have had his opportunity.

Maulana Hasrat Mohani: Sir, I oppose the whole resolution and this report altogether and; I want it to go on record that I oppose the whole thing at this stage when you put the amended proposition to the vote of the House.

Mr. President: I will now put the clause, as amended, to vote. The question is:

“That Clause 19, as amended, be passed.”

The motion was adopted.

The Honourable Sardar Vallabhbhai Patel: Sir, I move Clause 20.

“The provisions for the meeting, prorogation and dissolution of the Provincial Legislature, the relations between the two Houses (where there are two Houses), the mode of voting, the privileges of members, disqualification for membership parliamentary procedure, including procedure in financial matters, etc., shall be on the lines of the corresponding provisions in the Act of 1935.”

I understand that Sir Alladi Krishnaswami Ayyar is going to move an amendment to the last line, *viz.*, “on the lines of the corresponding provisions in the Act of 1935.” Instead of this he suggests a better form which is wider and is on the lines of the procedure in the British Parliament I will accept the amendment when he moves it. Otherwise this clause is a simple one and I move it for the acceptance of the House.

(Prof. Shibbanlal Saksena did not move his amendment.)

Sir Alladi Krishnaswami Ayyar: Sir, I have an amendment to the clause as proposed. It contains two parts. With regard to the first part of it there was some difference of opinion in certain quarters as to whether it should be pressed at this stage and whether it could not be taken up at a later stage. On that ground for the present I am not insisting upon it, though I think there is a good deal to be said in regard to that of it. The first part of it is:

“That at the end Clause 20 the following be added (with the following changes in the provisions of Section 71 of the Government of India Act, 1935):

“After the words ‘in respect of the publication by or under the authority of a Chamber of such a Legislature’ in sub-section (1) of Section 71, add ‘or any accurate reports of such proceedings’.”

I believe there is a necessity for some such provision but as it is felt in certain quarters that that part of it requires further examination I am not pressing it now. I propose to reiterate it at a later stage of the proceedings.

The second part of my amendment is:

For sub-sections (3) and (4) of Section 71 of the Government of India Act, 1935, substitute the following:

“The powers, privileges and immunities of the members of the Legislature of the Province shall be such as are declared by the Provincial Legislature and until so declared shall be those of the members of Commons of the House of Parliament of the United Kingdom and of its members and committees at the establishment of this Constitution’.”

If you will refer, Sir, to section 71 you will notice that the privileges are very restricted. The Legislature has no power to punish its own members and there are various other restrictions too. It was felt, as indicated herein that our Legislature should possess as plenary powers as those possessed by the House of Commons without prejudice to the Legislatures themselves later on making their own provisions. That is the object of this amendment. If there is any feeling that in an Independent India's Constitution there need not be any reference to the House of Commons, later on we might collect all the materials with reference to the privileges of the House of Commons and they might be

substituted. For the present I would press this, because the House of Commons is the Assembly, which has the widest privileges of all the Assemblies of the world.....

Mr. Naziruddin Ahmad: Sir, on a point of order, an Honourable member is smoking in this House while the deliberations are going on. Is it in order to do so? If this is permitted, there will be many more Honourable Members who might claim the indulgence of smoking inside the Chamber.

Mr. President: It would not be in keeping with the dignity of this House or in keeping with our own past traditions that any Honourable Member should smoke in this House.

Sir Alladi Krishnaswami Ayyar: Sir, I also move:

“That the following new clause be inserted after Clause 20 (*That is a very material provision*) :

- ‘20-A. (1) the validity of any proceedings in a Provincial Legislature shall not be called in question on the ground of any alleged irregularity of procedure.
 (2) No officer or other member of a Provincial Legislature in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.’”

That is a very salutary and necessary provision, because it ought not to be open to any individual to challenge the validity of any enactment on the ground that any particular rule or order has not been observed in the passage of a particular enactment. That is a provision which has found a place in every Government of India Act. It is a very salutary provision. I would therefore request the House to accept this amendment the reason for which I have explained.

Mr. President: There is no other amendment. So the original proposition and the amendments are open for discussion. Anybody who wishes to speak either on the resolution or the amendments is free to do so.

(No member rose to speak.)

I find that no one is anxious to speak. I shall therefore ask the Honourable the Mover to reply.

The Honourable Sardar Vallabhbhai Patel: Sir, I accept the amendments.

Mr. President: I have to put the amendments, which have been accepted by the Mover, to vote first. I shall put the first amendment of Sir Alladi Krishnaswami Ayyar as it has been actually moved.

The question is:

“That at the end of Clause 20, the following be added (with the following changes in the provisions of Section 71 of the Government of India Act, 1935):

‘For sub-sections (3) and (4) of Section 71 of the Government of India Act, 1935, substitute the following:

“The powers, privileges and immunities of the members of the Legislature of the Province shall be such as are declared by the Provincial Legislature and until so declared shall be those of the members of Commons of the House of Parliament of the United Kingdom and of its members and committees at the establishment of this Constitution”.’”

The motion was adopted.

Mr. President: I shall put Sir Alladi Krishnaswami Ayyar's next amendment.

The question is:

“That the following new clause be inserted after Clause 20:

‘20-A. (1) the validity of any proceeding in a Provincial Legislature shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or other member of a Provincial Legislature in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.’”

The motion was adopted.

Mr. President: The question is:

“That the clause, as amended by these two amendments, be passed.”

Clause 20, as amended, was adopted.

Mr. President: We now come to Clause 21.

CLAUSE 21

The Honourable Sardar Vallabhbhai Patel: I ask permission that Clause 21 may stand over for the present because there is a similar provision in Clause 16 of the Union Constitution and both may be considered together. There being two similar provisions in two constitutions, and this being a controversial matter, there is likely to be some confusion and I therefore suggest that this may be kept over and both considered together.

Mr. President: Clause 21 stands over for consideration at a later time. We come to Clause 22.

CLAUSE 22

The Honourable Sardar Vallabhbhai Patel: Sir, I move:

“The Provincial Legislature may from time to time make provisions with respect to all or any of the following matters, that is to say,—

- (a) the delimitation of territorial constituencies;
- (b) the qualifications for the franchise and the preparation of electoral rolls;
- (c) the qualifications for being elected as a member of either House;
- (d) the filling of casual vacancies in either House;
- (e) the conduct of elections under this Constitution and the method of voting thereat;
- (f) the expenses of candidates at such elections;
- (g) corrupt practices and other offences at or in connection with such elections;
- (h) the decision of doubts and disputes arising out of or in connection with such elections;
- (i) matters ancillary to any such matter as aforesaid:

Provided:

- (1) that no member of the Lower House shall be less than 25 years of age and no member of the Upper House shall be less than 35 years of age;
- (2) that the superintendence, direction, and control of elections, including the appointment of election tribunals shall be vested in the Governor acting in his discretion.”

Probably there will be a motion for deletion of Proviso (2) which I will accept because other provision has been made for it. Sir, I move this proposition for the acceptance of the House.

Sri K. Santhanam: Sir, I move:

“That in Clause 22 after the words ‘from time to time’ the following be inserted ‘in accordance with the procedure for amending the Provincial Constitution’.”

As the clause now stand, by a mere ordinary law such important matters as the delimitation of territorial constituencies and the qualifications for the franchise and the preparation of electoral rolls can be altered. It will mean that by a snatch vote a simple majority can upset the entire basis of the Provincial Constitution; it can gerrymander constituencies and make changes so that it can dissolve the House and come back to power, in a larger majority. Therefore some restrictions are needed. I suggest these changes should be made, only in accordance with the procedure for amending the Provincial Constitution. That procedure for amending the Provincial Constitution has not been laid down in the present Report, but I have tabled a clause for that purpose. The procedure may contain various provisions. Certain parts of the Provincial Constitution may be changed by one procedure and certain other parts may require a more elaborate procedure. Whatever that may be, these matters should be changed only by the procedure specially prescribed in that behalf. They should not be changed by ordinary legislation. I hope therefore that this amendment will be accepted by the House.

(Dr. P. S. Deshmukh did not move his amendment).

Sri K. Santhanam: Sir, I move:

“That in item (b) of Clause 22, for the words ‘the qualifications for franchise’ the following be substituted:

‘Limitations to adult franchise on grounds of non-residence of personal disabilities not based on birth, race, religion, or community’.”

Sir, adult franchise is the basis of the whole scheme. My amendment simply makes it clear that the qualification for the franchise does not mean any power to bestow this on any one. Even for adults there may be some qualification necessary especially on grounds of residence and there may be personal disabilities like insanity or life in prison and all that. I want to provide that apart from these there should be no restriction on adult franchise.

(Messrs. Gokulbhai D. Bhatt and V.C. Kesava Rao did not move their amendments.)

Mr. President: I understand that the Mover of the Resolution is in favour of accepting the motion of Mr. Khurshed Lal to delete the second proviso to Clause 22. Would someone else move it in the absence of Mr. Khurshed Lal?

Mr. K. M. Munshi (Bombay: General): With your permission I shall move it, Sir. I move the amendment to delete the second proviso to Clause 22. The reason for its deletion is that in the Union Constitution Committee’s Report there is going to be provision to set up an All-India Election Tribunal which will have the power of superintendence, direction and control of all elections not only Federal, but also Provincial. Therefore there is no need to give this power to the Governor to act in his discretion.

(Messrs. Kala Venkata Rao and K. Santhanam, did not move their amendments.)

Mr. H. V. Kamath: My amendment suggesting a new proviso to Clause 22 seeks to take this vital issue of separate electorate and weightage out of the purview and jurisdiction of Provincial Legislatures. But I am told that the Report of the Advisory Committee on Minorities is dealing with this and other cognate matters. Therefore until their report is taken into consideration there is no point in moving my amendment. I do not therefore press it. It runs as follows:

“That the following be inserted as proviso (3) to Clause 22.

‘that no Provincial Legislature shall at any time make provision for separate electorates or for weightage to any particular class or community in the Provincial Legislature and other elective bodies of the Province.’”

(Shri T. A. Ramalingam Chettiyar and Shri Kala Venkata Rao did not move their amendments.)

(Prof. Shibbanlal Saksena did not move his amendment.)

Seth Govind Das (C. P. and Berar: General): *[Sir, there are two amendments in my name. One is number 4 and the other No. 5 in the Supplementary List No. 3. I am not moving No. 4. I want to move No. 5 with runs:

“That after proviso (2) in Clause 22 the following new proviso be added:

‘(3) that all provisions under Clause 22(a) to (i) will be made on the principles of and in conformity with the instructions laid down in the Schedule annexed hereto so as to maintain uniformity in these matters throughout the Indian Union.’”

I feel there is no need to say much about it. I only wish that all the items from (a) to (i) given in this clause should be uniformly applied throughout India. When India as a whole is going to be one Union, the application of these clauses for one province in one way and for another in a different way, would not be proper. That is why I have submitted this amendment and I hope that Sardar Patel will accept it.]*

Mr. President: There are two amendments by Mr. Kala Venkata Rao. (There was no reply). All the amendments have been moved. Those who wish to speak either on the resolution or on the amendments may do so now.

The Honourable Sir N. Gopaldaswami Ayyangar: Mr. President, I wish to say a few words on the first amendment that was moved by Mr. Santhanam. I find some difficulty in fitting it in. His proposal is that in Clause 22 after the words “from time to time” the following words be inserted: “in accordance with the procedure for amending the Provincial Constitution”. There is a good deal of substance in what he said on the merits of the amendment itself. Apparently, his scheme is that the first provisions which are to be enacted in connection with the matters mentioned in the clause should find a place in the constitution itself, either in the body of the constitution or in the schedules to the constitution. If these schedules are framed, then you can give the provincial legislature power to amend these schedules. He apparently wants to safeguard against amendments being carried out in haste or perhaps in pursuance of ideas which may have had sway for the time being but perhaps would not be quite acceptable in the long run. So he wants to provide that amendments, to such schedules to the constitution should

*[]*English translation of Hindustani speech.

be made by the provincial legislature only according to the procedure prescribed for amending the provincial constitution. I can understand that. But what this clause says is that the first laws relating to these matters are to be made by the provincial legislature. "The provincial legislature may from time to time make provisions with respect to all or any of the following matters." If you allow the provincial legislature to make the first provisions in regard to these matters without placing, I take it, any particular restrictions on its powers, it does not stand to reason that you should provide that amendments to such provisions should be made only according to the procedure prescribed for amending the constitution. I think, Sir, that this clause will have to be redrafted in order to carry out his purpose. We can say that the first provisions with regard to these matters should find a place in the schedules to the constitution and then you can give powers to the provincial legislature to amend these schedules according to the procedure prescribed for amending the provincial constitution.

There is also another difficulty. I believe the draft Model Constitution does not provide for any procedure for amending the Provincial Constitution. That also we may have to provide for. I would suggest that so far as Mr. Santhanam's amendment is concerned, we hold it over so that we may produce a draft which will carry out the purpose Mr. Santhanam has in view. I feel that the amendment as moved by him should not for the present be accepted but that we should take it up later on.

Sir Alladi Krishnaswami Ayyar: Sir, I support the suggestion of Sir Gopaldaswami Ayyangar that the consideration of this clause might lie over. If the first delimitation of constituencies is by ordinary law, it stands to reason that the later changes also may be by ordinary law but on the other hand if the delimitation of constituencies is provided in the constitution, later amendments will be constitutional amendments. Therefore if in the schedule you indicate how exactly the constituencies are to be delimited, then of course provision will be necessary that later changes will be by constitutional amendments. Under the circumstances, I would request Mr. Santhanam not to press his amendment at this stage.

Sri M. Ananthasayanam Ayyangar (Madras: General): I do not find any insurmountable difficulty for which my friends there are trying to find a solution. The existing legislature will continue to function even after the constitution comes into force under the transitional provisions contained in Part IV. Otherwise immediately on the constitution coming into force it will not be possible to allocate the territorial constituencies and allow elections to take place. In the meanwhile demarcation of territorial constituencies will have to be made through the legislature in existence. The present legislature will continue under Clause 2 of Part IV. "There should be similar provisions, *mutatis mutandis*, in respect of the Council of Ministers, the Legislative Assembly and the Legislative Council (in Provinces which decide to have an Upper House)." The previous provision is: "Any person holding office as Governor in any province immediately before the commencement of this Constitution shall continue as such and shall be deemed to be the Governor of the Province under this Constitution until a successor, duly elected under this constitution, assumes office." Therefore the legislature will continue and that legislature can be entrusted with the duty of delimiting constituencies. Mr. Santhanam's amendment may be accepted without any difficulty about the initial delimitation of constituencies. That can be safely entrusted to the legislature.

Mr. President: Does any other member wish to speak on the resolution or the amendment?

Mr. M. S. Aney (Deccan States): I would like to speak on the second amendment of Mr. Santhanam.

Mr. President: It is 6 o'clock and if there is any long discussion, we might adjourn. I would like to know whether there are any other members who want to speak.

Some Honourable Members: Yes.

Mr. President: Then, before we adjourn, I would like to make one or two announcements. This morning's newspapers published the news that the aeroplane in which one of our Honourable Members, Mr. Jagjivan Ram and his two secretaries were travelling crashed near Basra. I am glad to be able to inform Honourable Members that the, injury which Mr. Jagjivan Ram has sustained is not of a very serious character, although I understand there has been a fracture of one of the knee caps. I am told it will not take very long for him to recover. Let us hope that he will be able to come back soon and participate in our deliberation.

It was represented to me by some members that they would like to have a little more time for sending in amendments to the Union Constitution Committee's report and as we have not finished the consideration of the Provincial Constitution, I am prepared to give a little more time for them to send in their amendments, say, by tomorrow evening 2 o'clock so that the amendments could be printed and circulated before Monday 2 p.m.

There is one another announcement. From Monday next I propose that we sit at 10 o'clock and go up to 1 p.m. We shall now adjourn.

Mr. K. M. Munshi: The Minorities Sub-Committee would meet on Monday, 10 o'clock was the time announced.

Mr. President: It has been represented to me by several members that while this House is sitting it will be most inconvenient for the members who are members also of the Minorities Sub-Committee to be sitting and they would not find time to devote to both the sessions which will have to be held from day to day. This meeting of the Minorities Sub-Committee has already been announced, but in view of this representation, I should like to postpone it for some days and would fix another date which will suit all the members. The exact date will be announced after consulting the convenience of all the members.

The Honourable Sardar Vallabhbhai Patel: If the Minorities Sub-Committee meeting is postponed, the Advisory Committee's report and everything else will have to be postponed. They should be allowed to adjust their time and have their meetings in the afternoon.

Mr. President: I understand that other members have got engagements in the afternoon. It will, be very difficult for the members to attend. In any case we cannot have it on Monday at Ten. We shall fix some other date. The Minorities Committee will have to sit in the afternoon.

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): May I know why 10 o'clock is fixed?

Mr. President: For various reasons to suit the convenience of Members.

The Honourable Pandit Jawaharlal Nehru: It is neither here nor there—either earlier or later.

Mr. President: I thought that most of the members considered it convenient.

We shall announce another time for the meeting of the Minorities Sub-Committee. Then we meet on Monday at 10 o'clock.

The Assembly then adjourned till Ten of the Clock, on Monday the 21st July, 1947.

APPENDIX
CONSTITUENT ASSEMBLY OF INDIA

*Report of the ad hoc Committee on Clause 8 of Part I of the
Provincial Constitution*

The Committee recommends that—

Clause 8 be re-drafted so as to read:

“It shall be competent for a Province, with the previous sanction of the Federal Government, to undertake, by an agreement made in that behalf with an Indian State, any legislative, executive or judicial functions vested in that State, provided that the agreement relates to a subject included in the Provincial or Concurrent Legislative List.

On such an agreement being concluded, the Province may, subject to the terms thereof exercise the legislative, executive or judicial functions specified therein through the appropriate authorities of the Province.”

Signed on behalf of the Committee.

NEW DELHI
July 17, 1947.

B. L. MITTER,
Chairman

**Members of Committee:*

1. Sir B. L. Mitter (*Chairman*).
2. Sir Alladi Krishnaswami Ayyar.
3. Mr. Ismail Choundrigar.
4. Sir A. Ramaswami Mudaliar.
5. Dr. B. R. Ambedkar.
6. Mr. K. M. Munshi.

CONSTITUENT ASSEMBLY OF INDIA

Monday, the 21st July 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

Mr. President: I understand there are three members who have not yet signed the Register who are present to day. They may please sign.

The following members presented their Credentials and signed the Register:

1. Dr. H. C. Mookerjee (West Bengal : General).
 2. Mr. F. R. Anthony (C.P. & Berar : General).
 3. Kumaraja Sir M. A. Muthiah Chettiyar (Madras : General).
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CONDOLENCE OVER THE ASSASSINATION OF GEN. AUNG SAN AND HIS COLLEAGUES IN BURMA

Mr. President: Honourable Members received with the greatest grief the sad news of the tragic circumstances in which General Aung San and his colleagues lost their lives as a result of a dastardly outrage the day before yesterday. The news must have shocked Indians particularly because our relation with Burma have been of a very friendly character even after Burma was separated. General Aung San was one of those men who had brought Burma to the door of independence and that he should lose his life and that his colleagues should lose their lives at the hands of their own countrymen is tragic beyond words.

I do not know when the world will come to realise that violence, and violence particularly of this type can never solve any problem of the world. If this outrage is any indication of a deep-laid plot, Burma is in, I would fear, for very difficult times. But we have hopes that the Government there which has been brought into power with the overwhelming support of the people will be able to control the situation and that the people of Burma will be able to enjoy the fruits of that independence which those who have lost their lives have just won for her.

I hope the House will permit me to convey our sense of sorrow and our condolences to the people of Burma, to the members of the Government there as also to the members of the bereaved families. I hope Honourable members will express their assent by standing in their places.

The Assembly assented, the members standing in their places.

Shri Gokulbhai D. Bhatt (Eastern Rajputana States) :

[Mr. President, with your permission, I would like to ask one or two questions. For how many days more will this Session of the Assembly continue? Are we going to meet again in August? I wish to know it in order to facilitate my programme.]

Mr. President: *I hope that the Assembly will conclude its session within this month, as we have before us one more report of another Committee to consider after we finish the report of this Committee. When the Assembly finishes discussions over that report, the great task before us, requiring a major portion of our time would have finished. Besides that, one or two resolutions are also expected. I hope they will not take a long time. Hence I think that the business of this sitting would be finished by the end of this month. It is possible that the members may have to come again on the 15th August.]*

REPORT ON THE PRINCIPLES OF A MODEL PROVINCIAL
CONSTITUTION—*contd.*

CLAUSE 22

Mr. President: We shall now take up the discussion of the clause that we were discussing that day. The amendments have been moved and the motion as well as the amendments are open to discussion.

I would like to know if there is any other amendment of which notice has been given, which had not been moved. My own impression is that all amendments have been moved.

Mr Aney, you wanted to speak on this?

Mr. M.S. Aney (Deccan States): Mr. President, Sir, I only wanted to make one observation with regard to the second amendment moved by Mr. Santhanam to Clause 22 that it was, in my opinion a superfluous amendment. He wants to make sure that any rules that may be made will not infringe the primary principle which has been already provided for *viz.* adult franchise, but I believe it is a well known principle that under the rule making powers those who have to frame the rule have to see that nothing is introduced into the rules which is inconsistent with the principles already embodied in the Statute itself. In view of that and in view of the fact that adult suffrage has already been provided for by a distinct provision in the Statute the second amendment which he has proposed appears to me to be unnecessary.

Shri K. Santhanam (Madras: General): With regard to the objection raised by Sir N. Gopalaswamy Ayyangar, I have given notice of an amendment which may also be taken up with this. It is in the new supplementary list. I would like to state that no provision has been made for the first election. Unless something is made, that clause is difficult to apply and so I have tabled an amendment as follows:

“That the following be inserted at the beginning of Clause 22:

‘For the first election to the Provincial Legislature under this Constitution, the constituencies, qualifications of voters and other particulars shall be such as may be prescribed, in the Schedule to this Constitution.’ ”

Then the clause will run as given and then my amendments will come. I move this amendment as I do not think there is any point to be cleared about it.

Mr. President: Does anyone wish to speak about the clause or any of the amendments that have been moved?

*[English translation of Hindustani Speech begins.

] * English translation of Hindustani Speech ends.

*[English translation of Hindustani Speech begins.

] * English translation of Hindustani Speech ends.

I will put the amendments to vote.

This is Mr. Santhanam's amendment.

"That the following be inserted at the beginning of Clause 22:

'For the first election to the Provincial Legislature under this Constitution, the constituencies, qualification of voters and other particulars shall be such as may be prescribed, in the Schedule to this Constitution'."

The Honourable Sardar Vallabhbhai J. Patel (Bombay: General): I accept Mr. Santhanam's as well as Seth Govind Das's amendment.

Mr. President: I put Mr. Santhanam's amendment to vote.

The amendment was adopted.

Mr. President: Mr. Santhanam's second amendment is as follows:

"That in Clause 22 after the words 'from time to time' the following be inserted:

'in accordance, with the procedure for amendment the Provincial Constitution'."

The amendment was adopted.

Mr. President: There is another amendment by Mr. Santhanam as follows :

"That in item (b) of Clause 22, for the words 'the qualifications for the franchise' the following be substituted:

'Limitations to adult franchise on grounds of non resident or personal disabilities not based on birth, race, religion or community'."

The amendment was adopted.

Mr President: There is another amendment moved by Mr. Munshi as follows:

"That the second proviso to Clause 22 be deleted."

The motion was adopted.

Mr. President: There is another amendment moved by Seth Govind Das as follows:

"That after proviso (2) in Clause 22, the following new proviso be added:

'(3) that all provisions under Clause 22(a) to (i) will be made on the principles and in conformity with the instructions laid down in the schedule annexed hereto as to maintain uniformity in these matters throughout the Indian Union'."

The amendment was adopted.

Mr. President: Now I put the clause, as amended to vote.

Clause 22, as amended, was adopted.

CLAUSE 23

The Honourable Sardar Vallabhbhai J. Patel: Sir, I move Clause 23:

"(1) If at any time when the Provincial Legislature is not in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require.

(2) An ordinance promulgated under this clause shall have the force and effect as an Act of the Provincial Legislature assented to by the Governor but every such ordinance—

(a) shall be laid before the Provincial Legislature and shall cease to operate at the expiration of six weeks from the reassembly of the Provincial Legislature, or if before the expiration of that period resolutions disapproving it are passed by the Legislature, upon the passing of the second of those resolutions; and

(b) may be withdrawn at any time by the Governor.

(3) If and in so far as an ordinance under this clause makes any provision which the Provincial Legislature would not under this Constitution be competent to enact, it shall be void."

Ordinance making power has been subjected to much criticism; but by long experience it has been found that it is necessary to have such provision in the case of an emergency when the Legislature is not sitting and there is not enough time to call the Legislature and there is immediate necessity of passing an urgent legislation.

I do not think there are many amendments to this clause. I move this proposition for the acceptance of the House.

(Messrs. Ajit Prasad Jain, H. V. Pataskar, R. K. Sidhwa, Shibbanlal Saksena and M. Ananthasayanam Ayyangar did not move their amendments.)

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I beg to move that the following new clause be added after Clause 23:

"24. All matters incidental to or consequential upon the Clauses above shall be deemed to be part of, and included in the said clauses."

Sir, my object in moving this amendment is to remove all technical difficulties that may arise at the time of the drafting of the final bill. We have accepted in the House a large number of amendments to the original Report and it is just possible that there may be some gap or omission here and there, met with at the time of the final drafting. I therefore propose this amendment so as to remove any such technical difficulties.

Mr. President: Mr. Naziruddin, I think yours is not an amendment but the addition of a new clause. We had, I think, better dispose of Clause 23, and then go on to this new clause.

No amendment has been moved to this clause, Clause 23. If any member wishes to speak about it, he can do so now.

(No member rose to speak.)

I shall now put the motion:

"23. (1) If at any time when the Provincial Legislature is not in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require.

(2) An ordinance promulgated under this clause shall have the same force and effect as an Act of this provincial Legislature assented to by the Governor, but every such ordinance—

(a) shall be laid before the Provincial Legislature and shall cease to operate at the expiration of six weeks from the reassemble of the Provincial Legislature, or, if before the expiration of that period resolution disapproving it are passed by the Legislature, upon the passing of the second of those resolution; and

(b) may be withdrawn at any time by the Governor.

(3) If and in so far as an ordinance under this clause makes any provision which the Provincial Legislature would not under this Constitution be competent to enact, it shall be void."

The motion was adopted.

Mr. President: Mr. Naziruddin Ahmad will please move his clause.

Mr. Naziruddin Ahmad: Sir, I beg to move that the following new clause be added after Clause 23:

"24. All matters incidental to or consequential upon the clauses above shall be deemed to be part of, and included in, the said clauses."

Sir, I submit that this clause would be necessary to remove technical difficulties at the time of, the drafting. We have introduced some new amendments in this House, without perhaps much notice. It is, therefore, just possible that there may be gaps here and there, I mean, unintentional gaps or technical difficulties. So at the time of drafting a point may arise that particular things *i.e.* things incidental to certain amendments adopted here or consequential upon those amendments—are not meant to be included in the Report. It is for this reason that I have proposed this new clause. I do not know of any gaps, apparent gaps, just now, but all the same I have brought forward this clause so that if there is any gap or omission, then this clause may be helpful to the draftsmen. With these few words I submit it for the acceptance of this House.

Mr. President: A new clause, Clause 24, has been proposed to be added here. Personally I have not been able to quite understand the effect of this additional clause. If any member wishes to speak about it. I shall be obliged if he would enlighten me on it.

Shri M. Ananthasayanam Ayyangar (Madras : General): Sir, I do not think there is any need for such a new clause as this because we are here only approving the general principles. Things ancillary, incidental, supplementary, consequential, etc., will naturally have to be added when the final drafting is done. The new clause now proposed is vague. With it, it is not enough to meet the situation, without it we are none the worse of. In any case it need not be considered or voted upon now.

Mr. President: As there is no other speaker, I shall put the motion to House.

The motion is that the following new clause be added after Clause 23.

“24 All matters incidental to or consequential upon the clauses above shall be deemed the part of, and included in, the said clauses.”

The motion was negatived.

Mr. President: There is notice or another additional clause by Mr. Santhanam. Will Mr. Santhanam please move it?

Shri K. Santhanam: Sir, I beg to move that after Clause 23 the following new clause be inserted:—

“24 The Governor of a province in which the legislature consists of a single chamber shall have the right to return at his discretion a Bill passed by the legislature for reconsideration and may suggest amendments. If the Bill is passed again by the legislature with or without, amendments by an absolute majority he shall assent to it.”

This is an amendment of some substance. As things stand in the draft of the model constitution, if a legislature passes a law by a scanty vote or by a very narrow majority it will have to become law immediately because there is no power of veto or any other power vested in the Governor. Sir, I myself do not want any power of veto for the Governor; I want full autonomy and full responsible government in every province. But I want to give the Governor the power to send a Bill passed by the provincial Assembly for reconsideration. If after reconsideration the Assembly passes it by an absolute majority he will have no power of veto but will have to give to his assent to it.

Sir, I have limited this power only to those provinces which will have unicameral legislatures because where there are two chambers the revisory function will belong to the Upper House. I have also vested this power in the Governor's discretion. Obviously a ministry which rushes a Bill through by a narrow majority will not care to advise reconsiderations and so it should be a power in the Governor's discretion.

Sir, I move.

Pandit Lakshmi Kanta Maitra: (West Bengal: General): Sir, I am afraid this amendment cuts at the very root of the democratic principle which forms the basis of this constitution. What after all is Mr. Santhanam's point? It is that if in any province with a unicameral legislature a Bill is passed by a narrow majority the Governor should be invested with additional powers—which are to be exercised by him in his discretion to make suggestion to the legislature to reconsider the whole situation and then come to a decision. Now I ask the House to consider the result of such a procedure. In my opinion the inevitable result would be that the Governor would be antagonised and would straight away come into conflict with the popular ministry which would be functioning. I do not see any necessity for it; on the other hand if any measure has been passed in inordinate haste and without due consideration and discrimination, the legislature surely is not debarred from repealing it or amending it at subsequent sessions, if it is not the product of mature deliberation. So I feel that to invest the Governor with powers like this would be directly to trench upon the independence and responsibility of the legislature. It will unnecessarily bring the Governor into conflict with the ministry and I feel that the motion should not be supported.

Mr. N. V. Gadgil (Bombay: General): Sir, I desire to make a suggestion which need not be incorporated here and now but may be considered as the proper stage later on. I suggest that there should be a time-limit within which the Governor should send a Bill back with or without amendments, failing which it should be taken automatically that he has assented to the Bill. The American constitution contains this kind of provision and it should be embodied here.

Pandit Lakshmi Kanta Maitra: While laying down a time-limit, does Mr. Gadgil accept the principle that the Governor will be in a position to reconsider the whole situation over the head of the legislature?

Shri M. Ananthasayanam Ayyangar: Sir, I consider this a very wholesome provision. I do not know why my friend Pandit Maitra has any doubt as to the intention of Mr. Gadgil in supporting this amendment. He accepts the principle and then says that there should be a time-limit. In the American constitution a time-limit of ten days is fixed. There must be a period within which the Governor must consider the matter and send it back for reconsideration of the House. After all a sufficient number of members might not have been present, there may be important matters involved relating to minorities and other matters where consideration at some greater length should have been bestowed on a Bill instead of its being through. The Governor would have to be watchful at every stage; it is not as if he would actually try to interfere at every stage with a popular ministry. He will be on his guard; he will be the President of the Council of Ministers from time to time and will exercise a wholesome influence. If in spite of all this a situation suddenly arises where a particular section wants to rush a Bill through let him put his check upon that and send it for reconsideration of the legislature. There are similar provision in the Government of India Act. I can assure my friend Pandit Maitra that a popular Governor would not try to interfere except in very special cases. I support the amendment.

Mr. Tajamul Husain (Bihar: Muslim): Sir, I rise to support the amendment. What would be the position if a Bill is sent for the assent of the Governor and he is not satisfied with the provisions of the Bill? Ordinarily a Governor who is selected on adult franchise will not interfere with any measure which is passed by the legislature. But in case he is not satisfied with the Bill is he to sign it against his conscience? Or is he to send it back to the House with his amendments or make a total rejection? I think under the English constitution if a Bill passes through the House

of Commons it goes to the House of Lords and is then sent to the King for his assent. In practice the King always assents though he has the right to reject a Bill in which case it goes back to the Houses of Parliament. If it passes again without any amendments and is again sent to the King for his assent he must sign it or he must abdicate. Similarly if the Governor is given power to refuse his consent or if he sends the Bill with his amendments it is for the provincial legislature to reconsider the Bill in the light of the Governor's suggestions. If they pass the Bill again in its original form the Governor must sign it or he must get out. Therefore I support the amendment that a chance must be given to the Governor and that he should not act merely as a figurehead.

Mr. Ramnarayan Singh (Bihar: General): Sir, I strongly support the amendment. We have provided in the constitution for an elected Governor and so I do not see why people should be so afraid of him that they do not want to give him any powers. From time to time it is necessary that the Governor should take the initiative and there will be no harm if any legislation is reconsidered. I appeal to the House to give some power to the Governor so that he may be of some use to society, otherwise it is better to get rid of the Governor altogether Sir, I think this amendment should be accepted by the House.

The Honourable Mr. Hussain Imam (Bihar: General): Mr. President, I intervene in this debate in order that the practice might be established, when things of this nature are being discussed of advising the Constituent Assembly on the practice all the world over. I regret, Sir, at this moment many of my colleagues have not before them Constitutions of the world. They have also probably not read the exhaustive notes which have been circulated by the staff of the Constituent Assembly at the instance of the Constitutional Adviser.

The practice in U.S.A., to give only one instance, is that the President has the power, in spite of there being dual chambers—the Senate and the House of Representatives to veto a Bill but that the veto can be overridden if a majority of two-thirds of both Houses reject it. In addition to that he has another veto which is a pocket veto, by means of which he can disallow a Bill if it is passed within ten days of the sittings of the House. There are any number of instances to indicate what the world is doing. It will be very useful if the practice could be established of the Honourable the President getting the Constitutional Adviser to indicate, on such controversial issues, what the practice in other parts of the world is. No doubt the Constitutional Adviser has issued a book to us. It will be very useful to us. Still there is room for more information on world practice.

I think Mr. Santhanam's amendment is very essential. He has urged in this amendment that it will have effect only in those provinces in which the legislature consists of a single chamber. The Mover thinks that where there is a second chamber, it will act as a brake on the Lower House. But we know, Sir, that there is need for further clarification where, if there is any difference between the two Houses there are different methods of tackling it in different Countries. In regard to Money Bills the practice in some places is that the Second Chamber is made *hors de combat*. It has no power. In regard to other Bills, in some of the Constitutions, the Second Chamber can vote finally, in other Constitutions, they have to sit together and come to a decision jointly, the Second Chamber's votes being usually overridden by the majorities in the Lower House. But what I was saying was that it is wrong on our part still to dream that we will be having Governors appointed by an outside authority. In future, the Governors will not be there to serve the cause of the powers-that-be. The Governor will be our man elected by adult franchise. It is therefore necessary that you must give him full trust and confidence. If you place your confidence in him and if you provide, as

[Mr. Hussain Imam]

suggested by Mr. Santhanam these checks and balances, you will arrive at a happy mean in which there will be one House ready to set right matters if the other goes wrong. This is the only method by which we can avoid pitfalls. I support the amendment.

Kumararaja Sir M. A. Muthiah Chettiyar (Madras : General): Sir I am very glad that Mr. Santhanam has moved this amendment and that there is the prospect of the House accepting it. But my happiness is mitigated by the fact that the amendment is restricted in its application to Provinces where there is no second chamber.

Sir, the experience that we have of second chambers where they exist does not warrant the belief that they are a sufficient check against hasty legislation. In the last few years the Lower House has rushed through legislation with such haste that many mistakes have crept in and there have been many occasions when the leaders of the Lower House have requested the members of the Upper House to correct and send back the Bill to the Lower House. All this will be avoided if the Lower House is given a chance to reconsider the matter.

There are many reasons necessitating this opportunity or reconsideration. Sir on many occasions all the Standing Orders are suspended and legislative measures published in the Gazette only the previous evening, are carried through the Legislature the next morning in the twinkling of an eye. They say that an emergency has arisen and that if the legislature does not pass the measure before it adjourns, the Governor would have to issue an Ordinance.

For these reasons I do suggest that we should go a step further and remove from the amendment the reference to single chambers so that this check may be there even in Provinces where there are two chambers.

With regard to the possible misuse of the power by the Governor I am glad that my hon. friend Mr. Hussain Imam has pointed that the Governor is not going to be a stranger. He is going to be a provincial man or an Indian from another province. That being so, we may be expected to gauge public opinion. If in his opinion he feels that the legislature is rushing through a measure against public opinion, he may be expected to send back the measure for reconsideration. There may be occasions when legislators may not have time to study any piece of legislation brought before them and they will be only glad to get a chance to look at it once again. Press and public opinion in the country would play a great part in shaping the views of the Governor. If the governor acts wrongly he will be told so by the Ministry and by public opinion. I do not think the Governor will misuse the power to send back legislative measures. I hope that the Mover and the leaders of the parties will find it possible to remove this reference to single chamber and provide for this check even in places where there are two chambers.

B Pocker Sahib Bahadur (Madras: Muslim): I have great pleasure in supporting this amendment. At the same time I must express my dissent from the view of the previous speaker that this should be extended even to cases where there is a bicameral legislature. The Upper House is a sufficient check against hasty legislation. Therefore, in the Provinces in which there is an Upper House it is not necessary that this power should be given to the Governor. I support the amendment.

Mr. Naziruddin Ahmad: I beg to support the amendment. Sir, in the speeches delivered here in this connection, one aspect of the thing has not been mentioned. It is that in some cases legislation may be *ultra vires* irregular or illegal in some respects. In such cases, the Minister who has sponsored such legislation may himself desire to reconsider the matter. A provision like this would give him an opportunity to reconsider his attitude when he finds that public opinion is against the measure. It is inconceivable that a Governor, under the new Constitution, would act in an improper manner. In the circumstances power like this may be very

much desired by the Ministers themselves. I believe that a power like this exists in the Government of India Act of 1935 much of which has been copied in this Report. The Government of India Act of 1935 has now been admitted to be a model legislation. As I have already submitted the Governor should be given this power in provinces where there is no second chamber and he may be expected to act in a beneficial manner.

Mahboob Ali Baig Sahib Bahadur (Madras : Muslim). W. President, the other day we accepted a clause empowering provinces to choose whether they would have a second chamber or not, implying thereby that this House would accept a second chamber in the case of those provinces who choose to have it. How could we deny in these circumstances the same restraining influence to provinces which choose to have only one chamber? Either you must allow provinces to have second chambers or you must allow that restraining influence to the Governors for remitting bills for reconsideration in the case of provinces which select only one chamber. Sir in the case of provinces which elect to have only one chamber, the Governor must have this restraining influence to check hasty legislation, and we cannot deny to such provinces a provision of this kind. This is consistent, logical and—necessary. Therefore I support the amendment.

K. T. M. Ahmed Ibrahim Sahib Bahadur (Madras : Muslim): Mr. President, Sir, it is absolutely necessary for the Governor to have this power to prevent hasty legislation. I submit that his power is not inconsistent with democratic principles. In the Union Constitution, there is a provision to the effect that the President should have the power of returning bill which have been passed by the National Assembly for reconsideration within a period of six months. What the Union Constitution seeks to give to the President of the Nation must in justice be given to the Governors of provinces. There is nothing undemocratic about it.

Further., Sir, the Governors of provinces are invested with very great powers, and the Provincial Constitution Committee says that the Governors will not abuse those powers as they are elected Governors. Then, Sir, it is obvious that if the President of the Union who is elected by a limited franchise is given power to send back bills to the National, Assembly for reconsideration, it is in the fitness of things that the Governors who are elected on adult franchise should be given the same power. I am therefore glad to support the amendment moved by Mr. Santhanam.

The Honourable Sardar Vallabhbhai Patel: Sir, I am prepared to accept this amendment of Mr. Santhanam with one change. I suggest that the last four words “by an absolute majority” should be dropped.

It was suggested that this should also cover the provinces where there are two chambers. I think it is not necessary because, where there are two chambers, if they differ, the case will come for reconsideration at a joint session. Therefore it is not necessary.

Mr. President: Mr. Santhanam, do you wish to say anything in reply?

Shri K. Santhanam: I will just say that I accept the suggestion made by Sardar Patel, but I wish make one remark. When a bill is sent back for reconsideration, both the parties will marshal their forces, and unless the ministry has got 51 per cent., it is likely to be defeated. It does not matter whether the words “by an absolute majority” are there or not. The effect will be just the same.

Pandit Lakshmi Kanta Maitra: I do not know whether the amendment moved by Mr. Santhanam has been accepted by the House or not. It is not clear to me—I think it is not clear to many members of the House as to what the decision of the House is with regard to the words “by an absolute majority”.

Mr. President: What are you speaking about, Mr. Maitra?

Pandit Lakshmi Kanta Maitra: I want to know whether you are going to put the vote of the House the deletion of the words “by an absolute majority”.

The Honourable Sardar Vallabhbhai Patel: Mr. Santhanam has accepted the amendment.

Mr. President: How does it stand now?

The Honourable Sardar Vallabhbhai Patel: Without any reference to the remarks made by Mr. Santhanam, I accept his amendment but with the deletion of the words “by an absolute majority”.

Dr. B. R. Ambedkar (Bombay : General): The sentence will read now, “If the Bill is passed again by the legislature with or without amendments, he shall assent to it”.

Mr. President: Then I put Clause 24 to vote. The resolution as now amended, with those four words “by an absolute majority” omitted, will now read:

“The Governor of a Province in which the legislature consists of single chamber shall have the right to return at his discretion a Bill passed by the legislature for reconsideration and may suggest amendments. If the Bill is passed again by the legislature with or without amendments, he shall assent to it.”

The motion was adopted.

Part II—The Provincial Judiciary

Mr. President: We shall go to Part II—The Provincial Judiciary.

The Honourable Sardar Vallabhbhai J. Patel: Sir, I move:

“1. The provisions of the Government of India Act, 1935, relating to the High Court should be adopted *mutatis mutandis*; but judges should be appointed by the President of the Federation in consultation with the Chief Justice of the Supreme Court, the Governor of the Province and the Chief Justice of the High Court of the Province (except when the Chief Justice of the High Court himself is to be appointed).

2. The judges of the High Court shall receive such emoluments and allowances as may be determined by Act of the Provincial Legislature and until then such as are prescribed in Schedule.....

3. The emoluments and allowances of the judges shall not be diminished during their term of office.”

This clause proposes to incorporate the provisions of the 1935 Act regarding High Courts, but regarding the appointment of the Judges it provides that the appointment shall be made by the President of the Federal Legislature in consultation with the Chief Justice of the Supreme Court and the Governor of the Province. With so many checks and counter checks these appointments place the High Court Judges beyond any influence of the parties or any other influences and beyond any suspicion or doubt of such a nature. There is thus enough guarantee provided for the independence of the Judiciary. The other two clauses are purely consequential relating to pay and allowances for which I hope there are no amendments. I therefore move the proposition for the acceptance of the House.

(Dr. Subbarayan, Mr. Mallayya, Mr. Ramalingam, Chettiar and Seth Govind Das did not move their amendments.)

Mr. President: Then there is no amendment to this clause. Does any one wish to say anything about this clause?

Sir Alladi Krishnaswami Ayyar: (Madras : General): Mine is also an amendment.

Mr. President: You may move it at this stage.

Sir Alladi Krishnaswami Ayyar: With your leave I propose to move the following amendment to Clause I in II.

At the end of Clause I in Part II, *add* the following:

“Provided that—

- (a) all the High Courts in the Union of India shall have the right to issue prerogative writs or any substituted remedies therefor throughout the area subject to their appellate jurisdiction;
- (b) the restriction as to jurisdiction in revenue matters referred to in section 226 of the Government of India Act, 1935, shall no longer apply to the High Courts; and
- (c) in addition to the powers enumerated in section 224 of the Government of India Act, 1935 the High Courts shall have powers of superintendence over subordinate courts as under section 107 of the Government of India Act, 1915.”

The object of these amendments is to remove certain patent and glaring defects in the jurisdiction of the High Court to get rid of anomalies and to provide an adequate and effective machinery for the enforcement of fundamental rights. Clause (a) of the amendment deals with prerogative writs or any substituted remedies therefor. The reference to substituted remedies is to enable a simple remedy by application for writs in accordance with the procedure obtaining in England under recent enactments. Under the law as it stands the High Courts of Calcutta, Bombay and Madras have the right to issue prerogative writs within the limits of their ordinary original jurisdiction. The remedy by application was substituted for the Writ of Mandamus by the Specific Relief Act, but the remedy is confined to the presidency towns. There is no conceivable reason why a citizen outside the limits of the presidency town should be left to the dilatory remedy of an ordinary suit while a remedy by application to the High Court is available to a resident of the presidency town. In regard to the prerogative writ of *habeas corpus*, the Criminal Procedure Code has enabled application of substituted remedy for *habeas corpus* being available throughout the appellate jurisdiction of the High Court. The Privy Council has recently held that the remedy by way of *Certiorari* enabling the High Court to remedy proceedings of judicial and quasi-judicial bodies acting in excess of jurisdiction is available within the presidency town. Clause (a) when passed will enable all the High Courts in the Union of India to exercise the jurisdiction in regard to these matters throughout the area subject to their appellate jurisdiction. The Clause also will provide an effective remedy for the fundamental rights guaranteed under the constitution. Clause (b) is intended to remedy an anomaly in the jurisdiction of the High Court. The anomaly goes back to the days of Warren Hastings. Under the law as it stands there is no bar even to a district munsiff entertaining a suit which involved a right to revenue, but the High Courts are debarred from entertaining such suits. The other day the Federal Court while upholding the right of a litigant in every respect ruled that the suit filed in the High Court was liable to be dismissed on the technical ground based on section 226 of the Government of India Act. The need for removing this bar on the jurisdiction of the High Court is universally felt by the profession and has been emphasised in several statements of the High Courts in India. The last clause is intended to remedy a defect introduced by the Act of 1935 under which the High Courts were deprived of the powers of superintendence in certain respects over the subordinate courts. This amendment I venture to state, has the universal support of the profession and I commend it your acceptance.

Shrimati G. Durgabai (Madras : General): Mr. President, Sir, I wish to make it clear at the very outset that I stand here to support Clause 1 in Part II relating to the Provincial Judiciary. Sir, I wish to confine myself to that portion of the clause which lays down the procedure for the

[Shrimati G. Durgabai]

appointment of judges to the Provincial Courts. The clause runs on the following lines:

“...the judges should be appointed by the President of the Federation in consultation with the Chief Justice of the Supreme Court, the Governor of the Province and the Chief Justice of the High Court of the Province (except when the Chief Justice of the High Court himself is to be appointed).”

Sir, we see thus by the manner provided in this clause we introduce some kind of intervention on the part of an external authority in matters relating to the provinces and the Provincial Governments. I think this kind of intervention and this kind of procedure laid down providing for the necessity for an external authority is bound to provoke in the minds of some people at least the fear that this is a sort of encroachment over the jurisdiction of the Provincial Government as opposed to the principles of provincial autonomy. But, Sir, I confess myself was holding this view for some time, whether it would not be desirable to leave this matter to the discretion of the Provincial Governments, namely the Governor acting on the advice of his Ministers. But on a careful consideration of the matter I find that the manner as suggested by the authors of this clause has greater advantages over the other. Hereafter in the new set-up conditions are bound to be different and the High Courts have got to take upon themselves greater and heavier tasks and onerous responsibilities. They are the repositories of the Constitution; they have got to interpret the constitution. They are the guardians of the fundamental rights in the Constitution. Every common man must look to these courts for fair treatment and justice. They have got to see that their rights are safeguarded and they are in safe custody. Therefore if we have got to achieve this, we have got to see to the successful working of these High Courts and this depends mostly upon the quality of the judiciary and the manner in which it is composed. The independence of the judiciary is a thing which has to be decided and this independence to a large extent depends on the way in which these judges are to be appointed. They should not be made to feel that they owe their appointment either to this person or that person or to this party or to that party. They have to feel that they are independent. It is only in that case that we get efficiency of administration of justice. It is with a view to secure this kind of independence that some sort of check is necessary and the authors of the clause have provided for this check by bringing in some external authority to have something to do with the appointments relating to the Provincial courts. We may feel why the Chief Justice of the Supreme Court also is brought into this picture but in the interests of the purity of administration of justice the Supreme Court has a great part to play hereafter. It is the highest of the High Courts of India and it will have a general advisory jurisdiction and a general appellate jurisdiction which is similar to that now exercised by the Privy Council relating to Indian units. Therefore, it is to review the work of all High Courts and also exercise the powers of general superintendence, direction and control in all matters relating to the provincial judiciary. Several matters of the High Courts have got to come before this Court by way of revision, reference and appeal. Therefore, the Chief Justice of the Supreme Court has got a great deal to do with these High Courts and not only that, the Supreme Court in itself has got to be composed from among the judges of the High Courts as we see. Therefore, considering all these matters I feel that it is highly necessary that the Chief Justice of the Supreme Court is consulted by the President of the Federation in making these appointments to the provincial courts. Of course, this need not really leave a fear in our minds that the freedom of the provinces is curtailed to a large extent but this sort of check will be used only on rare occasions and generally the recommendations made by the Governor

on the advice of his Ministers and in consultation with the Chief Justice of the High Courts will be accepted so long as they are right and also their choice is bound to be good generally, except in very rare instances when the intervention of the Federal Authority is to be brought.

There is another point to be taken into consideration, namely this, that we need not feel that we are doing something very unusual. There is no one uniform principle in all federal constitutions of the world that this power of appointment to the judges of the High Courts of the units should always rest with only the Provincial Governments. It is not necessary. We have got an instance provided to us in the Canadian constitution where the power of appointment rests with the Governor-General who will make the appointment. Therefore we can accept this principle without any fear or favour and adopt it in our system.

With these few observations, Sir, I support this clause and I commend it for the acceptance of the House.

B. Pocker Sahib Bahadur: Mr. President, Sir, I have great pleasure in supporting the amendment moved by Sir Alladi Krishnaswami Ayyar. Every one of those clauses is absolutely necessary having regard to the difficulties which people have been experiencing as a result of the Government of India Act of 1935 and also the recent ruling of the Privy Council regarding *certiorari*. Until the recent ruling, we were having this remedy by way of unit of *certiorari* as regards the mofussil also, but as a result of the Privy Council ruling, we are restricted as regards that remedy only to Presidency towns. It is absolutely necessary that such a remedy must be available to the people of the mofussil also.

As regards the power of superintendence to be vested in the High Courts we were having the remedy before the passing of the Government of India Act of 1935, but all such remedies were excluded by the new provisions of the 1935 Act, all the litigant public have been feeling very much about the absence of the right of superintendence in the High Courts as regards proceedings in the mofussil courts. The result is that people are now restricted to remedy under Section 15 of the C.P.C. which is inadequate and does not cover all cases in which remedy is necessary. Therefore, Sir, it is necessary that these matters should be made very clear, particularly for the reason that hereafter we may not be able to rely on English practice and on precedents in England.

I do not know, how far I am right; but I presume for the time being that English precedents and practice may not be available to us as authority hereafter. In view of these circumstances, it is absolutely necessary that these clauses should find a place in the measure that we are passing.

I have only to make another observation in connection with this clause. I have given notice of an amendment in which I suggested that instead of the Chief Justice of the High Court of the Province concerned, it must be the High Court itself that should be consulted. Instead of the consultation being confined to the Chief Justice, the consultation must be with the High Court. My amendment being an amendment to another amendment given notice of by Dr. Subbarayan as Dr. Subbarayan has not moved that amendment, my amendment fails. However, I would like to make this remark for the Drafting Committee that it is very desirable that the consultation should not be restricted to the Chief Justice of the High Court, but should be with the High Court as such, so that the matter may be considered by all the Judges of the High Court at the Judges Meeting, and the result might be communicated to the authorities concerned.

With these observations, I support the amendment proposed by Sir Alladi Krishnaswami Ayyar.

The Honourable Mr. Jaipal Singh (Bihar: General): Mr. President, I support Part II, Clauses 1 to 3. At the same time, I would like to have

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some information from the Honourable Mover as to whether any discussion has taken place and when we shall know anything about any result of the agitation that has been carried on in this country by all parties in regard to the separation of the judiciary from the executive, whether we are going to get this matter considered in the report Pandit Jawaharlal Nehru will submit on behalf of the Union Powers Committee. I only want to ask this question and I hope the Honourable Mover will give us some information on this point.

Rai Bahadur Syamanandan Sahaya (Bihar: General): Sir, I wanted to draw the attention of the Mover and the House to Clause 3 of Part II in which it is laid down that the "emoluments and allowances of the Judges shall not be diminished during their term of office". I was thinking, Sir, that the term "diminished" would not meet the requirements and that this should be replaced by the word, "varied". I am sorry I have not tabled an amendment, because there were other amendments which I thought would be moved. In any case, the matter is of importance and I therefore wanted to draw the attention of the Mover to this. Perhaps it may be rectified at the stage of drafting. The reasons and the principle which I suppose guided the members of the Provincial Constitution Committee to lay down that the emoluments will not be diminished during their term of office will be precisely the same as in the case of increasing their salary also. You would not naturally want the judiciary to be constantly looking up either for increasing their salary, or be under the apprehension that there will be a decrease in their salary. In these circumstances, I think it will be desirable that the word "diminished" should be changed by the word "varied" with the approval of the mover.

I have not formally moved an amendment. But I think the matter is of sufficient importance to be brought to the notice of the House.

Shri M. Ananthasayanam Ayyangar: I find, Sir, with all respect, that this amendment may bring in complications for this reason. I agree with Sir Alladi Krishnaswami Ayyar that the powers of the High Court have to be enlarged. There are a number of restrictions placed under the Government of India Act now on the powers of the High Court regarding revenue jurisdiction. This is No. 1 in his amendment by which he wants to correct this Act. In his amendment he wants to say that the High Court shall exercise jurisdiction over all revenue matters also without any of the restrictions or limitations contained in the Government of India Act. One of them is under section 226 which runs as follows:

"Until otherwise provided by Act of the Appropriate legislature no High Court shall have any original jurisdiction in any matter concerning the revenue or concerning any act ordered or done in the collection thereof according to the usage and practice of the country....."

Does he want by the Constitution Act to confer original jurisdiction in revenue matters also or in the matter of collection? These have been exempted. If such a power should be given here and incorporated in the Constitution Act itself, any change that may be necessitated by experience will have to be made by way of an amendment to the Constitution Act. There is absolutely no objection to the legislature of the High Court removing the restrictions.

So far the jurisdiction of the High Court in the matter of writs is concerned, they are subject now to any Order in Council that may have been passed by the Government, under section 223, Orders in Council by His Majesty the King or otherwise. Some of the writs may be obsolete, some of them may be necessary or may be found obsolete later on. Should we go into the details? In case there is need to modify this, there will have to be two-thirds majority in both the Houses and all the processes and procedure for modifying the constitution will have to be gone through as in other substantial matters. We can easily say the provincial legislature shall be entitled to enlarge the jurisdiction of the High Court or

place a restriction upon that. I do not feel that any of these matters need to be incorporated in a Constitution Act like this.

Again Clause (c) says that in addition to the powers enumerated in section 224 of the Government of India Act, 1935, the High Courts shall have powers of superintendence over subordinate courts as under section 107 of the Government of India Act. I do not deny that the High Court's powers may be enlarged in the manner suggested by Sir Alladi in his amendment. But the local legislature is competent to give not only those powers, but additional powers also not contemplated in section 107 of the Government of India Act. Why should we restrict to this or that? Evidently, Sir Alladi finds that the draft constitution placed before the House which we are discussing, seeks to embody all the provisions that exist in the present Government of India Act. I agree that we ought not to bodily incorporate those provisions whether they are good or bad. The framers of the constitution will go into the details and empower the local legislature to pass laws and regulations without intervention of His Majesty in Council, to enlarge the jurisdiction of the High Court in necessary matters, empower it to issue writs wherever necessary. These are details which will have to be referred to a Committee how and in what manner jurisdiction has to be enlarged. For this, the legislature, as we propose to have it, is entitled to go into these things. Certainly, my friend Sir Alladi would say that it is not a matter which could be disposed of at a sitting by all people; that it must be referred to a Committee of experts, so that they may look into every one of these clauses before incorporating them finally into the Bill. We have not that opportunity. He merely says the High Court's powers ought to be enlarged in a particular manner which may be good or bad. We admit it is good. Sometime later on, it may be found bad or oppressive or hard. There may be a necessity for decentralisation.

The powers of superintendence by the High Courts may be unnecessary, and uncalled for in certain matters. Therefore if we irrevocably confer all these powers on the Provincial High Courts, it will be very difficult. Why should we introduce those details? I should therefore say that my friend only wanted to bring to notice, by placing this amendment, the need for enlarging the powers of the High Courts in this direction. No doubt he has chosen the wrong method. The right method will be to place it before the Legislature and see to it that the Provincial Legislature has all the powers to enlarge the powers of the High Court in the matter of superintendence regarding revenue matters. I therefore request him not to press his amendment because it will lead to unnecessary complications.

Mr. K. M. Munshi (Bombay: General): Mr. President, Sir, the remarks of my friend Mr. Ananthasayanam are based on the present Government of India Act. But the reason why Sir Alladi's amendment is necessary has been placed before the House fully. The position with regard to Prerogative Writs is a technical matter and naturally therefore there might be a certain amount of difficulty for ordinary men to understand it but we must realise the important fact in this country, *viz.*, that only the High Courts of Calcutta, Bombay and Madras which have inherited the jurisdiction of the King's Bench Division have the power to issue Prerogative Writs within the original jurisdiction of those cities. Other High Courts have not that power nor does the power of these three High Courts extend beyond the original jurisdiction of the three towns concerned. The intention of this Clause is to see that every High Court in India should have the same power of issuing Prerogative Writs as the King's Bench Division has in England. This is not covered by the Government of India Act, nor converted by anything else. What this amendment seeks is that the High Courts in India in the Provinces should have the powers possessed by the King's Bench Division. Those Prerogative Writs were ancient and known to the English Common Law but many of them have now been brought into use in Calcutta, Madras and Bombay and as lawyer

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members of the House would realize during the difficult days of 1942 to 1945 when the Defence of India Act was in operation, these writs did a great deal of service in vindicating them.

Further we have to consider this fact also that this Constitution of India, of Free India, will be a kind of Charter. It will also contain Fundamental Rights and also recognize the Rights of Citizens in certain Fundamental Rights and certain obligations on the part of Government. Now all those must be enforced by some kind of remedy in the nature of the remedies which are now secured by a Britisher from the King's Bench Division. In the Constitution of the Union where the Supreme Court is constituted the Supreme Court has been invested with the power to issue these Prerogative Writs. With regard to the Constitutional rights and various other rights, if the power is only invested in the Supreme Court and not in any other High Court, it will follow that every citizen in order to vindicate his rights would have to come to Delhi. The intention of the amendment moved by Sir Alladi is that all the High Courts must have similar powers to issue Writs within their jurisdiction. This is the only meaning of this clause. It is necessary to have it in the Constitution because otherwise a Legislature may take away or attempt to take away certain powers of the High Court. Any analogy of the Government of India Act would not apply. This being the object, it is necessary that this amendment should be there.

I know that the word 'Prerogative Writs' is a very vague word. That is this reason why Sir Alladi's amendment uses the words—"any substituted remedies therefor". The idea is that either in a form defined by the Constitution or by any law made under the authority of the Constitution, those Writs will be preserved. There is no doubt about it.

The Prerogative Writs are largely the creature of common law in England but attempts are made in England to put them in the Statute book in a precise form. There is no reason why we should now allow the Common Law form to remain in its vagueness, in the present proposals. Some attempt will be made later to define those Writs in a proper legislation. The principle embodied in the amendment is that the High Courts in the Provinces must have the power to issue Prerogative Writs or some remedies of the kind. So, the objections raised by my friend Mr. Ananthasayanam are not valid.

As regards Clause (b), there is a restriction imposed by the Government of India Act as regards jurisdiction in revenue matters. This is only done as a matter of history. This amendment recognizes the principle that even revenue matters are subject to law. As regards Clause (c)—General superintendence, the High Courts will have superintendence over all Subordinate Courts and this clause does not require any elaboration.

The object is that this principle must be embodied in the Constitution. It is not intended that the Provincial Legislature should have the power to tinker with these powers of the High Court. The actual power and independence of the High Courts in these matters have to be maintained in order that the liberties and rights of citizens are not curtailed by a majority in the Legislature. In defence of civil liberties and in the interests of democracy these powers are essential.

Mr. Tajamul Husain: Clause 3 of Part II lays down that the Pay of the Provincial High Court Judges cannot be decreased during their term of Office, but it does not say anywhere that it cannot be increased. Sir, we must maintain the dignity and impartiality of the High Courts at all costs. If we do not mention in our Act that their pay shall not be increased and decreased, it will be giving them a chance—because after all they are human beings—they will be looking upto the Legislature for

favours of increment of their pay. This is a very important matter. I have not given notice of any amendment. The reason was that some honourable members had sent amendments. Therefore, Sir, my friend Rai Bahadur Shyamnandan Shahai has suggested the change, which I hope the Honourable Mover will accept. At present the provision reads:

“The emolument and allowances of the Judges shall not be diminished during their term of office.”

I suggest substituting the word “varied” for the word “diminished”; with this change it will read:

“The emoluments and allowances of the Judges shall not be varied during their term of office”.

I submit this for the acceptance of the House.

Shri L. Krishnaswami Bharathi (Madras: General): Sir, I wish to say one thing in reference to Clause 1 of Part II. The first part of it reads:

“The provisions of the Government of India Act, 1935, relating to the High Court should be adopted *mutatis mutandis*,”

I find Sections 219 to 231 of the Government of India Act relate to High Courts. With reference to one of the important provisions in that Act, I find the question of language comes in. Section 227 of that Act reads:

“All proceedings in every High Court shall be in the English language”.

I do not know if sufficient attention has been given to this aspect of the matter. I do not think, Sir, it is the intention of the Mover that the proceedings in the High Courts shall be in the English language. We are now talking of a national language or All-India language. My own personal view is that in every province, the provincial language shall be the language in which all the proceeding of the Province, including those of the High Court, shall be carried on. It may be that for some transitional period, we may have the English language, but I do not think we can allow English to be the language of our High Courts for all time to come. But the position is, if we accept the first part of this Clause as it stands with the words “*mutatis mutandis*” we may be committed to having the English language. I therefore, wish that some suitable provision may be made in this clause so as to avoid Section 227 of the Government of India Act with reference to the English Language.

Mr. President: As there is no one else who wishes to speak the Mover of the Resolution may reply to the debate, if he wishes to.

The Honourable Sardar Vallabhbhai J. Patel: Sir, I accept Sir Alladi’s amendment.

With regard to one or two questions that have been put, I would like to say a few words. Regarding the question raised by Mr. Jaipal Singh as to what has been done about the separation of the judiciary from the executive, I can only say that this is not the place to introduce that subject. This clause we are now considering only refers to the formation of the High Court, its constitution, the method of appointment of the judges, its powers and things like that. The real question which he has raised can be decided by the Legislature, it is a matter of policy to be decided by them; and I do not think there will be difficulty now in separating the judiciary from the executive.

The other point raised is about changing the word ‘diminished’ into ‘varied’, that the word ‘diminished’ should be substituted by the word ‘varied’. I do not think this change is necessary for the existing provision says that the emoluments etc., should not be varied to the disadvantage of the judges, and that clears the position. So I do not propose to have any changes made in the wording.

As I said, I accept Sir Alladi’s amendment, and I commend the proposition for the acceptance of the House.

Mr. President: I shall now put the motion to the House.

Shri L. Krishnaswami Bharathi: My point regarding the language in the High Court has not been answered to. It is an important point.

Mr. President: It is, of course, an important point; but I suppose the Drafting Committee will attend to it.

Shri L. Krishnaswami Bharathi: Sir '*mutatis mutandis*' means everything as it is, which means that you cannot vary the provision in the Government of India Act, at the time of drafting our provision. If we accept it as it is, the Drafting Committee will be committed to keeping English as the language of the High Court.

Dr. B. Pattabhi Sitaramayya (Madras: General): Sir, I think '*mutatis mutandis*' means with the necessary changes.

Mr. President: Yes, that is my impression also. This will cover any changes that the Drafting Committee may suggest ultimately.

I shall put Sir Alladi's amendment to vote.

That the following proviso be added at the end of Clause 1:

"Provided that—

- (a) all the High Courts in the Union of India shall have the right to issue prerogative writs or any substituted remedies therefor throughout the area subject to their appellate Jurisdiction;
- (b) the restriction as to jurisdiction in revenue matters referred to in section 226 of the Government of India Act, 1935, shall no longer apply to the High Courts; and
- (c) in addition to the powers enumerated in section 224 of the Government of India Act, 1935, the High Courts shall have powers of superintendence over subordinate courts as under section 107 of the Government of India Act, 1915."

The motion was adopted.

Mr. President: Then I shall put the resolution to the vote of the House as amended, *i.e.*, with the addition of the proviso which has been just accepted. I do not think I need read out the whole clause.

Part II, as amended was adopted.

Part III—Provincial Public Service Commission and Provincial Auditor-General

Mr. President: Now we pass on to Part III.

The Honourable Sardar Vallabhbhai J. Patel: Sir, this part refers to the Public Service Commissions and the Auditors-General.

"Provisions regarding Public Service Commissions and Auditors-General should be inserted on the lines of the provisions of the Act of 1935. The appointment of the Chairman of members of each Provincial Public Service Commission and of the Auditor-General should be vested in the Governor in his discretion."

It is proposed to give the power to the Governor. I move the proposition for the acceptance of the House.

Mr. President: There are amendments to this by Shri Khurshed Lal and Shri Gopinath Srivastava, Shri S. L. Saksena, Panditjit and Mr. Santhanam.

(The amendments were not moved.)

Shri K. Santhanam: Sir, with reference to Part III, I have an amendment (No. 23 on Second Supplementary List, dated the 16th July 1947). Though I do not want to move the amendment at this stage, I want you, Sir, to give a ruling that this can be taken up when the Union Constitution is taken up for consideration, as it has been suggested that it can be taken up at that time. I only want to make sure that this will not be ruled out then. I want to know whether you will permit me to move the amendment at that time.

Mr. President: If you wish to move the amendment now you can do so I can give you no promise as to the future. I can permit you to withdraw your amendment now if you wish to, and the question will be considered at the right time, whether the amendment can be moved in connection with the other report.

Shri K. Santhanam: Sir, I do not wish to move my amendments.

Mr. President: The question is:

“That Part III be accepted.”

The motion was adopted.

Part IV—Transitional Provisions

The Honourable Sardar Vallabhbhai J. Patel: Sir, I move:

“1. Any person holding office as Governor in any Province immediately before the commencement of this Constitution shall continue as such and shall be deemed to be the Governor of the Province under this Constitution until a successor duly elected under this Constitution assumes office.

2. There should be similar provisions *mutatis mutandis* in respect of the Council of Ministers, the Legislative Assembly and the Legislative Council (in Provinces which decide to have an Upper House).

3. The Government of each Governor’s Province shall be the successor of the Government of the corresponding Province immediately before the commencement of this Constitution in respect of all property, assets, rights and liabilities.”

These are provisions for the transition period in order to avoid an interregnum. I do not think there can be any controversy over this and I hope it will be accepted.

Shri T. A. Ramalingam Chettiar (Madras: General): I do not wish to move my amendment to Clause 1 (No. 119 on list, dated the 15th July 1947).

Shri K. Santhanam: I do not want to move my amendment to Clause 3 (No. 120 on List, dated the 15th July 1947).

Shri M. Ananthasayanam Ayyangar: I do not wish to move my amendment to Clause I (No. 24 on Second Supp. List dated the 16th July 1947).

(Pandit Govind Malaviya, Shri Rohini Kumar Chaudhury, Shri M. Ananthasayanam Ayyangar, Shri Mohanlal Saksena and Prof. N. G. Ranga did not move their amendments in the 3rd and 4th Supplementary Lists).

Mr. President: There are two amendments by Mr. Ananthasayanam Ayyangar, which are independent propositions. I shall take them up later.

Mr. K. M. Munshi: I have only one remark to offer with regard to Clause 3 of this part which says:

“The Government of each Governor’s Province shall be the successor of the Government of the corresponding Province immediately before the commencement of this Constitution in respect of all property, assets, rights and liabilities.”

I feel, Sir that the words “successor of the Government” might create difficulties and at this stage it would serve no useful purpose to keep Clause 3. I therefore submit that Clause 3 should be deleted. The words do “successor Government” might lead to other complications which need not be invited at this stage.

Mr. H. V. Kamath (C. P. & Berar: General): Mr. President Clause 1 of this part is of course unexceptionable and I think there will be no difficulty in the way of its acceptance by this House. But upon its acceptance certain consequences will, to my mind, flow from it and therefore I wish to draw your attention and the attention of this August Assembly to those consequential aspects of this clause, *viz.*, Clause 1 of Part IV. This clause says:

“Any person holding office as Governor in any province immediately before the commencement of this Constitution shall continue as such and shall be deemed to be the Governor of the Province under this Constitution until a successor duly elected under this Constitution assumes office.”

We are today passing from the darkness of servitude to the light of freedom. But there is bound to be an interregnum between our Dominionhood and that Republican Independence for which we are striving. This interregnum may be long or it may be short, and again there will be another time-lag between today and the commencement of this constitution. By ‘Commencement’ I believe the promulgation of this constitution is meant. I presume that the constitution will be promulgated perhaps by the end of this year but between now and that date of the promulgation of the constitution we are entering upon a new state and that is the state of Dominionhood. The Indian Union will be formally ushered in or inaugurated as a Dominion on the 15th of next month. Therefore, if according to this clause, in December when the constitution is likely to be promulgated, there are certain Governors in certain Provinces, they are likely to continue as such and they will be deemed to be the Governors under this constitution, I want to emphasise the word “shall be deemed to be the Governor of the Province under this constitution.” I think it would be derogatory to the dignity of the constitution, if certain non-nationals are permitted to continue as Governors under this Constitution after the commencement of this Constitution and before elections under this constitution take place. As we all know, very shortly, in the middle of next month, it will be within our power; within the competence of our own leaders to say who will be Governors and where. If, unfortunately some non-nationals—Europeans or Britishers remain or are appointed as Governors in certain provinces, on August 15th, it will follow that in December when the Constitution will be inaugurated or will commence, they will be there and therefore they will continue as Governors under this Constitution till the elections take place and their successors assume office. Therefore Sir, I submit that this is a position which, as a Sovereign body today an aspiring to become shortly a Sovereign legislature of the Dominion, we cannot envisage or tolerate. We have struggled hard these many years and decades to see the end of foreign rule in India. A few months less than five years ago our cry, our revolutionary campaign of ‘Quit India’ was launched and it is a happy coincidence that in the very month of August we in India are attaining Dominionhood if not independence, quite a good degree of independence, and power will, I hope, come into Our hands. Thus, Sir when it will be within our competence to have our own Governors, I for one want that our own nationals and citizens of the Indian Union should be the Governors when the new Constitution is inaugurated. I wish to draw your attention to these words in the Transitional Provisions I am quoting: “In any province immediately before the commencement of this Constitution”. We should take care to see that the Governors in all our Provinces immediately before the commencement of this Constitution are Indians, our own nationals and not non-nationals or foreigners. Have we undergone all these troubles and fought the rulers on so many occasions merely to see these martinets, these panjandrums and these minions of a foreign imperialism continuing their rule in our Provinces? I should like to see the end of it. I do not like to see the day when even after the commencement of this Constitution these very Europeans, whom we asked to quit five years ago, will be continuing as our rulers in certain provinces. I was hard put to it, some days ago to explain to a common man, why Lord Mountbatten

was recommended was for the Governor-Generalship of the Dominion of India. We can quite understand and appreciate the high considerations of diplomacy, political strategy and tactics which influences the recommendation of Lord Mountbatten for the Governor-Generalship. But the common man fails to understand it all. It is true that we cannot always act on the views of the common man. But, at the same time, in a democracy the psychology of the common man has its place. Democracy is largely conditioned by the psychological reflexes of the common man. I would request the Hon'ble Mover and this Assembly to bear these considerations in mind and see that the Governor of any Province immediately before the commencement of this Constitution is not a non-national. It is our men, our citizens who should be there. It is only if we see to this that we can produce the necessary psychological reaction in the mind of the common man. We will fail to produce this essential psychological effect if on the dawn of freedom and independence he were unfortunately to see the same foreigner still stalking the land as ruler or Governor. Our 'Quit India Resolution' is fast bearing fruit. At such a time we should create in the mind of the common man the impression that all power has been taken over by us towards the consummation of the 'Quit India Resolution' which was inaugurated by us five years ago.

नान्यः पन्था अयनाय विद्यते (nanyah pantha ayanaya vidyate)

When we are shortly going to witness the dawn of independence we must make a supreme effort to see that the common man is able to grasp the fact that we are out on masters and that there is no foreigner ruling over us. The sooner we do this the better it is for us and for our country. If we achieve this we will have gone a long way towards awakening the 'shakti' necessary for building up our Indian Union. I am sure I am voicing the feeling of a vast majority in this Assembly when I say that at the time of the inauguration of the Provincial Constitutions, no foreigner remains as Governor in any of the Provinces. It would be a mistake to allow a foreigner to continue as Governor of a province, after that date.

Sir, I will conclude with the words used on another historic occasion and request this August Assembly to tell the foreigner "We asked you to Quit India five years ago. We now again tell you with more power, more authority in our hands: For God's sake go. Leave India to its own fate. Leave India free to build up a strong Independent Sovereign Republic." "Jai Hind."

Sri M. Ananthasayanam Ayyangar: I should like to say a few words with regard to the Transitional Provisions. These ought to be absolutely transitional. That is my desire.

We must congratulate ourselves, Sir that we have spent five days over the elaborate provisions recorded in this Constitution submitted to the Assembly. I am sure we will be able to finish the details considered by the Expert Committee that will be appointed to go into the details of the formalities and bring out the Constitution at an early date. All that I am anxious about is that, when the British Government who originally fixed 30th June 1948 for ushering in a new Constitution have advanced the date, we should not be found un-ready. We should have our Constitution ready and there should be no delay on our part. I do want that 26th January 1948, the day which we have been celebrating as Day of Independence for India should surely be the day when we celebrate the Independence of India. Let it not be said that we have unnecessarily dragged the proceedings here. We will not be charged with that. We have spent only five days on this important matter. We have not left the details to take care of themselves. I hope all concerned will be able to push through the necessary work so that on the 26th day of January we will really have an Independent India and work under an Independent Constitution. As regards the present Governors continuing till then, I am

[Sri M. Ananthasayanam Ayyangar]

sure that they will not continue for any longer time than is necessary. When the new constitution comes into being, I expect that only nationals will be appointed as Governors.

Thirdly, after the new constitution is framed, it will take some time before elections take place; before delimitation of constituencies takes place. All these will take some time. I do not want to have any definite date fixed within which elections should take place under the new constitution. At the same time I would like to urge that after the new constitution has been framed, care should be taken to see that within six months and not later than that, the new constitution must be in full swing. Even before the constitution is drafted, since we are providing for adult franchise; we should ask the existing Governments to prepare the electoral rolls regarding adults in every village and town. Thereafter, the delimitation of constituencies will have to take place. No effort should be lost and all efforts must be made to see that the new constitution comes into being as early as possible. With these words, I support these transitional provision clauses.

Mr. President: Does anyone else wish to speak about this?

Shri Biswanath Das (Orissa : General): Mr. President, Sir, I heartily congratulate the Honourable Sardar Patel for having piloted the report within the shortest possible time, Sir, while congratulating him, I must also confess that the constitution that has been drafted for the provinces gives them less powers than what the provinces were enjoying under the Act of 1935.

We expect to have under the new dispensation a government of the people for the people and by the people. Now, all these three slogans will be meaningless if we do not have the leaders of the people of the provinces as governors of the provinces. Sir, the interim period that lies between the present and the date of the election should not be marred by having men of the permanent services as Governors of provinces. Sir, I support the decision taken in nominating Lord Mountbatten as the Governor-General. There may be important reasons and justifications for the same. The country will be fully with our leaders in that. Sir, that cannot however be translated into the provinces. I am not here to make any distinction between nationals and non-nationals. Sir, I cannot agree to see that people, who have been public servants, continue as governors of provinces. Most of the I.C.S. people do not have the Indian outlook and cannot in any sense be termed as servants of the people. That being the case, I would submit that it would be very hard on the country to tolerate a system of administration in which the same I.C.S. regime is being perpetuated in the provinces. I believe our leaders will not commit this blunder.

Sir with these submissions, I fully support the resolution and congratulate the Committee on having presented a report which was acceptable to the House so as to be passed within the shortest possible time.

The Honourable Sardar Vallabhbhai J. Patel: Sir, I suggest a verbal alteration in Clause 1, third line instead of the words "shall continue." I want to insert the words "may be continued". Any person holding office as Governor in any province immediately before the commencement of this Constitution "*may be continued*". In the fourth line I suggest the insertion of the word "when so continued" after the word "and". These are purely verbal alterations.

I will now remind the House that perhaps some of the friends who gave valedictory orations have forgotten that there is still one clause, Clause 15, to be moved. It is a controversial clause and it will take some time.

Shri C. Subrahmaniam (Madras: General): May be continued by whom? Who is the authority to continue him as Governor under the new Constitution?

The Honourable Sardar Vallabhbhai J. Patel: No doubt by the Government of India, who is the authority to appoint him. There is no difficulty about that.

Mr. H. V. Kamath: “May continue” or “may be continued”. Why not may continue”?

The Honourable Sardar Vallabhbhai J. Patel: Put in “may continue” if you like.

Dr. P. S. Deshmukh (C. P. & Berar: General): “May be continued” is better. “May continue” is likely to be interpreted as “should continue” and Mr. Kamath would be defeating just the object that he has in view. “May be continued” involves continuation only if so ordered by the Government.

Mr. President: I put this resolution to vote with this verbal change. In place of “shall continue” substitute the words “may be continued” and in the fourth line add the words ‘when so continued’ after the word ‘and’.

The motion was adopted.

Mr. President: Mr. Munshi, you moved that Clause 3 be deleted. I am sorry I did not put that to vote, but I take it that it is accepted.

The motion was adopted.

Mr. President: I shall now put the whole resolution as amended by the deletion of Clause 3 to vote, because there was some misunderstanding.

Part IV as amended, was adopted.

Mr. President: Mr. Ananthasayanam Ayyangar has given notice of an amendment.

(The amendment was not moved.)

CLAUSE 15

Mr. President: There was one clause which was passed over and that was Clause 15 and we may take up that now.

The Honourable Sardar Vallabhbhai J. Patel: I move:

“15. (1) In the exercise of his responsibilities, the Governor shall have the following special responsibility, namely the prevention of any grave menace to the peace and tranquillity of the Province or any part thereof.

(2) In the discharge of his special responsibility, the Governor shall act in his discretion:

Provided that if at any time in the discharge of his special responsibility he considers it essential that provision should be made by legislation, but is unable to secure such legislation he shall make a report to the President of the Federation who may thereupon take such action as he considers appropriate under his emergency powers.”

Honourable Members may kindly refer to my introductory speech in this connection. This question of discretionary powers of the Governor is a matter which requires very careful consideration. On the one hand it encroaches upon the powers of the Ministry. The Governor has not got the services under him and if he is to exercise his functions in his discretion, if he is given authority to take control of the services for the purpose of discretionary responsibility, then it is difficult to conceive how the ministry can function and it almost amounts to a sort of introduction of Section 93 under the provisions of his Act. Again on the other side there is a feeling that looking to the conditions prevailing in the country, some provision should be made for giving special responsibilities to meet with the difficult situation which has arisen in the country today. For this purpose this clause requires careful consideration and I hope all points of view will be made clear in this debate. I therefore move this proposition for the acceptance of the House.

The Honourable Pandit Hirday Nath Kunzru (U.P. General): Mr. President, I venture to suggest that it will be in the interest of us all if the discussion of this question is postponed till tomorrow. We have a new amendment before us of which notice has been given by Mr. Munshi and I think it is desirable that, we should have some time to think over it. There is no doubt that we have been thinking about this question for many days, but no suggestion was before us in the exact form which it has assumed in Mr. Munshi's amendment. I suggest, therefore, that we might take it up tomorrow. It is only half-past twelve now and the House will not lose more than half an hour if we adjourn the discussion till tomorrow. I hope that my suggestion will meet with the approval of the House, and of you, Mr. President.

Mr. President: I was going to suggest that instead of not utilising this half hour we might have the amendments moved and further discussion might take place tomorrow if that meets with the approval of the House. Thus the members will have an opportunity of considering the amendments also with the speeches of the Movers of those amendments if that meets with the wishes of the House.

The Honourable Pandit Hirday Nath Kunzru: Are you suggesting that the amendment should be moved today and that the speeches might be reserved till tomorrow?

Mr. President: If any mover of any amendment wishes to have that right, I shall give him that right.

Dr. B. R. Ambedkar: It should not be concluded today.

Mr. President: The first amendment is by Messrs. Ajit Prasad Jain, Khurshed Lal and Gopinath Srivastava.

(The amendment was not moved.)

(Messrs. K. Santhanam, Kala Venkata Rao, M. Ananthasayanam Ayyangar, Shibban Lal Saksena, and Pandit Govind Ballabh Pant did not move their amendments.)

Mr. B. M. Gupte (Bombay: General): I beg to move Sir, that the proviso to sub-clause (2) of Clause 15 be deleted and the following new sub-clauses be added:

“(3) If in the discharge of his special responsibility the Governor is satisfied that a situation has arisen in which immediate action has to be taken, he may, by a proclamation assume to himself all or any of the powers vested in or exercisable by any provincial body or authority except the High Court.

(4) The Proclamation shall be communicated forthwith to the President of the Union, who may thereupon take such action as he considers appropriate under his emergency powers.

(5) The Proclamation shall cease to operate at the expiration of 2 weeks, unless revoked before then by the Governor himself or by the President of the Union under his emergency powers, whichever is earlier.”

Mr. President: Pandit Hirday Nath Kunzru.

The Honourable Pandit Hirday Nath Kunzru: Mr. President, the amendment of which I have given notice runs as follows.

“That for clause 15, the following be substituted:

‘Whenever the Governor is satisfied that there is a grave menace to the peace, and tranquillity of the Province or any part thereof, he may, in his discretion report to the President of the Federation.

NOTE.—The President may take such action on the report under the emergency powers vested in him as he considers appropriate.’”

Sir, I shall reserve my speech till tomorrow because it will obviously be an advantage to consider the matter as a whole after all the amendments have been moved.

Mr. President: Mr. Munshi.

Mr. K. M. Munshi: Sir, this amendment is only an elaboration of Mr. Gupte's amendment. I think I should also reserve whatever I have to say on the amendment for tomorrow.

Mr. M. S. Aney: On a point of order, Sir, Mr. Munshi's amendment is an amendment to an amendment given notice of by Pandit Govind Ballabh Pant but inasmuch as Pandit Pant did not think it worth while to move his amendment at all there is no question of Mr. Munshi moving an amendment to that.

Mr. President: May I point out that an amendment in the same words as Pandit Gobind Ballabh Pant's has been moved by Pandit Kunzru?

Mr. M. S. Aney: Then it will require a change in the wording which should be "moved by Pandit Hirday Nath Kunzru."

Mr. K. M. Munshi: Mr. Aney seems not to have read the paper correctly. I have moved two amendments one to Pantji's, and another to Mr. Gupte's amendment. Since the former amendment was not moved, and Mr. Gupte has moved his amendment, I am perfectly in order in spite of Mr. Aney's protest. The amendment is:

"That for Clause 15 the following be substituted:

- (1) Where the Governor of a Province is satisfied in his discretion that a grave situation has arisen which threatens the peace and tranquillity of the Province and that it is not possible to carry on the Government of the Province with the advice of his Ministers in accordance with the provisions of section 9 he may by Proclamation, assume to himself all or any of the functions, of Government and all or any of the powers vested in or exercisable by any Provincial body or authority; and any such Proclamation may contain. Such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation including provisions for suspending in whole or in part of the operation of any provisions of this Act relating to any Provincial body or authority:

Provided that nothing in this sub-section shall authorise the Governor to assume to himself any of the powers vested in or exercisable by a High Court or to suspend, either in whole or in part, the operation of any provision of the Act relating to High Courts.

- (2) The Proclamation shall be forthwith communicated by the Governor to the President of the Union, who may thereupon take such action as he considers appropriate under his emergency powers.
- (3) The Proclamation shall cease to operate at the expiration of two weeks, unless revoked earlier by the Governor himself or by the President of the Union."

Mr. H. V. Kamath: With due deference to the legal and constitutional ability of Mr. Kunzru, I would like to submit that the phrase "satisfied in his discretion" is not quite happy. One may say or do something in one's discretion, but "to be satisfied in one's discretion" is not usual.

Mr. President: We shall adjourn the discussion of this till tomorrow.

Honourable Pandit Hirday Nath Kunzru: I shall deal with Mr. Kamath's point tomorrow.

Mr. President : We might now take up the other item on the agenda, namely the report of the Committee dealing with the Union Constitution. Pandit Nehru will move the motion which stands in his name.

Mr. H. V. Kamath: Mr. President, last night we received notice of a motion to be moved by Dr. Nehru tomorrow regarding our National Flag, I would request you to let us know up to what hour we could send in amendments to this motion.

Mr. President: Since you received the notice last night—, you could have sent in your amendment by now, but if you have not sent it, you may send it up to 5 O'clock today.

Maulana Hasrat Mohani (U.P. : Muslim): I do not find any mention of the amendment moved by me about this Union Report. There is an amendment by Dr. Deshmukh. I submitted mine at the time.

Mr. President. The amendments have been circulated as Honourable members know. We would have received that amendment late in the afternoon of Saturday. But all amendments have not been placed on the table.

Maulana Hasrat Mohani: I gave my amendment to Mr. Lengar two days before Dr. Deshmukh's amendment. It must find a place in the agenda and it must be before all Honourable members.

Mr. President: We shall consider it when we come to that.

REPORT ON THE PRINCIPLES OF THE UNION CONSTITUTION

The Honourable Pandit Jawaharlal Nehru (U.P.: General):
Mr. President, Sir. I beg to move :

“That the Constituent Assembly do proceed to take into consideration the *Report on the principles of the Union Constitution submitted by the Committee appointed in pursuance of the Resolution of the Assembly of the 30th April, 1947.”

This Report has been circulated and, after the full Report was circulated a *supplementary Report or rather an addendum to the previous report has also been circulated. In this Supplementary Report certain changes have been made in the previous Report. So I am putting before the House the report as amended by the Supplementary Report. I ventured to circulate a note on this report to the members of this House two days ago in which I pointed out that so far as the Preamble and part of Clause 1 were concerned, they were covered more or less by the Objective Resolution of this House. That Resolution holds. It may have to be varied in regard to smaller matters because of Political developments since it was passed.

A Sub-Committee has been asked to go into the question of drafting. We are not changing the Objectives Resolution at all. What I mean is, adapting it to the Preamble. The Objectives Resolution is history and we stand by all the principle laid down in it. In adapting it to the Preamble, certain obvious changes have to be made. At the present moment, as the House is aware, we are not going into the drafting of the Constitution, but are establishing the principles on which this should be drafted. Therefore, that draft of the Preamble is not necessary. We have settled the principles. So I suggested in my note that we may not consider this matter.

*Appendix 'A'.

†Appendix 'B'.

Part II dealing with Citizenship has not been finally decided yet by the Sub-Committee and Part III dealing with Fundamental Rights has already been considered by this House and passed. I would therefore suggest that we might begin consideration of this Report from Part IV. Chapter I, The Federal Executive. There are one or two minor matters which you may have to consider in Parts I and II. It is not necessary to take these one or two simple matters. It is better to begin with Part IV and consider the rest at a later period.

May I point out that I just mentioned that Fundamental Rights have been considered by this House and passed. All that we have passed will of course come up before the House once again for final consideration. There are many new members and it has been pointed out to me by some of them that they were not present here when these Fundamental Rights were considered and passed. Well, it is perfectly true. It is a little difficult for us to go back repeatedly and start afresh. That I do not think will be proper. But, as a matter of fact, all these things will finally come up before the House and it will be open to any of the members to point out anything or to amend any part of it at that time. So, I suggest, Sir, that we may proceed now with Part IV, Chapter I, if you have got the printed pamphlet, it is on page 5. It begins with Federal Executive.

The Report is a fairly long one. At the end of the Report, you will find an Appendix dealing with the judiciary. This is the Report of the *ad hoc* Committee on the Supreme Court. That is only for your information because these conclusions have been more or less incorporated in the Report.

Obviously, when we consider the constitution, the fundamental law of the nation as it is going to be, it is an intricate and important matter and we cannot just rush through it without giving it sufficient time and consideration. I may inform the House that so far as the Union Constitution Committee was concerned, it gave it their very earnest consideration, not once, but several times. We met the Provincial Constitution Committee also on several occasions and this is the result of our joint consultation, but mostly of the Union Constitution Committee's work itself.

I have just been given the list of amendments. This paper contains 228 amendments. I am told, in all we have reached the figure 1,000, I have not seen them as yet, none of them. It is rather difficult for me to deal with them now. I should like to abide by the wishes of the House in the matter.

If I may suggest one thing at present, it is this: that we start with Part IV—Federal Executive. The very first thing that comes up is how the Head of the Federation should be elected. I understand that there are several view points on that. Possibly that particular item may be taken up. It is a simple item. The views may be this way or that: but this is a simple issue and we may consider it now, not only because it is the first item, but because it can easily be taken up without a knowledge of the other large number of amendments. I beg to move this.

May I, Sir, now go on with item I of Part IV?

Mr. President: I will first put the resolution that the Report be taken into consideration.

Maulana Hasrat Mohani: I have stated that before you take into consideration the Report. I want to make certain points clear. In this paper, which he claims to be a supplementary report, Pandit Nehru has made certain suggestions. After all, these are only his suggestions. Is it necessary for myself or for anybody else to accept his suggestion? I for one do not accept these suggestions.

[Maulana Hasrat Mohani]

Besides, I have got very strong reasons for that. Pandit Nehru the other day said that we have already passed the Objectives Resolution and we have to keep that resolution before us in drafting everything now or afterwards.

Mr. President: Maulana Saheb, the simple proposition that I am putting to this House at the present moment is that the Report of the Committee be taken into consideration. When that is accepted, we will go clause by clause.

Haji Abdul Sathar Haji Ishaq Sait (Madras : Muslim): Sir, members can express their views whether this report should be taken into consideration or not. We should have a right to speak on that motion. Maulana Saheb is speaking on that motion.

Mr. President: Is it your suggestion that the Report should not be taken into consideration?

Maulana Hasrat Mohani: Yes. What I say is this, Pandit Nehru says that he has got the Objectives Resolution already passed by the House.

Maulana Hasrat Mohani: Yes. What I say is this. Pandit Nehru in that Objectives Resolution. It says simply that we will have a Republic. It does not say whether the Republic will be a Unitary Republic or a Federal Republic. Even if it is a Federal Republic, it does not make it clear whether that Federal Republic, will be of a centrifugal or centripetal character and unless and until we decide all these things, it is futile to determine the model of Provincial Constitutions. This is why I suggested in my speech the other day: you want to get one thing passed in your provincial constitution; when you have passed the provincial constitution and when I propose on the occasion of a proposed revised Union Constitution Report coming for consideration before the next meeting of the Constituent Assembly perhaps in October, an amendment to the effect that it must be a Union of Indian Socialist Republics, then you may say, "you are precluded from doing that as that will be something like a settled fact. We have passed the provincial constitution and now there is no scope, left for Hasrat Mohani to add anything or to say against that."

I am afraid, Sir, that it will be very easy for you to declare my amendments to the Union Constitution out of order as you did the other day in connection with an amendment proposed by my friend. Mr. Tajamul Husain. You will say "Well the provincial constitution has been accepted and passed, now, your amendments are out of order. You will say, that the report has been accepted and therefore my amendments are out of order. I will have raised no objection at this stage if this matter stands over. Then I will have every right to propose amendments on the occasion when you go clause by clause. Or I will have full rights to say that I oppose the Objectives Resolution also. I have got two reasons. One I have made clear that it does not decide anything.

Mr. Shankar Dattatraya Deo (Bombay : General): We cannot follow a single word or any idea.

Mr. President: (To Maulana Hasrat Mohani) Come to this mike, please.

Mr. Jainarain Vyas (Jodhpur State): On a point of order, Sir. The Honourable Member has already started considering the Report. The question before the House is whether the Report be considered or not. That question must be considered first.

Maulana Hasrat Mohani: Before considering the Report he should make certain points clear. It puts me at a great disadvantage if I accept this Report.

Mr. President: As I understand it, the Maulana's point is that I should give him a promise at this stage that his amendment will not be ruled out of order. Obviously I cannot give any promise to any member before the matter actually comes up. But you may all have noticed that I am very liberal in the matter of allowing amendments to be moved even if they come out of time. Unless there is any technical ground, I do not see any reason why his amendment may be ruled out of order. More than this I cannot say anything at this stage. I have given some sort of promise that Maulana wanted. I take it that the House wishes that we should proceed with the consideration of this report.

Many Honourable Members: Yes, yes.

The motion to take the Report into consideration was adopted.

B. Pocker Sahib Bahadur: I wanted to say one word about the proposition you have put.

Mr. President: I put it to vote and it has been carried.

The Honourable Pandit Jawaharlal Nehru: Sir, I suggest that we should begin with Part IV, Chapter I.

"*Clause 1 (1)* The Head of the Federation shall be the President (Rashtrapati) to be elected as provided below.

(2) The election shall be by an electoral college consisting of—

- (a) the members of both Houses of Parliament of the Federation, and
- (b) the members of the Legislatures of all the Units or where a Legislature is bicameral the members of the Lower House thereof.

In order to secure uniformity in the scale of representation of the units the votes of the Unit Legislatures shall be weighted in proportion to the population of units concerned.

Explanation.—A Unit means a Province or Indian State which returns in its own individual right members to the Federal Parliament. In Indian States which are grouped together for the purpose of returning representatives to the Council of States a Unit means the group so formed and the Legislature of the Unit means the Legislatures of all the states in that group.

(3) The election of the President shall be by secret ballot and on the system of proportional representation by means of the single transferable vote.

(4) Subject to the above provisions, elections for the office of President shall be regulated by Act of the Federal Parliament."

Now Sir, one thing we have to decide at the very beginning is what should be the kind of governmental structure, whether it is one system where there is ministerial responsibility or whether it is the Presidential system as prevails in the United States of America; many members possibly at first sight might object to this indirect election and may prefer an election by adult suffrage. We have given anxious thought to this matter and we came to the very definite conclusion that it would not be desirable, first because we want to emphasize the ministerial character of the Government that power really resided in the Ministry and in the Legislature and not in the President as such. At the same time we did not want to make the President just a mere figure-head like the French President. We did not give him any real power but we have made his position one of great authority and dignity. You will notice from this draft Constitution that he is also to be Commander-in-Chief of the Defence Forces just as the American President is. Now, therefore, if we had an election by adult franchise and yet did not give him any real powers, it might become slightly anomalous and there might be just extraordinary expense of time and energy and money without any adequate result. Personally, I am entirely agreeable to the democratic procedure but there is such a thing as too much of a democratic procedure and I greatly fear that if we have a wide scale wasting of the time, we might have no time left for doing anything else except preparing for the elections and having elections.

[The Honourable Pandit Jawaharlal Nehru]

We have got enough elections for the Constitution. We shall have elections on adult franchise basis for the Federal Legislature. Now if you add to that an enormous Presidential election in which every adult votes in the whole of India, that will be a tremendous affair. In fact even financially it will be difficult to carry out and otherwise also it will upset most activities for a great part of the year. The American Presidential election actually stops many activities for many-many months. Now it is not for me to criticise the American system or any other system. Each country evolves the system of its choice. I do think that while there are virtues in the American system, there are great defects in that system. I am not concerned with the United States of America. I am concerned with India at present, and I am quite convinced in my mind that if we try to adopt that here, we shall prevent the development of any ministerial form of Government and we shall waste tremendous amount of time and energy. It is said that the American Presidential election helps the forging of unity of the country by concentrating the mind of the entire country on the Presidential election and on the conduct of those elections. One man becomes the symbol of the country. Here also he will be a symbol of the country; but I think that having that type of election for our President would be a bad thing for us.

Some people suggested, why have even this rather complicated system of election that we have suggested? Why not the Central Legislature by itself elect the president? That will be much simpler, of course, but there is the danger that it will be putting the thing very much on the other side, of having it on too narrow a basis. The Central Legislature may, and probably will be dominated, say, by one party or group which will form the ministry. If that group elects the President, inevitably they will tend to choose a person of their own party. He will then be even more a dummy than otherwise. The President and the ministry will represent exactly the same thing. It is possible that even otherwise the President may represent the same group or party or ideas. But we have taken a middle course and asked all the members of all the legislatures all over India, in all the units to become voters. It is just likely that they will be choosing a party man. Always that is possible of course. Anyway, we may rule out electing the President by the Central Legislature as being on too narrow a basis.

To have it on adult franchise, you must have some kind of electoral college; It has been suggested that we may have some kind of electoral college which will include all manner of people—members of municipalities, district boards and so on. That, I think will be introducing confusion without doing good to anybody. It will mean a large number of petty elections for making up the electoral college. In the various legislatures you have already a ready-made electoral college—that is, the members, of the legislatures all over India. Probably they will number a few thousands. And presumably these members of the legislatures will be in a better position to judge of the merits of the individual in question or the candidates than some other larger electoral college consisting of municipal members and others. So I submit to the House that the method that this Committee has suggested is quite feasible and is the right method to choose a good man who will have authority and dignity in India and abroad.

You will notice that in choosing this method, we have taken care to prevent any weightage in voting, because legislatures, as has been explained, I believe in a note, may not be representative of the population of the numbers of the population. A province like the United Provinces or Madras may have a provincial legislature of 300 persons representing some 60 or 55 million people—I do not know how many. Another legislature may have 50 members representing some 50,000. It will be rather absurd to give the same weightage and the result will be that a number of very small units in the country will really dominate the scene.

Therefore weightage has been disallowed and some formula will have to be worked out carefully to see that voting is according to the population of the units concerned. I beg to move.

Mr. President: We shall take up the amendments to this motion, and resume discussion on this, next day.

Before we depart I would like to make one announcement. We have now the Report of the Union Powers Committee which had been circulated. Members may send in their amendments till day after tomorrow 5 P.M. *i.e.*, up to Wednesday, the 23rd at 5 P.M. (*Some Honourable Members:* "We have not received the Report"). I understand the Report was circulated long ago, in fact that it has been circulated twice. But if still any member has not received a copy, he may take it now.

Some Honourable Members: We are anxious to know the time-table for the next session. May we put off giving notice of amendments till Thursday evening?

Mr. President: Yes, notice of amendments to Union Powers Committee's Report may be given till 5 P.M. on Thursday, the 24th instant.

The House then adjourned till Ten of the Clock, on Tuesday, the 22nd July 1947.

CONFIDENTIAL

APPENDIX 'A'

No. CA/ 63/Cons./47

CONSTITUENT ASSEMBLY OF INDIA

COUNCIL HOUSE,

New Delhi, the 4th July, 1947.

FROM

PANDIT JAWAHARLAL NEHRU,

CHAIRMAN,

UNION CONSTITUTION COMMITTEE

To

THE PRESIDENT,

CONSTITUENT ASSEMBLY OF INDIA.

Sir,

On behalf of the members of the Committee appointed by the Honourable the President in pursuance of the resolution of the Constituent Assembly of the 30th April, 1947, to report on the principles of the Union Constitution, I have the honour to submit the annexed Memorandum which embodies the recommendations of the Committee together with explanatory notes where necessary.

I have the honour to be,

Sir,

Your most obedient servant,

JAWAHARLAL NEHRU,

Chairman.

No. CA/63/Cons./47

CONSTITUENT ASSEMBLY OF INDIA

Memorandum on the Indian Constitution

Preamble.—We, the people of India, seeking to promote the common good do hereby, through our chosen representatives, enact, adopt and give to ourselves this Constitution.

PART I

FEDERAL TERRITORY AND JURISDICTION

1. Name and Territory of Federation.—The Federation hereby established shall be a sovereign independent Republic known as India.

Save as otherwise provided or under this Constitution or any treaty or agreement the territories included for the time being in Schedule I shall be subject to the jurisdiction of the Federation.

[NOTE.—The structure proposed to be established by this Constitution being federal in character, the term Federation has been used.]

“India” has been suggested for the name of the State as being the shortest and the most comprehensive.

The words ‘save as otherwise provided by or under... and treaty or agreement’ are necessary, because there may be Indian States which, though unfederated and therefore not in the Schedule, may have ceded jurisdiction for certain special purposes by some treaty or agreement.

2. Admission of New Territory.—The Parliament of the Federation may from time to time by Act include new territories in Schedule I upon such terms as it thinks fit.

[Cf. Art. IV, Section 3(I), of the Constitution of the U.S.A., and Section 121 of the Australian Constitution. The power to admit new States is vested in the Congress in the U.S.A. and in the Commonwealth Parliament in Australia.

As a matter of nomenclature it may be explained that in this draft the Legislature of the Federation is referred to as “Parliament”; Unit Legislatures are referred to as “Legislatures”. The Federal Parliament consists of the President and a National Assembly comprising two Houses.]

3. Creation of new units and alteration of boundaries of units.—The Parliament of the Federation may by Act, with the consent of the Legislature of every Province and the Legislature of every Indian State affected thereby,—

- (a) create a new unit;
- (b) increase the area of any unit;
- (c) diminish the area of any unit;
- (d) alter the boundaries of any unit;

and may with the like consent make such incidental and consequential provisions as it may deem necessary or proper.

[NOTE.—This corresponds to S. 290 of the Act of 1935, but is wider in that it provides for the possibility of Indian State territory being included in a province.]

APPENDIX A
SCHEDULE I
TERRITORIES SUBJECT TO THE JURISDICTION OF THE
FEDERATION

I. *Governor's Provinces*—

Madras,
Bombay,
West Bengal,
The United Provinces,
Bihar,
East Punjab,
The Central Provinces and Berar,
Assam,
Orissa.

II. *Chief Commissioners' Provinces*—

Delhi,
Ajmer-Merwara,
Coorg,
The Andaman and Nicobar Islands,
Panth Piploda.

III. *Indian States*—

[Here enumerate the acceding or ratifying Indian States:—

- (1) Single States.
- (2) Groups of States.]

[The Governors' Provinces and the Chief Commissioner's Provinces specified in the Schedule will be automatically within, the jurisdiction of the Federation of India. As regards Indian States, some procedure will have to be prescribed for determining which of them are to be included in the Schedule initially. Under the Act of 1935, accession was to be evidenced by "Instruments of Accessor" executed by the Rulers. If it is considered undesirable to use this term or adopt this procedure, some kind of ratification may have to be prescribed.

If any of the Provinces specified in the Schedule should be partitioned before the Constitution comes into operation, the Schedule will have to be amended accordingly.]

*PART II

CITIZENSHIP

1. Citizenship.—At the date of commencement of this Constitution every person domiciled in the territories subject to the jurisdiction of the Federation—

- (a) who has been ordinarily resident in those territories for not less than five years immediately preceding that date, or

*This part is subject to the decision of the *ad hoc* Committee on Citizenship Clause.

(b) who, or whose parents, or either of whose parents, was or were born in India. shall be citizen of the Federation:

Provided that any such person being a citizen of any other State may, in accordance with Federal law, elect not to accept the citizenship hereby conferred.

Explanation.—For the purposes of this clause—

“Domicile” has the same meaning as in the Indian Succession Act, 1925.

2. After the commencement of this Constitution—

- (a) every person who is born in the territories subject to the jurisdiction of the Federation;
- (b) every person who is naturalised in accordance with Federal law, and
- (c) every person, either of whose parents was, at the time of such person’s birth, a citizen of the Federation;

shall be a citizen of the Federation.

3. Further provisions governing the acquisition and termination of Federal citizenship may be made by Federal law.

Explanation.—In this Constitution, unless the context otherwise requires “Federal law” includes any existing Indian law as law as in force within the territories subject to the jurisdiction of the Federation.

[NOTE.—The Provisions regarding citizenship will doubtless rouse keen controversy. The present draft is merely meant as a basis for discussion. Cf. Art. 3 of the Constitution of the Irish Free State 1922. which runs—

“Every person, without distinction of sex, domiciled in the area of the jurisdiction of the Irish Free State at the time of the coming into operation of this Constitution, who was born in Ireland or either of whose parents was born in Ireland, or who has been ordinarily resident in the area of the jurisdiction of the Irish Free State for not less than seven years, is a citizen of the Irish Free State and shall, within the limits of the jurisdiction of the Irish Free State, enjoy the privileges and be subject to the obligations of such citizenship:

Provided that any such person being a citizen of another State may elect not to accept the citizenship hereby conferred; and the conditions governing the future acquisition and termination of citizenship in this Irish Free State shall be determined by law.”

Clause I is on the lines of the above provision, except that a period of five years has been substituted for seven years in accordance with S. 3(1) (c) of the Indian Naturalisation Act, VII of 1926.

The clause has had to be drafted with due regard to the probability that the Federation will not initially exercise jurisdiction over the whole of India.

A person born in India and domiciled in Bombay, who happens to be resident in London at the commencement of the new Constitution, will be a citizen of the Federation under this clause; but not one domiciled in Sind or Baluchistan, if the Federation does not initially exercise jurisdiction there. It is, however, open to any person to acquire a new domicile by taking up his fixed habitation in another area before the Constitution comes into operation.

Under the Indian Succession Act, 1925, every person has a "domicile" of origin which prevails until he acquires a new domicile. Briefly, his domicile of origin is in the country which at the time of his birth his father was domiciled, and he can acquire a new domicile by taking up his fixed habitation in another country. There is also a provision in the Act enabling any person to acquire a domicile, British India by making and depositing in some office in British India, appointed in this behalf by the Provincial Government, a declaration in writing of his desire to acquire such domicile provided that he has been resident in British India for one year preceding the date of the declaration. Generally speaking, a wife's domicile during her marriage follows the domicile of her husband. If any person who is at present domiciled, say, in Hyderabad, wishes to acquire a domicile, say, in Delhi before the coming into operation of this Constitution he can do so either by taking his fixed habitation in Delhi or by following the procedure prescribed in the above, provision of the Indian Succession Act, so that at the date of commencement of the Constitution he will become domiciled "in the territories subject to the jurisdiction of the Federation".

Clauses 2 and 3 follow the provisions suggested by the *ad hoc* Committee; Clause 2 is not necessary, if we are content to leave the matter to Federal law under Clause 3. In this connection, there is much to be said in favour of the view of the Calcutta Weekly Notes:

"It is not possible to define exhaustively the conditions of nationality, whether by birth or naturalisation, by the Constitution. If certain conditions are laid down by the Constitution, difficulties may arise regarding the interpretation of future legislation which may appear to be contrary to or to depart in any way from them. For example, the draft of the nationality clause placed before the Constituent Assembly lays down that any person born in the Union would be a citizen of the Union. But what about a woman citizen of the Union marrying an alien national or about an alien woman marrying a Union national? Would the Union Legislature have power to legislate in the first case that the woman would lose her Union nationality or in the second case that she would acquire Union nationality (such being the law of most of the countries)? These are intriguing questions, but all these things have to be pondered before a rigid clause is inserted in the Constitution itself. It would, in our opinion therefore, be better to specify who would be citizens of the Indian Union at the date when the Constitution comes into force as in the Constitution of the Irish Free State and leave the law regarding nationality to be provided for by legislation by the Indian Union in accordance with the accepted principles of Private International Law." (Calcutta Weekly Notes, Vol. LI No. 27, May 26, 1947).

The same journal in two subsequent issues (Vol. LI, Nos. 28 and 29, June 2, and June 9, 1947) has drawn attention to a host of other questions arising out of Clause 2 and on the whole it may be better altogether to omit that clause, leaving the matter at large to be regulated by Federal law under Clause 3).

PART III

FUNDAMENTAL RIGHTS INCLUDING DIRECTIVE PRINCIPLES OF STATE POLICY

1. Fundamental Rights:—[Here enumerate the Fundamental rights and principle of State policy as passed by the Constituent Assembly.]

PART IV
CHAPTER I
THE FEDERAL EXECUTIVE

1. Head of the Federation.—(1) The Head of the Federation shall be the President (Rashtrapti) to be elected as provided below.

- (2) The election shall be by an electoral college consisting of—
- (a) the members of both Houses of Parliament of the Federation, and
 - (b) the members of the Legislatures of all the Units or, where a Legislature is bicameral, the members of the Lower House thereof.

In order to secure uniformity in the scale of representation of the Units, the votes of the Unit Legislatures shall be weighted in proportion to the population of the Units concerned.

Explanation.—A Unit means a Province or Indian State which returns in its own individual right members to the Federal Parliament. In Indian States which are grouped together for the purpose of returning representatives to the Council of States, a Unit means the group so formed and the legislature of the Unit means the Legislatures of all the States in that group.

(3) The election of the President shall be by secret ballot and on the system of proportional representation by means of the single transferable vote.

(4) Subject to the above provisions, elections for the office of President shall be regulated by Act of Federal Parliament.

[NOTE.—The provision about weighting of the votes according to the population of the Units is necessary to prevent the swamping of the votes of a large Unit by those of a much smaller Unit which may happen to have a relatively large Legislature. The mode of weighting may be illustrated thus: In a Legislature where each legislator represents 1 lakh (100,000) of the population, his vote shall count as equivalent to 100, that is, 1 for each 1,000 of the population: and where the Legislature is such that the legislator represents, 10,000 of the population, his vote shall count as equivalent to 10 to the same scale.]

2. Term of office of President.—(1) The President shall hold office for 5 years:

Provided that—

- (a) President may by resignation under his hand addressed to the Chairman of the Council of States and the Speaker of the House of the People resign his office;
 - (b) a President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in sub-clause (2).
- (2) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of the Federal Parliament, but no proposal to prefer such charge shall be adopted by that House except upon a resolution of the House supported by not less than two-thirds of the total membership of the House.

- (b) When a charge has been so preferred by either House of the Federal Parliament the other House shall investigate the charge or cause the charges to be investigated and the President shall have the right to appear and to be represented at such investigation.
- (c) If as a result of the investigation a resolution is passed, supported by not less than two-thirds of the total membership of the House by which the charge was investigated or cause to be investigated declaring that the charge preferred against the President has been sustained, the resolution shall have the effect of removing the President from his office as from the date of the resolution.

(3) A person who holds, or who has held, office as President shall be eligible for re-election once, but only once.

[NOTE.—Sub-clauses (1) (b) and (2) follow Art. 12(10) of the Irish Constitution, sub-clause (3) is also taken from the Irish Constitution.]

3. Age qualification.—Every citizen of the Federation who has completed the age of thirty-five years and is qualified for election as a member of the House of the People shall be eligible for election as President.

[NOTE.—This follows Art II, Section 1(5), of the Constitution of the U.S.A. and Article 12(4) of the Irish Constitution.]

4. Conditions of President's Office.—(1) The President shall not be a member of either House of the Federal Parliament and if a member of either House be elected President, he shall be deemed to have vacated his seat in that House.

(2) The President shall not hold any other office position of emolument.

(3) The President shall have an official residence and shall receive such emoluments and allowances. As may be determined by Act of the Federal Parliament and until then, such as are prescribed in Schedule.

(4) The emoluments and allowances of the President shall not be diminished during his term of office.

[NOTE—These follow the provisions of Articles 12(6) and (11) of the Irish Constitution.]

5. Casual vacancies and procedure at elections.—Appropriate provision should be made for elections to fill casual vacancies, the detailed procedure for all elections, whether casual or not being left to be regulated by Act of the Federal Parliament:

Provided that—

- (a) an election to fill a casual vacancy shall be held as soon as possible after and in no case later than six months from, the date of occurrence of the vacancy; and
- (b) the person elected as President at an election to fill a casual vacancy shall be entitled to hold office for the full term of five years.

6. Vice-President.—(1) In the event of the absence of the President or of his death, resignation, removal from office, or incapacity or failure to exercise and perform the powers and functions of his office or at any time at which the office of the President may be vacant, his functions shall be discharged by the Vice-President pending the resumption by the President of his duties or the election of a new President, as the case may be.

(2) The Vice-President shall be elected by both Houses of the Federal Parliament in joint session by secret ballot on the system of proportional representation by means of the single transferable vote and shall be *ex-officio* President of the Council of States.

(3) The Vice-President shall hold office for five years.

7. Functions of the President.—(1) Subject to the provisions of this Constitution the executive authority of the Federation shall be vested in the President.

(2) Without prejudice to the generality of the foregoing provision—

- (a) the supreme command of the defence forces of the Federation shall be vested in the President;
- (b) the right of pardon and the power to commute or to remit punishment imposed by any court exercising criminal jurisdiction shall be vested in the President, *but such power of commutation or remission may also be conferred by law on other authorities.*

[NOTE.—The italicized words in sub-clause 2(b) are necessary, because of the provisions of the Criminal Procedure Code, which, in this respect, will probably continue to be in force even after the commencement of the new Constitution. Similar limiting words occur in the Irish Constitution also.]

8. Extent of executive authority of the Federation.—Subject to the provisions of this Constitution, the executive authority of the Federation shall extend to the matters with respect to which the Federal Parliament has power to make laws and to any other matters with respect to which authority has been conferred the Federation by any treaty or agreement, and shall be exercised either through its own agency or through the Units.

9. The executive authority of the Ruler of a Federated State shall continue to be exercisable in that State with respect to Federal subjects, until otherwise provided by the appropriate Federal authority.

[NOTE.—Like the corresponding provision in section 8(2) of the Act of 1953 this clause gives the Rulers of Indian States, who have acceded to the Federation, concurrent executive power even in Federal subjects, until otherwise provided by Federal authority. (In this respect, the position of the Provincial units is rather different: these have no executive power in respect of Federal subjects save as given by Federal law.) Such a clause is necessary, for otherwise, all statutory powers in respect of Federal subjects will come to an end in the acceding States upon the commencement of this Constitution.]

10. Council of Ministers.—There shall be a Council of Ministers with the Prime Minister at the head, to aid and advise the President in the exercise of his functions.

11. Advocate-General for the Federation.—The President shall appoint a person, being one qualified to be appointed a judge of the Supreme Court, to be Advocate-General for the Federation, to give advice to Federal Government upon legal matters that may be referred to him.

12. Conduct of business of the Federal Government.—All executive action of the Federal Government shall be expressed to be taken in the name of the President.

CHAPTER II
THE FEDERAL PARLIAMENT

13. Constitution of the Federal Parliament.—The legislative power of the Federation shall be vested in the Parliament of the Federation which shall consist of the President and the National Assembly, comprising two Houses, the Council of States and the House of the People.

14. (1) (a) The Council of States shall consist of—

- (i) not more than 10 members nominated by the President in consultation with universities and scientific bodies;
- (ii) representatives of the Units on the scale of one representative for every whole million of the population of the Unit upto five million *plus* one representative for every additional two million of the population, subject to a total maximum of 20.

Explanation.—A Unit means a province or Indian State which returns in its own individual right members to the Federal Parliament. In Indian States which are grouped together for the purpose of returning representatives to the Council of States a Unit means the group so formed.

(b) The representatives of each Unit in the Council of States shall be elected by the members of the Lower House of the Legislature of such Unit.

(c) The House of the People shall consist of representatives of the people of the territories of the Federation in the proportion of not less than 1 representative for every million of the population and not more than 1 representative for every 750,000 of the population.

(d) The ratio between the number of members to be elected at any time for each constituency and the population of that constituency, as ascertained at the last preceding census shall, as far as practicable, be the same throughout the territories of the Federation.

(2) The said representatives shall be chosen in accordance with the provisions in that behalf contained in Schedule:

Provided that the elections to the House of the People shall be on the basis of adult suffrage.

(3) Upon the completion of each decennial census, the representation of the several Provinces and Indian States or groups of Indian States in the two Houses shall be readjusted by such authority, in such manner, as from such time as the Federal Parliament may by Act determine.

(4) The Council of States shall be a permanent body not subject to dissolution but, as near as may be, one-third of the members thereof shall retire in every second year in accordance with the provisions in that behalf contained in Schedule—

(5) The House of the People unless sooner dissolved shall continue for four years from the date appointed for its first meeting and no longer, and the expiration of the said period of four years shall operate as a dissolution of the House:

Provided that the said period may during an emergency be extended by the President for a period not exceeding one year at a time and not exceeding in any case beyond the period of six months from the expiry of the period of the emergency.

[NOTE. Taking into account only the “willing” Provinces, this clause gives the Council of States a maximum strength of about 200 members and the House of the People a maximum strength of between 300 and 400 members. The following tabular statement will serve to give a general picture of the composition of the Upper House under the above scheme. (The composition of the Lower House will be on a purely population basis.)]

COUNCIL OF STATES

Provinces

Madras	20	
Bombay	12	
Bengal (W)	12	
U.P.	20	
Punjab (E)	9	
Bihar	20	
C.P.	10	
Assam	7	
Orissa	6	
	Total	116

States

Hyderabad	10	
Mysore	6	
Travancore	5	
Baroda	3	
Gwalior	4	
Jaipur	3	
Kashmir	4	
Jodhpur	2	
Udaipur	2	
Patiala	2	
Rewa	2	
Cochin	1	
Bikaner	1	
Kolhapur	1	
Indore	1	
	47	
For the groups of the remaining States whose population individually does not amount to one million.		24
	Total	71

15. There should be the usual provisions for the summoning prorogation and dissolution of Parliament, for regulating the relations between the two Houses, the mode of voting, privileges of members, disqualification for membership, Parliamentary procedure, including procedure in financial matters. In particular, money Bills must originate in the Lower House. The Upper House should have power to suggest amend-

ments in money Bills; the Lower House would consider them and thereafter, whether they accept the amendments or not, the Bill as amended (where the amendments are accepted) or in its original form (where the amendments are not accepted) shall be presented to the President for assent and upon his assent shall become law. If there is any difference of opinion as to whether a Bill is a money Bill or not, the decision of the Speaker of the House of the People should be final. Except in the case of money Bills both the Houses should have equal powers of legislation and deadlocks should be resolved by joint meetings of the two Houses. The President should have the power of returning Bills which have been passed by the National Assembly for reconsideration within a period of six months.

16. Language.—In the Federal Parliament, business shall be transacted in Hindustani (Hindi or Urdu) or English, provided that the Chairman or the Speaker, as the case may be, may permit any member who cannot adequately express himself in either language to address the House in his mother tongue. The Chairman or the Speaker, as the case may be, shall make arrangements for giving the House, whenever he thinks fit, a summary of the speech in a language other than that used by the member and such summary shall be included in the record of the proceedings of the House.

[NOTE.—This follows the corresponding provision in the Constituent Assembly Rules.]

CHAPTER III

LEGISLATIVE POWERS OF THE PRESIDENT

17. Power of President to promulgate ordinances during recess of Parliament.—(1) If at any time when the Federal Parliament is not in session the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require.

(2) An ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Parliament assented to by the President, but every such ordinance—

(a) shall be laid before the Federal Parliament and shall cease to operate at the expiration of six weeks from the re-assembly of Federal Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and

(b) may be withdrawn at any time by the President.

(3) If and so far as an ordinance under this section makes any provision which the Federal Parliament would not under this Constitution be competent to enact, it shall be void.

[NOTE.—The ordinance-making power has been the subject of great criticism under the present Constitution. It must however be pointed out that circumstances may exist where the immediate promulgation of a law is absolutely necessary and there is no time in which to summon the Federal Parliament. In 1925, Lord Reading found it necessary to make an ordinance suspending the cotton excise duty when such action was immediately and imperatively required in the interests of the country. A democratically elected President who has moreover to act on the advice of ministers responsible to Parliament is not at all likely to abuse any ordinance-making power with which he may be invested. Hence the proposed provision.]

CHAPTER IV
THE FEDERAL JUDICATURE

18. Supreme Court.—There shall be a Supreme Court with the constitution, powers and jurisdiction recommended by the *ad hoc* Committee on the Union Judiciary, except that a judge of the Supreme Court shall be appointed by the President after consulting the Chief Justice and such other judges of the Supreme Court as also judges of the High Courts as may be necessary for the purpose.

[NOTE.—The *ad hoc* Committee* on the Supreme Court has observed that it will not be expedient to leave the power of appointing judges of the Supreme Court to the unfettered discretion of the President of the Federation. They have suggested two alternatives, both of which involve the setting up of a special panel of eleven members. According to one alternative, the President, in consultation with the Chief Justice, is to nominate a person for appointment as puisne judge and the nomination has to be confirmed by at least seven members of the panel. According to the other alternative the panel should recommend three names, out of which the President, in consultation with the Chief Justice, is to select one for the appointment. The provision suggested in the above clause follows the decision of the Union Constitution Committee.]

CHAPTER V
AUDITOR-GENERAL OF THE FEDERATION

19. Auditor-General.—There shall be an Auditor-General of the Federation who shall be appointed by the President and shall only be removed from office in like manner and on the like grounds as a judge of the Supreme Court.

20. Functions of Auditor-General.—The duties and powers of the Auditor-General shall follow the lines of the corresponding provisions in the Act of 1935.

CHAPTER VI
SERVICES

21. Public Service Commission.—There shall be a Public Service Commission for the Federation whose composition and functions shall follow the lines of the corresponding provision in the Act of 1935, except that the appointment of the Chairman and the members of the Commission shall be made by the President on the advice of his ministers.

22. Provision should be made for the creation of All-India Services whose recruitment and conditions of service will be regulated by Federal law.

CHAPTER VII
ELECTIONS

23. Elections to the Federal Parliament.—Subject to the provisions of this Constitution, the Federal Parliament may, from time to time, make provision with respect to all matters relating to or connected with elections to either House of the Federal Legislature including the delimitation of constituencies.

24. Superintendence, direction and control of elections.—The superintendence, direction and control of all elections, whether Federal or Provincial, held under this Constitution including the appointment of election tribunals for decision of doubts and disputes arising out of or in connection with such elections shall be vested in a Commission to be appointed by the President.

*For Committee's Report see Appendix.

PART V

**DISTRIBUTION OF LEGISLATIVE POWERS BETWEEN THE
FEDERATION AND THE UNITS**

The provisions to be inserted under this head will depend upon the decisions that may be taken upon the report of the Union Powers Committee. The Union Constitution Committee has, however, decided that—

- (1) the Constitution should be a Federal structure with a strong Centre;
- (2) there should be three exhaustive legislative lists, *viz.*, Federal Provincial and Concurrent, with residuary powers to the Centre;
- (3) the State should be on a par with the Provinces as regards the Federal Legislative list subject to the consideration of any special matter which may be raised when the lists have been fully prepared.

PART VI

**ADMINISTRATIVE RELATIONS BETWEEN THE FEDERATION
AND THE UNITS**

1. The Federal Parliament in legislating for an exclusively Federal subject may devolve upon the Government of a Unit, whether a Province, an Indian State or other area, or upon any officer of that Government, the exercise on behalf of the Federal Government of any functions in relation to that subject.

2. The authority of the Federal Government will also extend to the executive power and authority in so far as it is necessary and applicable for the purpose as to secure that due effect is given within the Unit to every Act of the Federal Parliament which applies to that Unit; and the authority of the Federal Government will extend to the giving of directions to a Unit Government to that end.

3. The authority of the Federal Government will also extend to the giving of directions to the Unit Government as to the manner in which the latter's executive power and authority should be exercised in relation to any matter which affects the administration of a Federal subject.

[NOTE—*Cf.* Section. 122, 124 and 126 of the Government of India Act, 1935.]

PART VII

FINANCE AND BORROWING POWERS

1. Revenues derived from sources in respect of which the Federal Parliament has exclusive power to make laws will be allocated as Federal revenues but in the cases specified in the next succeeding paragraph the Federation will be empowered or required to make assignments to Units from Federal revenues.

2. Provision should be made for the levy and, if necessary, distribution of the following taxes, *viz.*, customs, Federal excises, export duties, death duties and taxes on income other than agricultural income and taxes on companies.

3. The Federal Government will have power to make subventions or grants out of the Federal revenues for any purpose, notwithstanding that the purpose is not one with respect to which the Federal Parliament may make laws.

4. The Federal Government will have power to borrow for any of the purposes of the Federation upon the security of Federal revenues subject to such limitations and conditions as may be fixed by Federal law.

5. The Federal Government will have power to grant a loan to, or guarantee a loan by, any Unit of the Federation on such terms and under such conditions as it may prescribe.

[NOTE.—Cf. Sections 136 to 140, 162 and 163(2) of the Government of India Act, 1935.]

PART VIII

DIRECTLY ADMINISTERED AREAS

1. The Chief Commissioner's Provinces should continue to be administered by the Centre as under the Government of India Act, 1935, as an interim measure, the question of any change in the system being considered subsequently, and all centrally administered areas including the Andaman and the Nicobar Islands should be specifically mentioned in the Constitution.

2. Appropriate provision should be made in the Constitution for the administration of tribal areas.

[NOTE.—The provision to be made regarding tribal areas should incorporate the scheme for the administration of such areas as approved by the Constituent Assembly on the report of the Advisory Committee.]

PART IX

MISCELLANEOUS

The provisions for the protection of minorities as approved by the Constituent Assembly on the report of the Advisory Committee should be incorporated in the Constitution.

PART X

AMENDMENT OF THE CONSTITUTION

An amendment to the Constitution may be initiated in either House of the Federal Parliament and when the proposed amendment is passed in each House by a majority of not less than two-thirds of the members of that House present and voting and is ratified by the legislatures of not less than half of the Units of the Federation, it shall be presented to the President for his assent; and upon such assent being given, the amendment shall come into operation.

Explanation—“Unit” in this clause has the same meaning as in Clause 14 of Part IV. Where a Unit consists of a group of States, a proposed amendment shall be deemed to be ratified by the legislature of the Unit, if it is ratified by the majority of the legislatures of the States in the Group.

PART XI

TRANSITIONAL PROVISIONS

1. The Government of the Federation shall be the successor to the Government of India established under the Government of India Act, 1935, as regards all property, assets, rights and liabilities.

[If, before the commencement of this Constitution, two successor Governments should be set up in India, this clause may have to be amended, in as much as there may be a division of assets and liabilities.]

2. (1) Subject to this Constitution, the laws in force in the territories of the Federation immediately before the commencement of the Constitution shall continue in force therein until altered or repealed, or amended by a competent legislature or other competent authority.

(2) The President may by Order provide that as from a specified date any law in force in the Provinces shall, until repealed or amended by competent authority, have effect subject to such adaptations and modifications as appear to him to be necessary or expedient for bringing the provisions of that law into accord with the provisions of this Constitution.

3. Until the Supreme Court is duly constituted under this Constitution, the Federal Court shall be deemed to be the Supreme Court and shall exercise all the functions of the Supreme Court:

Provided that all cases pending before the Federal Court and the Judicial Committee of the Privy Council at the date of commencement of this Constitution may be disposed of as if this Constitution had not come into operation.

4. Excepting holders of the offices specified in Schedule—every person who immediately before the date of the commencement of this Constitution, was in the service of the Crown in India, including any judge of the Federal Court or of any High Court, shall, on that date be transferred to the appropriate service of the Federation or the Unit concerned and shall hold office by a tenure corresponding to his previous tenure.

[NOTE.—Under the next succeeding clause there will be a provisional President from the commencement of the new Constitution, so that there will be no room for a Governor-General. Similarly, in the Provinces there will be no room for any Governor appointed by His Majesty. The same may be true of the holders of certain other offices. All such offices may be enumerated in a Schedule. The proposed provision applies to persons holding office other than those mentioned in the Schedule. *Cf.* Article 77 of the Transitory Provisions of the Constitution of the Irish Free State, 1922, reproduced below:—

“Every existing officer of the Provisional Government at the date of the coming into operation of this Constitution (not being an officer whose services have been lent by the British Government to the Provisional Government) shall on that date be transferred to and become an officer of the Irish Free State (Saorstát Éireann) and shall hold office by a tenure corresponding to his previous tenure.”]

5. (1) Until both the Houses of the National Assembly have been duly constituted and summoned under this Constitution, the Constituent Assembly shall itself exercise all the powers and discharge all the duties of both the Houses.

Explanation.—For the purposes of this sub-clause, the Constituent Assembly shall not include any members representing territories not included in Schedule I.

(2) Such person as the Constituent Assembly shall have elected in this behalf shall be the provisional President of the Federation until a President has been elected as provided in Part IV of this Constitution.

(3) Such persons as shall have been appointed in this behalf by the provisional President shall be the provisional council of ministers until ministers are duly appointed as provided in Part IV of this Constitution.

[NOTE.—It is essential that on the date of commencement of this Constitution there should be a Legislature and an Executive ready to take over power. The most practicable course is that the Constituent Assembly should itself be the provisional Legislature. The clause regarding the provisional Executive is consequential. These provisions may however require modification after the passing of the new Dominion Act amending the Government of India Act, 1935.]

6. As there may be unforeseen difficulties during the transitional period, there should be a clause in the Constitution on the following lines:—

The Federal Parliament may, notwithstanding anything contained in Part X, by Act.—

- (a) direct that this Constitution, except the provisions of the said Part and of this clause, shall, during such period, if any, as may be specified in the Act, have effect subject to such adaptations and notifications as may be so specified;
- (b) make such other provisions for the purpose of removing any such difficulties as aforesaid as may be specified in the Act.

No Act shall be made under this clause after the expiration of three years from the commencement of this Constitution.

[NOTE.—The-removal-of-difficulties-clause is now quite usual: see, for example, section 310 of the Government of India Act, 1935. The period of three years has been borrowed from Article 51 of the Irish Constitution. This clause will make the process of amendment comparatively easy during the first three years.

CONSTITUENT ASSEMBLY

ad hoc Committee on Supreme Court

We, the undersigned members of the Committee appointed to consider the Constitution and powers of the Supreme Court have the honour to submit this our report.

2. We considered the question under the following heads:

- I. Jurisdiction and powers of the Supreme Court.
- II. Advisory jurisdiction of the Court.
- III. Ancillary powers of the Court.
- IV. Constitution and strength of the Court.
- V. Qualifications and mode of appointment of judges.
- VI. Tenure of office and conditions of service of judges.

I. JURISDICTION AND POWERS OF THE SUPREME COURT

3. A Supreme Court with jurisdiction to decide upon the constitutional validity of acts and laws can be regarded as a necessary implication of any federal scheme. This jurisdiction need not however belong exclusively to the Supreme Court. Even under the existing Indian Constitution, the question of the validity of acts and laws is permitted to be raised in any court whenever that question arises in a litigation before that court.

4. A Supreme Court for certain purposes being thus a necessity, we consider that the Court may well be given the following additional powers under the new Indian Constitution:—

- (a) *Exclusive jurisdiction in disputes between the Union and a Unit or between one Unit and another*

5. The Supreme Court is the best available *forum*—for the adjudication of such disputes, and its jurisdiction should be exclusive.

- (b) *Jurisdiction with respect to matters arising out of treaties made by the Union*

6. The treaty-making powers belongs to the Union as part of the subject of 'Foreign Affairs'. It would therefore be appropriate to invest

the Supreme Court of the Union with jurisdiction to decide finally, though not necessarily in the first instance, upon all matters arising out of treaties including extradition between the Union and a foreign State. At this stage we do not deal with inter-unit extradition, because this will depend upon the ultimate distribution of powers between the Union and the Units.

(c) *Jurisdiction in respect of such other matters within the competence of the Union as the Union Legislature may prescribe*

7. If the Union Legislature is competent to legislate on a certain matter, it is obviously competent to confer judicial power in respect of that matter on a tribunal of its own choice; and if it chooses the Supreme Court for the purpose, the Court will have the jurisdiction so conferred.

(d) *Jurisdiction for the purpose of enforcing the fundamental rights guaranteed by the Constitution*

8. Clause 22 of the draft the Fundamental Rights provides that the right to move the Supreme Court by appropriate proceedings for the enforcement of fundamental rights is guaranteed. We think however, that it is undesirable to make the jurisdiction of the Supreme Court in such matters exclusive. The citizen will practically be denied these fundamental rights if, whenever they are violated, he is compelled to seek the assistance of the Supreme Court as the only Court from which he can obtain redress. Where there is no other Court with the necessary jurisdiction, the Supreme Court should have it; where there is some other Court with the necessary jurisdiction, the Supreme Court should have appellate jurisdiction, including powers of revision.

(e) *General appellate jurisdiction similar to that now exercised by the Privy Council*

9. Under the new Constitution the jurisdiction of the Privy Council as the ultimate appellate authority will disappear and it is obviously desirable that a similar jurisdiction should now be conferred on the Supreme Court. So far as the British Indian Units are concerned, this jurisdiction should be co-extensive with the present jurisdiction of the Privy Council. As regards the Indian State units, there are at least two classes of cases where, in the interests of uniformity, it is clearly desirable that the final decision should rest with the Supreme Court, namely:

- (1) cases involving the interpretation of a law of the Union, and
- (2) cases involving the interpretation of a law of a Unit other than the State concerned.

Sir B. L. Mitter suggests that such uniformity can be obtained either by invoking the appellate authority of the Supreme Court or by a reference of the particular issue to the Supreme Court. Cases involving the constitutional validity of a law of the Union or of any Unit have already been dealt with; they will all necessarily fall within the Supreme Court's jurisdiction.

10. It will also, of course, be open to any Indian State Unit to confer by special agreement additional jurisdiction upon the Supreme Court in respect of such matters as may be specified therein.

II. ADVISORY JURISDICTION OF THE COURT

11. There has been considerable difference of opinion amongst jurists and political thinkers as to the expediency of placing on the Supreme Court an obligation to advise the Head of the State on difficult questions

of law. In spite of arguments to the contrary, it was considered expedient to confer advisory jurisdiction upon the Federal Court under the existing Constitution by Section 213 of the Act. Having given our best consideration to the arguments pros and cons, we feel that it will be on the whole better to continue this jurisdiction even under the new Constitution. It may be assumed that such jurisdiction is scarcely likely to be unnecessarily invoked and if, as we propose, the Court is to have a strength of ten or eleven judges, a pronouncement by a full Court may well be regarded as authoritative advice. This can be ensured by requiring that references to the Supreme Court for advice shall be dealt with by a full Court.

III. ANCILLARY POWERS OF THE COURT

12. Power should be conferred upon the Supreme Court as under section 14 of the Act 1935 to make rules of procedure to regulate its work and provisions similar to those contained in Order 45 of the Civil Procedure Code should be made available so as to facilitate the preparation of the record in appeals to the Supreme Court as well as the execution of its decrees. It does not seem to us necessary to continue the restriction now placed on the Federal Court by section 209 of the Act of 1935. If the Supreme Court takes the place of the Privy Council, it may well be permitted to pronounce final judgements and final decrees in cases where this is possible or to remit the matter for further inquiry to the Courts from which the appeal has been preferred where such further inquiry is considered necessary. Provision must also be made on the lines of section 210 of the Act of 1935 giving certain inherent powers to the Supreme Court.

IV. CONSTITUTION AND STRENGTH OF THE COURT

13. We think that the Supreme Court will require at least two Division Benches and as we think that each Division Bench should consist of five judges, the Court will require ten judges in addition to the Chief Justice, so as to provide for possible absences or other unforeseen circumstances. Moreover, one of the judges may be required to deal with many miscellaneous matters incidental to appellate jurisdiction (including revisional and referential jurisdiction).

V. QUALIFICATIONS AND MODE OF APPOINTMENT OF JUDGES

14. The qualifications of the judges of the Supreme Court may be laid down on terms very similar to those in the Act of 1935 as regards the judges of the Federal Court, the possibility being borne in mind (as in the Act of 1935) that judges of the superior courts even from the States which may join the Union may be found fit to occupy a seat in the Supreme Court. We do not think that it will be expedient to leave the power of appointing judges of the Supreme Court to the unfettered discretion of the President of the Union. We recommend that either of the following methods may be adopted. One method is that the President should in consultation with the Chief Justice of the Supreme Court (so far, as the appointment of puisne judges is concerned) nominate a person whom he considers fit to be appointed to the Supreme Court and the nomination should be confirmed by a majority of at least 7 out of a panel of 11 composed of some of the Chief Justices of the High Courts of the constituent units, some members of both the Houses of the Central Legislature and some of the law officers of the Union. The other method is that the panel of 11 should recommend three names out of which the President, in consultation with the Chief Justice, may select a judge for the appointment. The same procedure should be followed for the appointment of the Chief Justice except of course that in this case there will be no consultation with the Chief Justice. To ensure that the panel will be both independent and command confidence the panel should not be an *ad hoc* body but must be one appointed for a term of years.

VI. TENURE OF OFFICE AND CONDITIONS OF SERVICE OF JUDGES

15. The tenure of office of the judges of the Supreme Court will be the same as that of Federal Court judges under the present Constitution Act and their age of retirement also may be the same (65). Their salary and pensions may be provided for by statutory rules. It is undesirable to have temporary judges in the highest Court in the land. Instead of having temporary judges, the system of having some *ad hoc* judges out of a panel of Chief Justices or judges of the High Courts may be adopted. In this connection we invite attention to the Canadian practice as embodied in section 30 of the Canadian Supreme Court Act. The section runs as follows:—

“30. *Appointment of ad hoc judge.*—If at any time there should not be a quorum of the judges of the Supreme Court available to hold or continue any session of the Court, owing to a vacancy or vacancies, or to the absence through illness or on leave or in the discharge of other duties assigned by statute or order in council, or to the disqualification of a judge or judges, the Chief Justice, or, in his absence, the senior puisne judge, may in writing request the attendance at the sittings of the Court, as an *ad hoc* judge, for such period as may be necessary of a judge of them Exchequer Court or, should the Judges of the said court be absent from Ottawa or for any reason unable to sit of a judge of a provincial superior court to be designated in writing by the Chief Justice or in his absence by any Acting Chief Justice or the senior puisne judge of such provincial court upon such request being made to him in writing.

* * * * *

4. *Duties.*—It shall be the duty of the judge whose attendance has been so requested or who has been so designated in priority to other duties of his office, to attend the sittings of the supreme Court at the time and for the period for which his attendance shall be required, and while so attending he shall possess the powers and privileges and shall discharge the duties of a puisne Judge of the Supreme Court.”

16. Not all the recommendations that we have made need find a place in the Constitution Act. The main features may be embodied in the Constitution Act and detailed provisions in a separate Judiciary Act to be passed by the Union Legislature. The form of procedure in the Supreme Court. *e.g.*, for the enforcement of fundamental rights may also be provided for in the Judiciary Act. We may point out that the prerogative writs of mandamus, prohibition and *certiorari* have been abolished in England by a statute of 1938. Corresponding orders have been substituted and the Supreme Court of Judicature has been empowered to make rules of court prescribing the procedure in cases where such orders are sought [*See* section 7—10 of the Administration of Justice (Miscellaneous Provisions) Act, 1938].

17. We understand our terms of reference to relate only to the constitution and powers of the Supreme Court. We have, therefore, said nothing about the High Courts of the Units, although we have had to refer to them incidentally in some of our suggestions relating to the Supreme Court.

1. S. Varadachariar.
2. A. Krishnaswami Ayyar.
3. B. L. Mitter.
4. K. M. Munshi.
5. B. N. Rau.

New Delhi. May 21, 1947

CONFIDENTIAL

APPENDIX 'B'

No. CA/63/Cons./47

CONSTITUENT ASSEMBLY OF INDIA

COUNCIL HOUSE,

New Delhi, the 13th July 1947.

FROM

PANDIT JAWAHARLAL NEHRU,
CHAIRMAN, UNION CONSTITUTION COMMITTEE.

TO

THE PRESIDENT,
CONSTITUENT ASSEMBLY OF INDIA.

DEAR SIR,

1. On behalf of the members of the Committee appointed by you in pursuance of the resolution of the Constituent Assembly of the 30th April 1947, I submitted a memorandum embodying the recommendations of the Committee.

2. The Committee met again on the 12th July 1947 and decided on certain modifications to be made in the said memorandum. I have the honour to submit this supplementary report containing these recommendations.

3. In the opinion of the Committee, clause 3 of the memorandum should contain the following additional sub-clause to enable the Federal Parliament to alter the name of any Unit, namely:—

“(e) alter the name of any Unit.”

4. The Committee is of opinion that the following should be added to sub-clause (2) of clause 6 of Chapter I of Part IV of the memorandum to make it clear that if a member of the Council of States is elected as Vice-President he shall vacate his seat as such member, namely:—

“and if a member of the Federal Parliament is elected to be the Vice-President, he shall vacate his seat as such member.”

5. The Committee is further of the opinion that Part X of the memorandum on the Indian Constitution should be replaced by the following:—

PART X

AMENDMENT OF THE CONSTITUTION

The amendment of the Constitution may be initiated in either House of the Federal Parliament and when the proposed amendment is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his assent; and upon such assent being given the amendment shall come into operation:

Provided that if such amendment is in respect of any provision of the Constitution relating to all or any of the following matters, namely:—

- (a) any change in the Federal Legislative List,
- (b) representation of Units in the Federal Parliament, and
- (c) powers of the Supreme Court,

it will also require to be ratified by the legislatures of Units representing a majority of the population of all the Units of the Federation in which Units representing at least one-third of the population of the Federal States are included.

Explanation.—“Unit” in this clause has the same meaning as in Clause 14 of Part IV. Where a Unit consists of a group of States, a proposed amendment shall be deemed to be ratified by the legislature of the Unit, if it is ratified by the majority of the legislatures of the States in the Groups.”

Yours sincerely,

JAWAHARLAL NEHRU.

CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 22nd July 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The following Member presented his Credentials and signed the Register; Mr. Jai Sukh Lal Hathi (Residuary States Group);

Mr. Ram Narayan Singh (Bihar : General): Sir, I wish to draw your attention to a very important constitutional issue. I think, and everybody knows, that we are meeting as a sovereign body here and making the constitution for a future Free India. But in the envelopes used by the Assembly Office we still find on the top the words 'On His Majesty's Service'. I think this is not proper and I draw the attention of the House and yourself to this matter. I hope these words will be dropped from the envelopes in future in the correspondence conducted by the Assembly Office.

RESOLUTION RE. NATIONAL FLAG

Mr. President: We shall proceed with the agenda. The first item on the agenda is a Motion by Pandit Jawaharlal Nehru about the Flag.

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): Mr. President, it is my proud privilege to move the following Resolution:

"Resolved that the National Flag of India shall be horizontal tricolour of deep Saffron (Kesari), white and dark green in equal proportion. In the centre of the white band, there shall be a Wheel in navy blue to represent the *Charkha*. The design of the Wheel shall be that of the Wheel. (*Chakra*) which appears on the abacuse of the Sarnath Lion Capital of Asoka.

The diameter of the Wheel shall approximate to the width of the white band.

The ratio of the width to the length of the Flag shall ordinarily be 2:3."

This Resolution, Sir, is in simple language, in a slightly technical language and there is no glow or warmth in the words that I have read. Yet I am sure that many in this House will feel that glow and warmth which I feel at the present moment for behind this Resolution and the Flag which I have the honour to present to this House for adoption lies history, the concentrated history of a short span in a nation's existence. Nevertheless, sometimes in a brief period we pass through the track of centuries. It is not so much the mere act of living that counts but what one does in this brief life that is ours; it is not so much the mere existence of a nation that counts but what that nation does during the various periods of its existence; and I do venture to claim that in the past quarter of a century or so India has lived and acted in a concentrated way and the emotions which have filled the people of India represent not merely a brief spell of years but something infinitely more. They have gone down into history and tradition and have added themselves on to that vast history and tradition which is our heritage in this country. So, when I move this Resolution, I think of this concentrated history through which all of us have passed during the last quarter of a century. Memories crowd in upon me. I remember the ups and downs of the great struggle for freedom of this great nation. I remember and many in this House will remember how we looked up to this Flag not only with pride and enthusiasm but with a tingling in our veins; also how; when we were sometimes down and out, then again the sight of this Flag gave us courage

[Pandit Jawaharlal Nehru]

to go on. Then, many who are not present here today, many of our comrades who have passed, held on to this Flag, some amongst them even unto death and handed it over as they sank, to others to hold it aloft. So, in this simple form of words, there is much more than will be clear on the surface. There is the struggle of the people for freedom with all its ups and downs and trials and disasters and there is, finally today as I move this Resolution, a certain triumph about it—a measure of triumph in the conclusion of that struggle.

Now, I realise fully, as this House must realise, that this triumph of ours has been marred in many ways. There have been, especially in the past few months many happenings which cause us sorrow, which has gripped our hearts. We have seen parts of this dear motherland of ours cut off from the rest. We have seen large numbers of people suffering tremendously, large numbers wandering about like waifs and strays, without a home. We have seen many other things which I need not repeat to this House, but which we cannot forget. All this sorrow has dogged our footsteps. Even when we have achieved victory and triumph, it still dogs us and we have tremendous problems to face in the present and in the future. Nevertheless it is true I think—hold it to be true—that this moment does represent a triumph and a victorious conclusion of all our struggles, for the moment. (*Hear, hear*).

There has been a very great deal of bewailing and moaning about various things that have happened. I am sad, all of us are sad at heart because of those things. But let us distinguish that from the other fact of triumph because there is triumph in victory, in what has happened. It is no small thing that that great and mighty empire which has represented imperialist domination in this country has decided to end its days here. That was the objective we aimed at.

We have attained that objective or shall attain it very soon. Of that there is no doubt. We have not attained the objective exactly in the form in which we wanted it. The troubles and other things that accompanied our achievement are not to our liking. But we must remember that it is very seldom that people realise the dreams that they have dreamt. It is very seldom that the aims and objectives with which we start are achieved in their entirety in life in an individual's life or in a nation's life.

We have many examples before us. We need not go into the distant past. We have examples in the present or in the recent past. Some years back, a great war was waged, a world war bringing terrible misery to mankind. That war was meant for freedom and democracy and the rest. That war ended in the triumph of those who said they stood for freedom and democracy. Yet, hardly had that war ended when there were rumours of fresh wars and fresh conflicts.

Three days ago, this House and this country and the world was shocked by the brutal murder in a neighbouring country of the leaders of the nation. Today one reads in the papers of an attack by an imperialist power on a friendly country South-East Asia. Freedom is still far off in this world and nations, all nations in greater or lesser degree are struggling for their freedom. If we in the present have not exactly achieved what we aimed at, it is not surprising. There is nothing in it to be ashamed of. For I do think our achievement is no small achievement. It is a very considerable achievement, a great achievement. Let no man run it, down because other things have happened which are not to our liking. Let us keep these two things apart. Look at any country in the wide world. Where is the country today, including the great and big powers, which is not full of terrible problems, which is not in some way, politically and economically, striving for freedom which somehow or other eludes its grasp? The problems of India in the wider context do not appear to be terrible. The problems are not anything new to us. We

have faced many disagreeable—things in the past. We have not held back. We shall face all the other disagreeable things that face us in the present or may do so in the future and we shall not flinch and we shall not falter and we shall not quit. (*Loud applause*).

So, in spite of everything that surrounds us, it is in no spirit of down heartedness that I stand up in praise of this Nation for what it has achieved. (*Renewed cheers*). It is right and proper that at this moment we should adopt the symbols of this achievement, the symbol of freedom. Now what is this freedom in its entirety and for all humanity. What is freedom and what is the struggle for freedom and when does it end. As soon as you take one step forward and achieve something further steps come up before you. There will be no full freedom in this country or in the world as long as a single human being is unfree. There will be no complete freedom as long as there is starvation, hunger, lack of clothing, lack of necessities of life and lack of opportunity of growth for every single human being, man, woman and child in the country. We aim at that. We may not accomplish that because it is a terrific task. But we shall do our utmost to accomplish that task and hope that our successors when they come, have an easier path to pursue. But there is no ending to that road to freedom. As we go ahead, just as we sometimes in our vanity aim at perfection, perfection never comes. But if we try hard enough we do approach the goal step by step. When we increase the happiness of the people, we increase their stature in many ways and we proceed to our goal. I do not know if there is an end to this or not, but we proceed towards some kind of consummation which in effect never ends.

So I present this Flag to you. This Resolution defines the Flag which I trust you will adopt. In a sense this Flag was adopted, not by a formal resolution, but by popular acclaim and usage, adopted much more by the sacrifice that surrounded it in the past few decades. We are in a sense only ratifying that popular adoption. It is a Flag which has been variously described. Some people, having misunderstood its significance, have thought of it in communal terms and believe that some part of it represents this community or that. But I may say that when this Flag was devised there was no communal significance attached to it. We thought of a design for a Flag which was beautiful, because the symbol of a nation must be beautiful to look at. We thought of a Flag which would in its combination and in its separate parts would somehow represent the spirit of the nation, the tradition of the nation, that mixed spirit and tradition which has grown up through thousands of years in India. So, we devised this Flag. Perhaps I am partial but I do think that it is a very beautiful Flag to look at purely from the point of view of artistry, and it has come to symbolise many other beautiful things, things of the spirit, things of the mind, that give value to the individual's life and to the nation's life, for a nation does not live merely by material things, although they are highly important. It is important that we should have the good things of the world, the material possessions of the world, that our people should have the necessities of life. That is of the utmost importance. Nevertheless, a nation, and especially a nation like India with an immemorial past, lives by other things also, the things of the spirit. If India had not been associated with these ideals and things of the spirit during these thousands of years, what would India have been? It has gone through a very great deal of misery and degradation in the past, but somehow even in the depths of degradation, the head of India has been held high, the thought of India has been high, and the ideals of India have been high. So we have gone through these tremendous ages and we stand up today in proud thankfulness for our past and even more so for the future that is to come for which we are going to work and for which our successors are going to work. It is our privilege of those assembled here, to mark the transition in a particular way, in a way that will be remembered.

[Pandit Jawaharlal Nehru]

I began by saying that it is my proud privilege to be ordered to move this Resolution. Now, Sir, may I say a few words about this particular Flag? It will be seen that there is a slight variation from the one many of us have used during these past years. The colours are the same, a deep saffron, a white and a dark green. In the white previously there was the *Charkha* which symbolised the common man in India, which symbolised the masses of the people, which symbolised their industry and which came to us from the message which Mahatma Gandhi delivered. (*Cheers*) Now, this particular *Charkha* symbol has been slightly varied in this Flag, not taken away at all. Why then has this been varied? Normally speaking, the symbol on one side of the Flag should be exactly the same as on the other side. Otherwise, there is a difficulty which goes against the rules. Now, the *Charkha*, as it appeared previously on this Flag, had the wheel on one side and the spindle on the other. If you see the other side of the Flag, the spindle comes the other way and the wheel comes this way; if it does not do so, it is not proportionate, because the wheel must be towards the pole, not towards the end of the Flag. There was this practical difficulty. Therefore, after considerable thought, we were of course convinced that this great symbol which had enthused people should continue but that it should continue in a slightly different form, that the wheel should be there, not the rest of the *Charkha*, that is the spindle and the string which created this confusion, that the essential part of the *Charkha* should be there, that is the wheel. So, the old tradition continue in regard to the *Charkha* and the wheel. But what type of wheel should we have? Our minds went back to many wheels but notably one famous wheel, which had appeared in many places and which all of us have seen, the one at the top of the capita of the Ashoka column and in many other places. That wheel is a symbol of India's ancient culture it is a symbol of the many things that India had stood for through the ages. So we thought that this *Chakra* emblem should be there, and that wheel appears. For my part, I am exceedingly happy that in this sense indirectly we have associated with this Flag of ours not only this emblem but in a sense the name of Ashoka, one of the most magnificent names not only in India's history but in world history. It is well that at this moment of strife, conflict and intolerance, our minds should go back towards what India stood for in the ancient days and what it has stood for, I hope and believe, essentially throughout the ages in spite of mistakes and errors and degradations from time to time. For, if India had not stood for something very great, I do not think that India could have survived and carried on its cultural traditions in a more or less continuous manner through these vast ages. It carried on its cultural tradition, not unchanging, not rigid, but always keeping its essence, always adapting itself to new developments, to new influences. That has been the tradition of India, always to put out fresh blooms and flowers, always receptive to the good things that it receives, sometimes receptive to bad things also, but always true to her ancient culture. All manner of new influences through thousands of years have influenced us, while we influenced them tremendously also, for you will remember that India has not been in the past a tight little narrow country, disdaining other countries. India throughout the long ages of her history has been connected with other countries, not only connected with other countries, but has been an international centre, sending out her people abroad to far off countries carrying her message and receiving the message of other countries in exchange, but India was strong enough to remain embedded on the foundations on which she was built although changes many changes, have taken place. The strength of India it has been said, consists in this strong foundation. It consists also in its amazing capacity to receive, to adapt what it wants to adapt, not to reject because something is outside its scope, but to accept and receive everything. It is folly for any nation or race to think that it can only give to and not receive from the rest of the world. Once a nation or

a race begins to think like that, it becomes rigid, it becomes ungrowing; it grows backwards and decays. In fact, if India's history can be traced, India's periods of decay are those when it closed herself up into a shell and refused to receive or to look at the outside world. India's greatest periods are those when she stretched her hands to others in far off countries, sent her emissaries, ambassadors, her trade agents and merchants to these countries and received ambassadors and emissaries from abroad.

Now because I have mentioned the name of Ashoka I should like you to think that the Ashokan period in Indian history was essentially an international period of Indian history. It was not a narrowly national period. It was a period when India's ambassadors went abroad to far countries and went abroad not in the way of an Empire and imperialism but as ambassadors of peace and culture and goodwill. (*Cheers.*)

Therefore this Flag that I have the honour to present to you is not, I hope and trust, a Flag of Empire, a Flag of Imperialism, a Flag of domination over any body, but a Flag of freedom not only for ourselves, but a symbol of—freedom to all people who may see it. (*Cheers.*) And wherever it may go—and I hope it will go far,—not only where Indians dwell as our ambassadors and ministers but across the far seas where it may be carried by Indian ships, wherever it may go it will bring a message, I hope, of freedom to those people, a message of comradeship, a message that India wants to be friends with every country of the world and India wants to help any people who seek freedom. (*Hear, hear.*) That I hope will be the message of this Flag everywhere and I hope that in the freedom that is coming to us, we will not do what many other people or some other people have unfortunately done, that is, in a newfound strength suddenly to expand and become imperialistic in design. If that happened that would be a terrible ending to our struggle for freedom. (*Hear, hear.*) But there is that danger and, therefore, I venture to remind this House of it—although this House needs no reminder—there is this danger in a country suddenly unshackled in stretching out its arms and legs and trying to hit out at other people. And if we do that we become just like other nations who seem to live in a kind of succession of conflicts and preparation for conflict. That is the world today unfortunately.

In some degree I have been responsible for the foreign policy during the past few months and always the question is asked here or elsewhere: "What is your foreign policy? To what group do you adhere to in this warring world?" Right at the beginning I venture to say that we propose to belong to no power group. We propose to function as far as we can as peace-makers and peace-bringers because today we are not strong enough to be able to have our way. But at any rate we propose to avoid all entanglements with power politics in the world. It is not completely possible to do that in this complicated world of ours, but certainly we are going to do our utmost to that end.

It is stated in this Resolution that the ratio of the width to the length of the Flag shall ordinarily be 2:3. Now you will notice the word "ordinarily". There is no absolute standard about the ratio because the same Flag on a particular occasion may have a certain ratio that might be more suitable or on any other occasion in another place the ratio might differ slightly. So there is no compulsion about this ratio. But generally speaking, the ratio of 2:3 is a proper ratio. Sometimes the ratio 2:1 may be suitable for a Flag flying on a building. Whatever the ratio may be, the point is not so much the relative length and breadth, but the essential design.

So, Sir, now I would present to you not only the Resolution but the Flag itself.

There are two of these National Flags before you. One is on silk—the one I am holding—and the other on the other side is of cotton Khadi.

I beg to move this Resolution. (*Cheers.*)

Mr. President: I have got notice of three amendments to this Resolution.

Many Honourable Members: No, no.

Mr. H. V. Kamath (C. P. and Berar: General): Mr. President, Sir, my amendment reads as follows:

“That the following new para. be inserted in the motion:

‘That inside the *Chakra* in the centre of the white band, the swastika, the ancient Indian symbol of *Shantam, Shivam, Sundaram*, be inscribed’.”

When I sent in the amendment, I had not seen the design of the Flag. There were at that time two or three, considerations uppermost in my mind. I thought that this Flag, being the Flag of our new Indian Republic, of *Bharatavarsha*, should adequately symbolise our ancient culture, the culture of our spirit, the spirit which has animated our sages and our seers, which gave the message of *Shantam, Shivam, Sundaram* to the world, the message of peace, the peace not merely of stillness, not merely a passive peace, but a dynamic peace that passeth all understanding, the peace of which the great Valmiki has sung समुद्र इव गाभीर्यं धर्मे च हिमवानिव (*Samudraiva gambirye dhairyecha himavaniva*). I thought, Sir, if the Swastika be inscribed inside the Chakra it would along with the *Dharma Chakra* of Asoka fittingly symbolise our ancient culture, that is to say, the exoteric and esoteric aspects of our culture. The Dharma Chakra symbolises the esoteric and the *Swastika* symbolises the esoteric aspects. But, Sir, I have now seen the flag and I find that it is somewhat hard to fit the *Swastika* into this *Chakra*. It would look cumbersome because of the design of the *Chakra*. The *Chakra* symbolises the *Dharma Chakra* or the Wheel of the Law, the Wheel of *Samsara* which revolves on these eternal verities of *Shantam, Shivam, Sundaram*. These verities sustain the *Samsara* and in them we as part of that universe live and move and have our being. Pandit Nehru referred to our role as peace-makers and peace-bringers. That is certainly true. India's role has been that from years sempiternal, from the beginning of time. In the words of Swami Vivekananda, we have never dipped our hands in the neighbour's blood, our embattled cohorts have never marched into other lands for conquest, and we have always been the harbingers of peace and the makers of peace in this war-torn, war-weary world. Mr. President, Sir, after having seen the design of this Flag, I do see that it is difficult to fit the *Swastika* in, much as I would like to see it fitted in. It would make it rather clumsy and cumbersome. In these circumstances, I do not press this amendment and beg leave of the House to withdraw it.

Mr. President: Mr. Tajamul Husain.

Honourable Members: He is not present.

Mr. President: Dr. Deshmukh.

Dr. P. S. Deshmukh (C. P. and Berar: General): Mr. President, Sir, after such an impressive and emotional speech by Pandit Nehru one hesitates to say or add anything that may be interpreted or considered to take away from its effect. We always respect his words and on a somewhat sentimental question like this, our respect approaches adoration. I have some very strong grounds on which my amendment was based. It is not in any way or sense discordant with the speech to which we have just listened. My idea was essentially based on the retention of the tricolour absolutely intact with the *charkha* retained as it is—*charkha* which is the emblem of *Ahimsa* and the common toiling man associated so inseparably with the acquisition of our political freedom, and the

name of Mahatma Gandhi. But in view of the fact that the House would rather stick to the Flag that has been proposed I do not wish to move the amendment, although I still feel that my idea has much in it to recommend itself.

Mr. President: Mr. Shibbanlal Saksena had given notice of an amendment to the above amendment of Dr. Deshmukh but since that amendment itself has not been moved, no question of this amendment to the amendment being moved arises. Now we shall discuss the Resolution.

Seth Govind Das (C. P. and Berar: General): *[Mr. President, I have come here to support the resolution moved by Pandit Jawaharlal Nehru. I consider this day a landmark in the history of India. Today, Independent India is displaying her national flag. Everyone who has taken part in the struggle for freedom during the last twenty-seven years is today reminded like Panditji of the events during that period. We were unarmed and helpless and had no resources for achieving independence. But the way in which this battle of freedom has been fought and victory achieved has no parallel, not only in the history of India but also in the history of the world. Today we are achieving the victory for which we were trying for the last so many years. We are also reminded of those who came forward so many times to pull down this flag, to trample it and to set fire to it. But when Truth and Justice were with us, it was altogether impossible to trample it and to finish it in that way. After twenty-seven years we have been able to prove to the world that even an unarmed nation with no resources at its command, can achieve freedom, if it follows the path of Justice and Truth.

Today, I am reminded of the day when in 1922, Pandit Motilal Nehru came to Jubbulpore for the first time. I am a resident of Jubbulpore. That was the first time when this flag was displayed in India. At that time it had three colours—red, white and green. It was a tricolour no doubt. At that time, this flag was hoisted over the Town Hall of Jubbulpore for the first time in India. Who is not reminded of Pandit Motilal on seeing Pandit Jawaharlal Nehru? At that time a question was raised in the House of Commons as to how this flag was hoisted over a public hall and the Prime Minister of Great Britain assured the house that no event of the sort would be repeated in India in future. But I am pleased to find today that the flag which was hoisted for the first time twenty-five years ago in Jubbulpore, my home town, will now be unfurled over every public building there. It will be a matter of pride for everyone in India.

There is no touch of communalism in the three colours of the flag. Panditji has already told you this in the course of his speech. It is true that at a time when the colours were red, white and green there was a trace of communalism in the flag. But when we change these colours to saffron, white and green, we declared it in clear words that the three colours had no communal significance. At that time, we also made it clear as to what these colours signified. Those who have been maddened by Communalism today, should not take this flag to be a communal flag. You see that it has the Asoka chakra in the middle. Panditji told you what a great place Asoka has in our history. After the battle of Kalinga, Asoka tried to unite the whole world with love and he achieved such success that the historians not only of this country but also of the whole world admit that there has been no Emperor like Asoka in the world. Mr. H. G. Wells writes in his History of the World that while the rest of the Emperors led a bloody life, Asoka alone tried to unite the world with love.

*[English translation of Hindustani speech begins.]

[Seth Govind Das]

When we see the colours of our flag we should keep in mind other things also. I want to tell those who say that the saffron colour represents Hindus, that it is wrong to say so. No doubt at one time it was the colour of the Hindus. During the regime of the Peshwas it was the colour of the Hindus. In their fights for freedom, Rajputs used saffron dress and saffron ensign. But if we go more remote into the past, we will have to accept that saffron was not the colour of these times. You may be knowing that in the times of Mahabharat there was no question of colour. The flag flying over the chariot of Arjun had the symbol of Hanuman. Karna's flag had the symbol of the elephant. Therefore to describe any colour as the ancient colour of the Hindus is historically wrong. I say that it is natural that the flag under which we fought the battle of freedom during the last twenty-seven years and have now achieved independence, should be our national flag. I am pained to see that at present, some people maddened with communalism are bringing about such events, which I am confident, after sometime when sense will dawn upon them, will make them very much ashamed of themselves. Only day before yesterday a meeting was held in Delhi regarding Hindi. The motion that Hindi should be the national language and Devanagari script the national script, was to be moved in the meeting. Pandemonium prevailed in the meeting and national flags were removed from cars and thrown away. I say that to be mad with communalism and to do such things and to insult the flag in this way is an insult to the whole nation. Human beings live in this country and not gods and they have the three dispositions of "*Satvaguna, Rajoguna* and *Tamoguna*" ('goodness, passion and dullness'). If such incidents occur, peace, righteousness and happiness of which this flag is the symbol, will disappear from this land. Therefore I warn these people, who are mad with communalism that they should not do such things. As regards the green colour, there was a time when this was the colour of the flag of the war of Independence. I would remind you of the war of Independence of 1857. At that time, the colour of our flag was green and under it we fought that battle. It was at that time not the colour of Muslims alone or of Hindus but of all those who fought the war of Independence. Therefore nothing is more painful than to be against any particular colour and that too at a time when the whole of India is becoming independent and this flag will be hoisted everywhere in the country. We have styled this flag as a world-conqueror and have spoken of its conquest of the world with love. We want to conquer the world with non-violence and love. This is its symbol. When we will have done that, we will have fulfilled our pledge. I support this resolution with all my heart.]*

Shri V. I. Muniswami Pillai (Madras: General): Mr. President, Sir, I appear before you today to support the Resolution so ably moved by our great national leader Pandit Jawaharlal Nehru who had a lion's share in the freedom struggle of this great country.

Sir, he has explained to us the significance of this Flag which is to be held and defended by the millions of the inhabitants that live in this great country. It is not to be the Flag of the rich or the wealthy but it is to be the Flag of the depressed, oppressed and submerged classes all over our country.

Sir, I particularly welcome the introduction of the wheel in the centre. Mahatma Gandhi gave us the great *mantra* that lies in the matter of the *Charkha*. Those of us who have taken to *Charkha* feel proud today after so many centuries of political struggle in this country, that it has been possible to bring a Flag for this country which was lacking all these centuries.

I also welcome the introduction of the Sarnath Lion Capital of Asoka. Asoka, coming as he did after the great Buddhist order, has given us the great *Panchaseelam*, above all, sympathy for humanity.

*English translation of Hindustani speech ends.

The Harijan classes and all those communities who are in the lowest rung of the ladder of society, feel that the constitution which is on the anvil of this supreme body is going to bring solace to the millions of the submerged classes. The principle of Buddha who exhibited practically his great sympathy for suffering human beings, I am sure, Sir, will be practically carried out after accepting this great Flag.

With these words, I support the Resolution.

Chaudhri Khaliquzzaman (United Provinces: Muslim): *[Mr. President I support the resolution moved by Pandit Nehru (*Cheers*). I think that from today everyone, who regards himself as a citizen of India—be he a Muslim, Hindu or Christian,—will as a citizen make all sacrifices to uphold and maintain the honour of the flag which is accepted and passed as the flag of India (*Cheers*). I do not wish to narrate again history which is wrong. I want that all of us should forget the past and should oust from our minds the old things. Therefore, I hope that the majority too shall forget the past. All of us should make a fresh history of India from today in which everyone, who has got sincerity, dignity and interest in the reconstruction of the country and the nation, may join hands. I know that a flag to look at, is simply a piece of cloth but a country's flag symbolises its ideals and its aspirations, both moral and spiritual. I feel happy that none, who calls himself a citizen of India, can have occasion to disagree with the speech of Pandit Nehru in support of the flag. Therefore, I think that from whatever angle we may view it, the step taken today will only strengthen the foundations of India. Every Muslim, Hindu and Christian will feel proud in hoisting this flag throughout the length and breadth of India, and he shall honour it (*Cheers*). With these words I support the motion.]**

Sir S. Radhakrishnan (United Provinces: General): Mr. President, Sir I do not wish to say very much after the very eloquent way in which Pandit Jawaharlal Nehru presented this Flag and the Resolution to you. The Flag links up the past and the present. It is the legacy bequeathed to us by the architects of our liberty. Those who fought under this Flag are mainly responsible for the arrival of this great day of Independence for India. Pandit Jawaharlal has pointed out to you that it is not a day of joy unmixed with sorrow. The Congress fought for unity and liberty. The unity has been compromised; liberty too, I feel, has been compromised, unless we are able to face the tasks which now confront us with courage, strength and vision. What is essential to-day is to equip ourselves with new strength and with new character if these difficulties are to be overcome and if the country is to achieve the great ideal of unity and liberty which it fought for. Times are hard. Everywhere we are consumed by phantasies. Our minds are haunted by myths. The world is full of misunderstandings, suspicions and distrusts. In these difficult days it depends on us under what banner we fight. Here we are putting in the very centre the white, the white of the Sun's rays. The white means the path of light. There is darkness even at noon as some people have urged, but it is necessary for us to dissipate these clouds of darkness and control our conduct by the ideal light, the light of truth, of transparent simplicity which is illustrated by the colour of white.

We cannot attain purity, we cannot gain our goal of truth, unless we walk in the path of virtue. The Asoka's wheel represents to us the wheel of the Law, the wheel *Dharma*. Truth can be gained only by the pursuit of the path of *Dharma*, by the practice of virtue. Truth,—*Satya*, *Dharma*—Virtue, these ought to be the controlling principles of all those who work under this Flag. It also tells us that the *Dharma* is something which is perpetually moving. If this country has suffered in the recent past, it is due to our resistance to change. There are ever so many challenges

[] English translation of Hindustani speech.

[Sir S. Radhakrishnan]

hurled at us and if we have not got the courage and the strength to move along with the times, we will be left behind. There are ever so many institutions which are worked into our social fabric like caste and untouchability. Unless these things are scrapped we cannot say that we either seek truth or practise virtue. This wheel which is a rotating thing, which is a perpetually revolving thing, indicates to us that there is death in stagnation. There is life in movement. Our *Dharma* is *Sanatana*, eternal, not in the sense that it is a fixed deposit but in the sense that it is perpetually changing. Its uninterrupted continuity is its *Sanatana* character. So even with regard to our social conditions it is essential for us to move forward.

The red, the orange, the *Bhagwa* colour represents the spirit of renunciation it is said:

“सर्वे त्यागाराज धर्मेषु दृष्ट्या” (*Sarve tyage rajadharmesu drsta*).

All forms of renunciation are to be embodied in *Raja Dharma*. Philosophers must be Kings. Our leaders must be disinterested. They must be dedicated spirits. They must be people who are imbued with the spirit of renunciation which that saffron colour has transmitted to us from the beginning of our history. That stands for the fact that the World belongs not to the wealthy, not to the prosperous but to the meek and the humble, the dedicated and the detached. That spirit of detachment that spirit of renunciation is represented by the orange or the saffron colour and Mahatma Gandhi has embodied it for us in his life and the Congress has worked under his guidance and with his message. If we are not imbued with that spirit of renunciation in these difficult days, we will again go under.

The green is there—our relation to the soil, our relation to the plant life here on which all other life depends. We must build our Paradise here on this green earth. If we are to succeed in this enterprise, we must be guided by truth (white), practise virtue (wheel), adopt the method of self-control and renunciation (saffron). This Flag tells us ‘Be ever alert, be ever on the move, go forward, work for a free, flexible compassionate, decent, democratic, society in which Christians, Sikhs, Moslems, Hindus, Buddhists will all find a safe shelter.’

Thank you. (*Loud cheers*).

Dr. Mohan Sinha Mehta (Udaipur State): Mr. President, Sir, as I had listened from my seat to the great speech which was delivered by our great leader on a great subject, the first thought that rose in my mind was that there should be no more speeches on that subject and that the Resolution should be adopted unanimously from every section of the House by acclamation. But since it was not to be and some speeches were made—fortunately no amendments are being considered—I ventured to come up here and say a few words in support of the Resolution.

Sir, I should like to say that the proposal which has been put before us has the support of the Indian States also. (*Cheers*). One of our representatives, a distinguished Prime Minister, participated in the deliberations of the Committee which has brought this proposal before you through Pandit Jawaharlal Nehru.

Sir, this is a historic occasion when free India is going to adopt a National Flag and I wish you to understand that a very large majority of the Indian States in India are and remain an integral part of India. (*Cheers*)

Sir, when I was listening to Pandit Nehru’s speech from my seat, I felt he symbolised to me in my vision the subject of the Resolution which he was moving, the sombre background of the panels of this room

and Pandit Nehru in his spotless white. Knowing Pandit Nehru as we do, I am sure I am not exaggerating when I say that he in his figure represented the significance of the subject-matter of this Resolution.

Sir, as he explained to us the contents of the Flag, and its design, especially when he was coming to the *Chakra* of Asoka's column, I thought he would also refer to it as symbolising the participation of the Indian States in the Indian Union. For the first time, Sir, after a long, long time, we will have India ruled for India and by Indians. Again Pandit Nehru symbolises this also—the symbol of self-rule. But you will pardon my saying that in a large part of India which you colour yellow on the map the ideal of self-rule was maintained by the Indian States. Please do not analyse this proposition on the basis of political philosophy. When we are discussing the Flag of India we are not discussing abstract doctrines or political practices, but primarily things which are symbolic, things of sentiment. Am I far wrong in saying that the *Chakra* of Asoka represents the Indian States, because since the time of Asoka. The Great, the whole country has not been under Indian rule, ruled by Indians for Indians? At any rate, some of us would like to look upon it with that sentiment. I am, therefore, speaking here not only on my own behalf, but also on behalf of a large number of States; I have not consulted them, but I am sure they will agree with me when I say that this Flag whether it is flying over a building in India or on the high seas in foreign waters, this Flag would represent the combined sentiments of the Union of India, irrespective of what places of worship we go to, irrespective of the difference in our names and nomenclatures; we are all Indians and this is our Flag.

Sir, I wholeheartedly support the Resolution.

Mr. Mohamed Sheriff (Mysore State): Mr. President, Sir, I am sorry that some controversy has been created about the Resolution which was so admirably moved by Pandit Jawaharlal Nehru about the question of the consideration of the Indian Flag. Some gentlemen suggested that there should be some variation in the colours represented on this Flag. Some wanted that the..... (*Hon'ble Members*: "No, no".) Very well.

While appreciating the motive which has actuated these gentlemen in making this representation, yet, speaking for myself, I say that so far as this Flag is concerned, it is the best Flag and I do endorse whatever Pandit Jawaharlal Nehru has said this morning while sponsoring this Resolution.

Sir, the white, the saffron and the green colours, signify renunciation, purity or sacrifice. Great spiritual significance is attached to them. These colours are venerated by all persons, whether they are Hindus, or Muslims, Christians or Parsis. The *Chakra* which is there in the centre of the Flag symbolises motion, progress and advancement and from aesthetic and other considerations also, it suits the genius, tradition and culture of India. As was said by Chaudhuri Khaliqzaman, it is a Flag which deserves the respect of everybody who lives and has his being in India. With these words, Sir, I have very great pleasure in supporting the Resolution sponsored by Pandit Jawaharlal Nehru.

Mr. Satyanarayan Sinha (Bihar: General): I suggest, Sir, that the question be now put.

Honourable Members: The question may be put.

Mr. President: I have got the names of some twenty-five speakers here because it is an occasion on which every one would like to express himself. But I think it is not necessary to carry on the debate any further, because we have heard from members all that could be said. I would, therefore, put the closure motion to vote.

Mr. Tajamul Husain (Bihar: Muslim): Sir, before closure is applied, I would like to submit that more speeches should be allowed, because

[Mr. Tajamul Husain]

on an occasion like this everybody should be given the opportunity to express his thoughts.

Mr. R. K. Sidhwa (C.P. and Berar: General): Sir, this is a memorable day and the opportunity to express himself should be given to everyone who wishes to speak.

Rai Bahadur Syamanandan Sahaya (Bihar: General): Sir, it is not every day that we will be adopting a National Flag for the country and as such it is but proper that if a few more members want to speak to-day they should be allowed to do so.

Pandit Govind Malaviya (U. P.: General): Sir, let us have the whole of today as the Flag day.

Mr. President: I am entirely in the hands of the House; if you do not want more speeches, I shall stop here, but if members want more opportunities to speak I shall proceed in the order in which I have got the names here with me.

Shri Balkrishna Sharma (United Provinces: General): We want to hear the old mother.

Mr. Tajamul Husain: We would like to hear the "Bul-bule Hind."

Mr. President: I will call upon her at the end. I am sure it will be the sweetest speech and we should, according to our old custom, end with sweets. (*Cheers*).

Mr. Saadulla may now speak.

Saiyid Mohammad Saadulla (Assam: Muslim): Mr. President, Sir, my intervention in this debate was not at all necessary, in view of the very learned and able speech of Pandit Jawaharlal Nehru and speeches from other quarters. The reason for my standing before you is that I want to make perfectly clear our position. The Muslim members who are in this House in spite of the fact that you have extended to them "*swagatam*" on the very first day, are looked upon by some members with distrust and attempts were made to debar us from participating in this August Assembly unless we disclaim certain opinions we hold. I have seen in the press certain references that the Muslim members in this Constituent Assembly are unwanted, and some papers had gone to the length of saying that the Muslim members here will be fifth columnists and saboteurs of the Constitution. I am very glad that the Resolution of Pandit Nehru gives us a chance of belying these aspersions and removing distrust by proclaiming from the housetops our allegiance to the Union of India where by accident of residence and birth we happen to be. It the injunction of Islam, emphasized by instructions from League High Command and leaders, that wherever we be we must be good and loyal to the government which functions there. Acting on the principle I salute the Flag which has been presented to the House by Pandit Nehru.

In my opinion the Flag symbolises the evolution of our aspirations, the fulfilment of our struggles and the ultimate result of all our sacrifices. If I may be permitted to draw an analogy from nature, the saffron represents the condition of the earth, the scorched condition caused by the torried heat of the Indian Sun. When the crystal-clear white raindrops and the water from the snow-capped mountains and rivers comes down we get our arid areas converted into smiling green fields the crops of which sustain us and conduce to the growth of the people. Similarly we had in our political struggle our scorched earth days but later on came our days of hope and today this Flag unfurled in this House has brought us to the culminating point, the desiderata of our past struggles. I am glad, Sir, that the Flag remains as it is and that the amendments proposed were not moved, for India is represented in the different colours of this Flag. India is very well noted for her

spiritual attainments. Everywhere it is admitted that India has got a great spiritual message to send out to the different countries of the world. The saffron, as is well known, is the colour of all those people who live the spiritual life not only among Hindus but also among Muslims. Therefore the saffron colour should remind us that we should keep ourselves on that high plane of renunciation which has been the realm of our *Sadhus* and saints, *Pirs* and *Pandits*. I therefore welcome the inclusion of this colour in the Flag.

Next I come to the white portion. White both among Hindus and Muslims is the emblem of purity. I congratulate the High Command of the Indian National Congress that by a bold stroke of imagination they took up the white cap as the symbol of their creed. The presence of the white portion in this Flag should remind every one who takes it up that we must be pure not only in word but also in deed. Purity should be the motto of our life,—individually as well as in connection with the State.

Lastly, Sir, green reminds me of the fact that it was the emblem of the upsurge of India's freedom. Green was the emblem of the Flag which was raised by Bahadur Shah in 1857. But it has more than a sentimental or symbolical value to us Muslims because green was the colour of the Flag of the Muslims from the time of the great Prophet of Arabia thirteen centuries ago. Some may regret that the *Charkha* which was the emblem of the masses has been replaced by the *Dharma chakra* of *Asoka*. But I consider that it was really a heaven-born inspiration of the authorities that this *Chakra* now takes the place of the *Charkha*. Although the *Charkha* was the emblem of our self-help and of our approach to the common masses and was embodied in our activities by the message of the Mahatma, yet towards the later stage the ideal of *Charkha* had been polluted, the instruction or inspiration of Mahatma Gandhi had been deviated from and those who wore the *Charkha* which was the symbol of non-violence were most violent in their actions which at one time Pandit Nehru had at great personal risk to assuage. The *Dharma chakra* of *Asoka* reminds us of the condition of the people at the time of that great Buddhist Emperor of India. He ruled not for his personal aggrandisement but for the contentment, peace and prosperity of the people under his charge. This emblem now embodied in our National Flag ought to remind every administrator and every citizen of the federation of India that we should forget the past and look to the future and try to carry on the tradition of that great Buddhist Emperor *Asoka*, and we should be reminded at all times that we are here not only for our material prosperity but also for our spiritual advancement. This *Chakra* was a religious emblem and we cannot dissociate our social life from our religious environments.

Sir, with these few words not only on behalf of myself but also as Deputy Leader of the Muslim League Party and as an old inhabitant of the furthest and the smallest province of the Indian Union, Assam, I salute this Flag as a symbol of India's freedom.

Dr. H. C. Mookherjee (West Bengal: General): Mr. President, ever since the Indian Christian community became conscious of the fact that it was fundamentally an Indian community, its great leaders in the past have always fully identified themselves with the Indian Nationalism. I need only remind those, who do me the honour of listening to me, of the name of the late Kaka Baptist of Bombay, of the late K. C. Bannerjee of Bengal, of the late Bishop Chidambaram of the United Provinces and the late Dr. S. K. Dutta of Punjab. These names are only a few out of the many I could quote to prove that we have all along identified ourselves fully with Indian Nationalism. From one point of view we have been misunderstood. It has been held that because we profess Christianity,—essentially an Asiatic religion,—and because we have certain

[Dr. H.C. Mookherjee]

contacts with foreign missions, therefore the Indian Christian community has what is known as Christian mentality. It is not so and I stand here to say that it is an incorrect idea. It is a misconception and I want it to be clearly understood that today I on behalf of my community, am pledging our allegiance once more to the Flag.

To me it seems significant that some of the workers very closely associated with the Congress are Indian Christians and I am sure my friends will bear testimony to the fact that we too have produced leaders who have fully identified themselves with Indian Nationalism. We owe our allegiance to the Flag, not only because we are Indian Christians, but because we have been always well treated in the past by the Indian National Congress. In fact it would be no exaggeration to suggest that we have been better treated by the Indian National Congress than by those with whom we are affiliated from the standpoint of religion. I take this opportunity of reminding the Hon'ble Pandit Jawaharlal Nehru of an occasion which happened in 1938 when I had been called to the Punjab by Dr. S. K. Dutta to do a little service in connection with a function at the Forman Christian College. At that time the University Union at Allahabad had arranged for an address by me on Prohibition and they insisted that I should speak on this subject because shortly before that I had visited Salem in Madras through the kind offices of Rajaji. Pandit Jawaharlal Nehru had agreed to preside over the function, but had forgotten the subject on which I was expected to speak. At his request, first of all I explained my ideas about the duties of minorities when asked by him to put before the audience our views regarding the minority question. He was to have left for Delhi within half an hour, but he forgot everything about it and in consequence missed the train. After I had spoken, Pandit Nehru told me that what the community had stood for would be remembered by the Indian National Congress when it came to power. Within three or four days I received reports of a certain case of injustice suffered by Indian Christians in some villages. I went to the villages and found out that the charges were true. I placed before Pandit Nehru the information which I gathered and in seven days' time the whole matter was settled. In that way our religious liberties were restored.

May I in this connection mention another occasion when we received prompt help from the Congress? When I was in Madras, the Principal of the Physical Education College at Saidapet, Dr. Beck, told me that he had immense difficulties in getting land for the Madras College of Physical Education. As soon as Rajaji came to power he granted us even more land than we had wanted within a short time. These are the services that we have received from the Congress. This not only because we are in sympathy with the objectives of the Congress but also because of good treatment we have identified ourselves with the Congress. Once more I, repeat that the Indian Christians owe allegiance to the National Flag.

Mr. R. K. Sidhwa: Mr. President, Sir, the Honourable Mover of this motion Pandit Nehru, said that he felt it a proud privilege to move this Motion and present this Flag to this House. Sir, it is not he proud privilege of only Hon'ble Pandit Nehru today, but it is the proud privilege of the whole Nation to see this Flag round which the people have struggled hard to win freedom has become an accomplished fact, that the National Flag hereafter shall be an officially recognised Flag. While our young and old men and women and children hoisted this Flag on private houses and public buildings, the British bureaucracy in India pulled it down and trampled it under their feet. Notwithstanding that, our countrymen took up that very Flag and hoisted it on the very building from which it had been pulled down. While doing so they strictly followed the doctrine given to us by Mahatma Gandhi to carry on the struggle in a non-violent way. Mahatma Gandhi enjoined upon us to

be non-violent in word, thought and deed. I must admit, Sir, while it has not been possible to follow non-violence in word and thought, I along, with millions of Indians have strictly followed the principle of nonviolence while fighting the battle against the British bureaucracy in India. Through that non-violent struggle we have been able to achieve our cherished goal today. On the Flag problem, a popular slogan went round, "Up, up with the National Flag; down, down with the Union Jack". We do not mean disrespect to any Nation's Flag, but we considered the hoisting of the British Flag here, a symbol of slavery. On 15th August this Flag which has been presented to us today will be hoisted on this August Assembly, on the great magnificent Secretariat Buildings and I may also say, Sir, on the Viceregal Lodge. (*Cheers*). And the Union Jack will be respectfully, slowly and solemnly brought down. Undoubtedly, on that day, the National Flag will be hoisted all over India and it will be saluted by every one.

Sir, the first National Flag, I should say the Swaraj Flag, was hoisted in 1911 at the Indian National Congress Session held at Calcutta by that great President, by that great congressman, by that great Indian Patriot who was one of the founders of the Indian National Congress and, may I say, the prime mover for the formation of the Congress, the late Dadabhai Naoroji. That flag I have seen in the picture I have got it in my house. It is not the same Flag as we see here today. I now remember what that great leader said on the occasion of hoisting that Flag in Calcutta in 1911.

Mr. President: I did not want to interrupt the speaker. But he is mistaken in regard to the year. It was 1906 and not 1911.

Mr. R. K. Sidhwa: Thank you, Sir. While hoisting the Flag he said: 'I present this Flag. Under this Flag we should fight our battles.' Sir, this Flag has since changed in design and now it has been officially recognised as the Flag of the Nation. We shall all salute it. It will remain firmly and solidly till eternity wherever it is flown.

The Honourable Mr. Jaipal Singh (Bihar: General): Mr. President as I listened to Pandit Jawaharlal Nehru, I thought no speech would be necessary, but since various groups in this House have severally tried to acknowledge their acceptance of and allegiance to the Flag which we are going to adopt as the National Flag of this country. I thought I would also say a few words on behalf of the 30 million Adibasis, the real owners of this country, the original sons of the soil, the most ancient aristocracy of India, who have been fighting for freedom for the last six thousand years. On behalf of these my people, I have great pleasure in acknowledging this Flag as the Flag of our country in future. Sir, most of the members of this House are inclined to think that flag hoisting is the privilege of the Aryan civilised. Sir, the Adibasis had been the first to hoist flags and to fight for their flags. Members who come from the so-called province of Bihar, will support me when I say that, year after year, in the *melas*, *jatras* and festivals in Chota Nagpur, whenever various tribes with their flags enter the arena, each tribe must come into *jatra* by a definite route by only one route and no other tribe may enter the *mela* by the same route. Each village has its own flag and that flag cannot be copied by any other tribe. If any one dared challenge that flag, Sir, I can assure you that that particular tribe would shed its last drop of blood in defending the honour of that flag. Hereafter, there will be two Flags, one Flag which has been here for the past six thousand years, and the other will be this National Flag which is the symbol of our freedom as Pandit Jawaharlal Nehru has put it. This National Flag will give a new message to the Adibasis of India that their struggle for freedom for the last six thousand years is at last over, that they will now be as free as any other in this country. I have great pleasure, Sir, in accepting and acknowledging on behalf of the Adibasis of India the Flag that has been presented to us by Pandit Jawaharlal Nehru.

Mr. Frank R. Anthony (C.P. and Berar: General): Mr. President, Sir, as listened to the very eloquent speech of Pandit Jawaharlal Nehru in introducing and commending this Flag, I thought that it was a sufficient seal to the solemnity of the occasion. But since the understandable feelings and enthusiasms of members have led to the making of several speeches, I felt that I should say a few words. I had the privilege of serving in the Committee which finalised the form and shape of this Flag. It was made clear there that this Flag did not contain any communal motives or significance. While we have retained essentially the banner under which the fight for India's freedom was fought and brought to consummation, the Flag as hoisted today has certain qualities and motives which should be cherished by every nation that treads the path of progress and freedom. I believe sincerely that this is really a beautiful Flag in its physical aspect and also in its motives. Today this Flag is the Flag of the Nation. It is not the Flag of any particular community, it is the Flag of all Indians. I believe that while this is a symbol of our past it inspires us for the future. This Flag flies today as the Flag of the Nation, it should be the duty and privilege of every Indian not only to cherish and and live under it but if necessary, to die for it.

Giani Gurmukh Singh Musafar (East Punjab: Sikh): *[Mr. President, I feel that after the speech of such great men as Pandit Jawaharlal Nehru and Sir Radhakrishnan, who have so brilliantly interpreted the colours of the flag I need not say much. I have stood up only with the idea of associating myself with those sentiments. The sacrifices made for this flag and in the cause of the country's freedom have been pathetically narrated by Pandit Nehru in his own inimitable style. Under this Flag, my community mustered around the Indian National Congress and contributed its utmost to those sacrifices, I think no one shall be happier than the Sikhs to see those sacrifices flowering and bearing fruit today. But there is one thing and that is unavoidable that flowers are never without thorns. At this hour of happiness, I feel that many of my brethren, who were one with us at the time of making sacrifices could not now be here with us to share our happiness. It may happen sometimes that a thorn is useful in heightening the beauty and charm of the flower. I am only trying to give vent to emotions which fill my heart at the thought as to how many sacrifices we had to make to see this flag up in the air. We have reached the position today that we can install our flag wherever we like, Now it is equally incumbent upon us to maintain the dignity of this fluttering Flag. Perhaps at times we may have to make the same sacrifices to keep it aloft as we have had to achieve it. Therefore, I promise on behalf of my Sikh community that they shall continue to make sacrifices for upholding the honour and dignity of the flag with the same vigour, daring and fearlessness, as they have shown in the cause of the country's freedom. With these words, I support the Resolution moved by Panditji.]†

Mr. H. J. Khandekar (C.P. & Berar: General): *[Mr. President, I support the Resolution on this flag as moved by the Honourable Pandit Jawaharlal Nehru. You know what great sacrifices have been made by us to maintain the honour of this Flag in this country; and how many sacrificed their lives, got their children trampled were killed and destroyed. The British Empire used all their power to destroy this Flag, but we the inhabitants of this country always cherished and adored it This Flag, under which we find Free India and which we wish to hoist over Free India, is the same Flag which even today gives us strength to free ourselves.

This Flag has three colours. One is saffron which is related to our own community. I belong to the depressed classes and I wish to remind you that when Shivaji was in power and when a chance of freeing this country and establishing a Hindu Raj arose our community sacrificed lacs of

*[English translation of Hindustani speech begins.

]†English translation of Hindustani speech ends.

persons under this saffron banner. For example, the Iron Pillar of Sidhanath Mahar in Koragaon reminds us of that age even today.

Here is the Flag. It has three colours. The first one is related to my community. The second colour which is white denotes peace and tranquillity and indicates unity amongst all the communities in this country and for this reason this Flag represents every religion and every language in the country. As the President of the All India Depressed Classes Union, I wish to give this assurance before the House that my community shall always follow the Flag which we are adopting today. With these words, I support the Resolution on the Flag on behalf of my own self and community as a whole. If the honour of the Flag, maintained by us even up to this day is a besmirched any time, my Community along with other inhabitants of the country will sacrifice themselves to save the honour of the Flag. With these words I beg to support the Resolution.]*

Shri Balkrishna Sharma: †[Mr. President, Sir, when my leader Pandit Jawaharlal Nehru has expressed such lofty sentiments today on this occasion, I myself thought no speech should be delivered after that. But the conventions prevailed and members of every group have expressed their ideas, here. On the suggestion of my elders, I also submitted my name to the President and wish to express myself briefly before you today.

This day, the day of moving this resolution by Pandit Jawaharlal Nehru, is a day of congratulations to our country and its history. When I was listening to the speech of Pandit Nehru, I felt as we had finished one part of our Journey and were beginning the next. Now, when the first part of our journey comes to a close, we feel obliged to look back. In the history of the last twenty years, a great man, born amongst us, has so melodiously and artistically harmonized our life that it would be ingratitude on our part, if we do not bow to him. It is not possible to enumerate in this short time, what Mahatma Gandhi has given us and contributed towards our national life and what is being given by him to us even now. But if you take a little trouble and go back to the circumstances prevailing 27 and 28 years ago, you will find what great progress has been made, in our country through the efforts of the world's greatest leader. There was a time when Congress was merely passing resolutions and assembling for three days during Christmas and it considered that its duty ended there. When Mahatma Gandhi said that we would not get independence by passing resolutions, and that strength was necessary to obtain rights, the nation looked at him in bewilderment and thought that he had gone mad. The message of gaining strength for a nation without arms appeared to be a mad idea in the history of the world. The world thought of only one way as means of attaining national rights and that was the way of violence. Should we not remember today that development of mass consciousness in the country which was carried out by Mahatma Gandhi by non-violent methods? It appealed to the people and they organised. I think that it was the greatest gift of Mahatma Gandhi that he changed a mere resolution—passing Congress into a fighting body. His second great gift to our country was that the Congress which worked only for three days (in a year) was changed into a permanent Organisation. His third great gift is of a national language. We used to express ourselves in a foreign language. Mahatma Gandhi by offering us Hindi as a National language, gave us a chance to feel and awaken our national sentiments. One of those boons is that of the Flag which has been offered by him to this country. Thus centralising the collective strength of our country in the form of this flag, he inspired us to proceed and march on the way to sacrifice. Today, on behalf of all of us, I offer my homage at the feet of this great man.

When Pandit Jawaharlal Nehru was addressing us, I looked at him and felt what had been done by this great man to our country. How much idealism have we attained through him and how much sense of service

] *English translation of Hindustani speech ends.

† [English translation of Hindustani speech begins.

[Shri Balkrishna Sharma]

and devotion have we imbibed through him? On behalf of you all, I offer my respects to Pandit Jawaharlal Nehru and Mahatmaji. When I was listening to his speech, I felt that one part of the journey is coming to an end. An idea crept in my mind that now we have to see what next we have to do. Pandit Jawaharlal Nehru interprets the *Chakra* in the centre of our National Flag as an indication of movement. It reminds me of the old message which I had read in *Brihadaranyaka Upanished* "Remaining asleep is *Kaliyug*, opening of eyes is *Dwapar* getting up is *Treta* and moving about is *Satyayug*". Today Pandit Jawaharlal after giving us the message of motion in the form of this *chakra*, is once again taking us to *Satyayug*. *Upanishad* writers say: "Charaiveti, Charaivet" Bhagwan Buddha himself has said "Charaiveti Kihave Charaiveti". "Go on, endeavouring continually, go on again and again, there is no place for rest." On behalf of the congressmen today, may I give this assurance to our leader Pandit Jawaharlal Nehru "Dear Captain! Under your leadership we shall try to follow you with all our strength."

Today on this occasion I salute the National Flag and pray to God that a new era may dawn upon this country, a new earth and a new sky may be formed in this country which may be able to give a message of eternal peace to the entire human world from under this Flag.†

Pandit Govind Malaviya: †[Mr. President, Sir, when I came here today I had not the slightest idea that we would speak anything about this Flag. But when Pandit Jawaharlal Nehru, the beloved leader of the country, made his speech, a wave of joy enthusiasm arose in our hearts and we felt a desire to pay our tribute to the National Flag on this solemn and auspicious occasion. Thus, Sir, I also sought your permission to speak a few words.

The importance of a national flag does not depend on its colour, its bands or its other parts. The flag as a whole, is important and other things—the colours etc., that it contains—are immaterial. The flag may be of a piece of white cloth of any other insignificant material but when it is accepted as a National Flag, it becomes the emblem of national self-respect. It becomes an expression of the sense of freedom of a nation. It becomes its dearest object. For the last 27 years this tricolour flag has been uppermost in our thoughts and imagination. We have made numerous sacrifices for the freedom of India with this flag in our hands. As I have already stated, when a flag or any other thing is accepted by a nation as its ensign, it becomes the dearest object of the nation and assumes the most important and the highest place in the life and history of that nation. This, our Flag, has been the symbol of the hopes and dreams of our hundred million souls for the last 27 years. For the honour of this flag millions holding it dearer than their lives, suffered tremendously. Numberless people went to jails leaving their children starving. People had their heads and bones broken by the lathis of police and the military to keep it aloft. Unarmed youngmen and students of the country opened their chests before the bullets of the English military or police to protect the honour of his flag. For generations it has been our flag and the great feeling, emotion and enthusiasm we have in our hearts for this flag is beyond human description. We are eager to pay our tribute to this flag.

Sir, this flag for which great sacrifices have been made and about which there are many 'gathas' of patriotism, heroism and sacrifices, has become the centre of our thoughts. There are various opinions today in our country about this flag. Many members have given notices of various resolutions about this flag. I know every mover has his own individual and important reasons for moving his resolution. If their suggestions are not accepted here, it does not mean that we do not appreciate the thoughts of any particular individual or section. We do not entertain the idea that because some differences of opinion exist regarding this flag, any

]*English translation of Hindustani speech ends.

†[English translation of Hindustani speech begins.

body forfeits his claim to it. On the contrary, we hold that he has similar claims to it as we have. I would like to address a few words to those who have opposed the adoption of this flag, or have moved amendments for effecting some change in it, I would like to address a few words to the Hindu members who have approved of the flag. There maybe some ground for their complaint but it should not be forgotten that this flag has been the emblem of our highest hopes and noblest emotions for 27 years. It has been the advocate, after 27 years' struggle and sacrifices presenting before the House some other flag for adoption? The struggle for independence started by the Congress was not on behalf of any particular community or section. Under this flag, the Congress and the khilafat, the Hindus and the Muslims together infused the fire of enthusiasm in the people of this country; and the Sikh community has made countless sacrifices. Every community in India has shed its blood and has sacrificed its all. This flag does not belong to any particular community. It belongs to us all as a whole. The characteristic feature of the flag is this, that though it belongs to the whole of India, every individual, whether Hindu, Muslim or Christian can claim it as his own, be happy over it and have respect for it.

The green portion in the flag may be taken to represent our Muslim friends the white one the Christians and other communities and the saffron the Sikhs. Every community is represented in the flag. But it does not mean that these colours merely represent these communities and they have no other significance. There may be other interpretations also of these colours. They represent the Hindus as well. As I have said the characteristic feature of the flag provides ample scope for every one to think it as his own. In the Vedas "Rta" has not been defined but it is all embracing and has been extolled by poets and bards. But no one can identify it with any particular object.

Similarly the great poets have expressed many good ideas in beautiful words about the various virtues of mankind, *e.g.*, truth, beauty, duty, benevolence, kindness and filial devotion. All write on the same subject but in their own way. On the same virtue, one writes some thing and another some other thing. They express different ideas and different emotions in different ways. Similarly in the case of this flag, everyone can sing a chorus in praise of the flag according to his own sentiments. Every community can think of this flag as its own. Some people have complained in the press that there should be predominance of Hindu colours in the flag and that the present flag should be changed. They ask if along with other communities, have the Hindus not shed their blood and sacrificed their kin for this flag? How can we forget the call of those Hindu martyrs through whose sufferings and sacrifices, these disgruntled (Hindus) have had the chance to see the dawn of independence? Will it not be sheer ingratitude to them on our part? With due respect, I would like to tell even the most orthodox Hindus that this flag amply represents the Hindu sentiments. This flag is the true expression of the sentiments of the Hindus and Hinduism. The Vedas say that the colour of a flag should be red. Therefore according to the Vedas the flag of the Hindus should be red. Besides this, let us interpret it in a different way. The red colour at the top represents fire and the sun. The white represents the moon. Now according to the Hindu mythology, the first thing that the Creator (Brahma) did was to create the sun and the moon. The Hindus, the Aryans—have since their very beginning been worshipping the Sun, Fire and the Moon. The sun and the Moon are worshipful deities. This flag represents these vary gods—the fire the sun and the moon. The green colour at the bottom, as I have said, should be taken by our Muslim friends to represent them. But at the same time, this colour in a way represents the Hindus as well. You know of all the nine planets Budha is supposed to be the most important. This green colour represents the Budha. This very Budha according to the Hindu mythology, Is the god

[Pandit Govind Malaviya]

of wealth. The green colour of Budha is the emblem of prosperity and happiness of society. That colour is given in the flag. What better flag can the Hindus adopt for themselves, than the present one which represents the Fire, the Sun, the Moon and Budha? Apart from this, there is a 'Chakra' wheel in the centre of the flag. This is very significant. The Hindus attach great importance to 'avatars'. 'When there is too much of vice, suffering and disturbance on the earth, according to the Hindu mythology, some Divine Being comes on the stage to establish order and guide the world to the path of virtue. This Divine Being is known as our Avatar. Lord Krishna was the incarnation of God. So also was Lord Buddha. "Sudarshan Chakra" was the divine weapon of Lord Krishna, Every Hindu knows of 'Sudarshan Chakra.' That "chakra" or wheel embodied in the flag. Hindus consider Lord Buddha as an Avatar and the Chakra on the flag represents Lord Buddha as well. And, if the Hindu beliefs are correct the final incarnation or divine being as already appeared on the earth to rid humanity of the present terrible turmoil and vices, and to re-establish peace, justice and order in the world. That Divine being is amongst us. It is Mahatma Gandhi. We may not acknowledge him today, as such, but after some time, the Hindus will consider him as the latest Avatar. His dear charkha is embodied on the flag. So I can say that every one has got a pleasing feature in the flag and particularly the Hindus. As I have explained, every part of the flag is consistent with the religious sentiment of the Hindus. Therefore, far from opposing it, Hindus should adore it and should be prepared to sacrifice their all to protect its honour. I am fully satisfied with the flag, but as, some people wanted some addition and alteration in it. I thought it advisable to satisfy them without making any change in the flag and for this I have made an attempt I would like to assure them that due consideration was given. to their proposals and feelings but finally it was decided that the flag under which the whole country, including those who are opposing it today; fought for freedom, should be adopted as the national flag. After the change that has been made in the flag, no Hindu should have any ground for any dissatisfaction.

Sir, it is our country that has always guided the world. It has brought the world from darkness to light. As in the past, this country has fortunately for the world produced the greatest man of the time, who amidst all the crowding miseries of mankind and under the shadow, of the dark clouds of the third world war, preceded by two great wars that destroyed the world, is still standing solid like a rock and a beacon for the world. He is proclaiming that madness should be given up. If the world follows him, there would be Peace and Prosperity. This flag bears the dear emblem of Mahatma Gandhi.

I pray to God to bestow on us the strength and the wisdom to lead ourselves and the whole world to its desired destination. It is India and he alone that can guide the world to its goal. It is India alone that can be expected to do good to the world.]*

Mr. Tajamul Husain: I want to speak a few words. My name is not on the list but I will not exceed two or three minutes. Have I your permission?

Mr. President: No I have got more than 25 names on the list.

Mr. Tajamul Husain: I hope I will have your permission afterwards.

Mr. President: I would request the speakers now to shorten their speeches as we have got only forty minutes more, so that I may be able to give an opportunity to as many speakers as may wish to speak. I suggest two minutes for each speaker.

] *English translation of Hindustani speech ends.

I call upon Dr. Joseph Alban D'Souza to speak.

Dr. Joseph Alban D'Souza (Bombay: General): Mr. President: I give you, Sir and the House a guarantee that I am not going to exceed more than 2 or 3 minutes. I stand here at this Assembly rostrum first as an Indian and then only as an Indian Christian (*Hear, hear*) because Sir, on this day when the National Flag has been introduced and planted there is jubillation and joy all over the Nation, first in every Indian Home and along with that in the home of every Indian Christian. Sir, the mover of this Resolution, the great Pandit Jawaharlal Nehru, has in an eloquent and brilliant manner told us how this Flag represents, in the first place the brilliant and great traditions of the past and equally brilliant historic conditions of the past. Then Sir, he went on to tell us what it represents at present. At present he told us it represents the ups and downs that have occurred in the progress towards freedom and above all, he told us that it represents the triumphant conclusion of our fight for freedom. Sir, it is only meet and proper that the mover of this Resolution should the great Pandit Jawaharlal Nehru and why? Because of his great personality. Sir, what do I mean by his great personality? If I am to express it as briefly as I can and at the same time give it all the significance, I can, it is this. His personality, Sir, is based on all sacrificing and all selfless character, and because it is all sacrificing and all selfless, it is all-pervading, all permeating and all-conquering. I need not say a word more on this. It is not necessary because the whole of India, nay, Sir, the world knows how this great son of mother India has immolated himself on the high altar of the Indian Nation Sir, I think my time is coming to a close. I shall express my heartfelt desire for the progress of India under the aegis of the Flag that has been accepted today, by a small Latin quotation:

“Vivat, Crescat, floreat India”

which rendered in English means—May India under the aegis of this Flag live, grow and flourish, to the lasting advantage and glory not only of teeming millions of citizens of India but may I add, Sir, to the lasting glory and advantage of the world at large. This Sir, is the prayer of this humble Indian Christian. (*Cheers.*)

Mr. Jai Narain Vyas (Jodhpur State): *[Sir, I need not say much in praise of the National Flag. I want to associate myself on behalf of the politically backward people of the States, with the chorus of tribute paid to the flag. Under this flag not only the people of the provinces but the States people too have fought for freedom, economic and social, and for liberation from foreign yoke. Our struggle in the State has been associated with this flag and with the mover of the Resolution relating to the flag, Pandit Jawaharlal Nehru. Without his guidance the movement of the States people and their progress would not have attained the momentum it has. Today Pandit Nehru's name is associated with the flag. Our feelings and sentiments are the same as those of Pandit Nehru. Previously there was a *Charkha* on the flag and now a *Chakra* has been substituted for it. This *Charkha* is the symbol of activity. Under the *Charkha* flag the people of ten provinces have already attained freedom but the people of the States have yet to attain it in certain respects. I mean we have to attain responsible government in States. We do not mean to remove our ruling princes but we want to have full responsible government under them. There is no doubt that we will attain our objective under this flag. This is our national flag. It belongs to all the communities of India—Hindus, Muslims, Sikhs and Parsis. Let it fly everywhere in India and on the Viceregal Lodge, on the hamlets of the peasants and on the palaces of the princes. With these sentiment, I pay my homage to the Flag.]*

[] English translation of Hindustani Speech.

Shri S. Nagappa (Madras: General): Mr. President, Sir, I rise to support the Resolution before the House, moved by our revered leader Pandit Jawaharlal Nehru. Sir, this is the Flag under which we have during the last sixty years marched on and have at last reached victory. We are proud of this Flag. In it there are three colours and these three colours represent the three communities in our Country who are united into one. The Flag denotes also what the country desires. We do not desire to capture other countries, we do not want to be imperialistic, we do not want to see other countries bowing to us. All that we want is that our Flag should fly all over the world as the Flag symbolising peace, progress and prosperity. That is the aim of our country.

Mahatma Gandhi was kind enough to introduce in the Flag the emblem of the poor man—the industry by which the poor man ekes out a livelihood—the *Charkha*. Sir, I come from the *Harijan* Community which depends very much on spinning and Mahatma Gandhi has rightly put the *Charkha* on the Flag. Pandit Nehru was kind enough to say that this emblem should be on the other side also, if it is put on one side. But the *Chakra* represents not only the *Charkha* but it happily represents the progress of the country and it represents the rising Sun, the rising Sun of the independence of our country. We have been living for two hundred years in slavery, and now we are at last seeing the Sun of independence rising in our country.

This *Chakra* represents also the great *Vishnu Chakra*—the wheel of the world that was able to take the whole world to peace, progress and prosperity.

Sir, it is very easy to have a Flag, to hoist the Flag and see it fly over buildings. But every man must know how to keep the honour of the Flag. Then man who keeps the honour of the Flag keeps the honour of the whole Nation. The higher the Flag flies, the greater is the honour of the Nation.

Hitherto, this Flag was called the Congress Flag. Now it cannot be called the Congress Flag, it will be called the Indian National Flag. Everyone, whether he be a Muslim, Hindu or Christian, will own this Flag. He has to defend it and stake even his life, if need be then alone will the honour of our country be high in the eyes of the world.

Mr. Lakshminarayan Sahu (Orissa: General): Sir, I wholeheartedly support the Resolution that has been so ably, wonderfully, and may I add, magically moved by Pandit Jawaharlal Nehru. The Flag that has been presented to us reminds me of my own place in Orissa. There is the temple of Jagannath in Orissa over which for over a thousand years the Eternal Wheel called the *Neela Chakra* has been standing; and with it is associated the Flag called "*Patita Pavan Vana*", that is, the flag which represents the poor people, the untouchables. I wish that on this occasion all our leaders would make an effort to throw open the temple of Jagannath to the so-called untouchables who are denied admission into it to-day.

This wheel on this Flag reminds me also of many associations connected with Kalinga and Magadha to which latter place you. Mr. President, belong. Asoka from Magadha went over to Kalinga and fought a great battle. After very heavy carnage, he was turned into a gentle being—the gentle Asoka; and it is there that the Kalingas in a way conquered Asoka. When I see this Flag here, associated with the name of Asoka and also with Buddha, I am reminded that our country Kalinga after a great battle taught a good lesson to Asoka non-violent one. There are two places in Orissa even to day where the edicts of Asoka are standing, to tell the world that we must serve all countries and all humanity, irrespective of caste, creed, colour and so on. In fact, I feel that this Flag of ours is not only National, but it is in a way International because the

wheel represents the wheel of eternity. Therefore, all of us, I say, even those of us who were not with the Congress till yesterday will respect this Flag. This is the Flag which has become entirely National, completely National today when the Resolution about this National Flag was moved so ably by Pandit Jawaharlal Nehru.

When I see the three colours on this Flag, I am reminded also of the three images inside the temple of Jagannath. Lord Jagannath represents the blue colour, Balaram represents the white and Subhadra Devi represents the yellow colour, with Lord Jagannath and Balaram on either side of Subhadra Devi, in a way defending the Women folk. This symbol I worship because in a way it is the symbol of my country—the place from where I come to sit in this Constituent Assembly as a member.

I therefore, wholeheartedly support the Resolution so ably moved by Pandit Jawaharlal Nehru.

Rev. Jerome D'Souza (Madras: General): Mr. President, I thank you Sir, for giving me the opportunity to join in the chorus of the expression of happiness on this very auspicious occasion, when India, without distinction of religion or caste or creed, province or section accepts a National Emblem that will represent her in the councils of the world. Sir, some of us who have seen public demonstrations and pageants in foreign countries, have felt humiliation at seeing our own great land, its vast peoples, its ancient heritage and culture and its incomparable beauty unrepresented in these pageants. And when these strangers looked at us we had to bow our head in humiliation knowing that in this Comity we had no independent representation. Sir, today this humiliation ends and if such a pageant should take place, the children of India who may be present there will share the pride with which other nations greet and honour the symbols of their country fluttering in the air and their hearts will rejoice as their Flag will rise in the breeze. That, Sir, is one aspect of it which, I think, will come home to all of us with peculiar satisfaction.

Better than most people, I take it that our people understand the meaning of symbolism, of ritualism the significance of the hoisting of this Flag, and all that it stands for. Such is our love of ritual, such is the imaginative wealth with which we surround symbols and signs. Ours is a very happy and singularly well-conceived symbol with its harmony of colour and with its unique idea of a circle in the centre into which such a wealth of meaning can be concentrated. Sir, I am sure many of those who were present will recall the historical occasion when this very noble building in which we have gathered was inaugurated. On that day the Viceroy of the day, Lord Irwin, referred to the circular construction of this building and alluding to one of the noblest of Christian English poets, quoted his lines that he had seen “eternity as a circle of white light”. Sir, this circle, this wheel, which represents so many things time and its revenges, industry and all its achievements—represents for us also eternity and the values of eternal life.

Pandit Jawaharlal Nehru referred to these spiritual values by which a nation lives and which should be represented by this Flag. Nothing could be more appropriate and admirable than this circle to represent those spiritual values. This is the symbol with which India will continue its fight. May I be permitted to say that India will continue its struggle also for peace, and that just as her soldiers will be encouraged and uplifted by the sight of this Flag in all righteous warfare against unjust enemies, so also this Flag will stand as a reminder of our love of peace. May it help us to go forward in all righteous work and see that all social wrongs are righted. Above all, in every case of fratricidal warfare, of strife among ourselves, when injustice is done, when tempers rise, when communal peace is broken up, may the sight of this Flag help to soften

the harsh and discordant voices, and help us to stand together, as we have gathered today in unanimity, in happiness is brotherly feeling to salute this, our National Flag.

Mr. President: There are yet a number of speakers on the list but I had promised earlier that I will call Mrs. Naidu to make the final speech. So I request her to address the House.

Mrs. Sarojini Naidu (Bihar: General): Mr. President, the House knows that I had refused over and over again this morning to speak. I thought that the speech of Jawaharlal Nehru—so epic in its quality of beauty, dignity and appropriateness—was sufficient to express the aspirations, emotions and the ideals of this House. But I was happy when I saw the representatives of the various communities that constitute this House rise up and pledge their allegiance to this Flag. I was especially reminded by the people that sit behind me from the Province of Bihar that it was at the risk of my life and seat in their province, should I forget to mention that this Flag, so willingly and proudly accepted today by the House, has for its symbol the *Dharma Chakra* of Asoka, whom they claim (I do not know with what historical veracity) to be a Bihari! But if I am speaking here today, it is not on behalf of any community, or any creed or any sex, though women members of this House are very insistent that a woman should speak. I think that the time has come in the onward march of the world-civilisation when there should be no longer any sex consciousness or sex separation in the service of the country. I therefore speak on behalf of that ancient reborn Mother with her undivided heart and indivisible spirit, whose love is equal for all her children, no matter what corner they come from in what temples or mosques they worship, what language they speak or what culture they profess.

Many-many times in the course of my long life, in my travels abroad—for I am vagabond by nature and by destiny—I have suffered the most terrible moments of anguish in free countries, because India possessed no flag. A few of those moments I would like to recall.

On the day when peace was signed at Versailles after the last war. I happened to be in Paris. There was great rejoicing everywhere and flags of all nations decorated the Opera House. There came on the platform a famous actress with a beautiful voice, for whom the proceedings were interrupted while she wrapped round herself the flag of France. The entire audience rose as one man and sang with her the National Anthem of France—the Marseillaise. An Indian near me with tears in his eyes turned to me and said “When shall we have our own Flag?” “The time will soon come,” I answered, “When we shall have our own Flag and our own Anthem”.

I was asked to speak at a peace celebration in New York soon after the peace had been signed. Forty-four Nations and their Flags fluttering in the great hall in which the Assembly met. I looked at the Flags of all the Nations and when I spoke I cried that though I did not see in that great Assembly of Free Nations the Flag of Free India, it would become the most historic Flag of the world in the not distant future.

It was also a moment of anguish for me when a few months later forty-two Nations sent their women to an International Conference in Berlin. There they were planning to have, one morning, a Flag parade of the Nations. India had no official flag. But at my suggestion some of the women Indian delegates tore strips from their saris sitting up till the small hours of the morning to make the Tri-colour flag, so that our country should not be humiliated for the lack of a National Banner.

But the worst anguish of all was only a few months ago, when on the inspiration of Jawaharlal Nehru the Nations of Asia met in Delhi and affirmed the unity of Asia. On the wall behind the platform there was the flag of every nation of Asia. Iran was there, China was there, Afghanistan was there as also Siam. Big countries and little countries were all represented but we had exercised a self-denying ordinance, so that we might scrupulously keep or pledge that no party politics would be permitted at the conference. Can you not understand and share with me the anguish of that decision which excluded the Tri-colour the Congress Flag from the Asian Conference? But here today we retrieve that sorrow and that shame: we attain our own Flag, the Flag of Free India. Today we justify, we vindicate and we salute this Flag under which so many hundreds and thousands of us have fought and suffered. Men and women, old and young, princes and peasants, Hindus and Muslims, Sikhs, Jains, Christians, Zorostrians, all of them have fought under this Flag. When my friend Khaliquazzaman was speaking, I saw before me the great patriots, my friends and comrades of the Muslim community who had suffered under this Flag. I thought of Mahomed Ali, of Shaukat Ali, of Ansari and of Ajmal Khan. I could mention the smallest community in India, the Parsi community, the community of that grand old man Dadabhai Naoroji, whose grand-daughters too fought side by side with the others, suffered imprisonment and made sacrifices for the freedom of India. I was asked by a man who was blind with prejudice: 'How can you speak of this flag as the flag of India? India is divided'. I told him that this is merely a temporary geographical separation. There is no spirit of separation in the heart of India. (*Hear, hear*). Today I ask one and all to honour this Flag. That wheel, what does it represent? It represents the *Dharma Chakra* of Asoka the Magnificent who sent his message of peace and brotherhood all over the world. Did he not anticipate the modern ideal of fellowship and brotherhood and cooperation? Does not that wheel stand as a symbol for every national interest and national activity? Does it not represent the *Chakra* of my illustrations and beloved leader, Mahatma Gandhi and the wheel of time that marches and marches and marches without hesitation and without halt? Does it not represent the rays of the Sun? Does it not represent eternity? Does it not represent the human mind? Who shall live under that Flag without thinking of the common Indian? Who shall limit its functions? Who shall limit its inheritance? To whom does it belong? It belongs to India. It belongs to all India. Pandit Jawaharlal Nehru told us that India has never been exclusive. I wish he had added 'India welcomes all knowledge from friend and foe alike'. Did she not? Have not all the cultures of the world contributed to the ocean of her culture? Has Islam not brought to India the ideals of democratic brotherhood, the Zorostrian his steadfast courage, who fled from Iran with a blazing log from their fire temple, whose flame has not perished these thousand years? Have not the Christians brought to us the lesson of service to the humblest of the land? Has not the immemorial Hindu creed taught us universal love of mankind and has it not taught us that we shall not judge merely by our own narrow standard but that we should judge by the universal standard of humanity?

Many of my friends have spoken of this Flag with the poetry of their own hearts. I as a poet and as a woman, I am speaking prose to you when I say that we women stand for the unity of India. Remember under this Flag there is no prince and there is no peasant, there is no rich and there is no poor. There is no privilege there is only duty and responsibility and sacrifice. Whether we be Hindus or Muslims, Christians, Jains, Sikhs or Zoroastrians and others, our Mother India has one undivided heart and one indivisible spirit. Men and women of reborn India rise and salute this Flag! I bid you, rise and salute the Flag. (*Loud cheers*).

Mr. President: I would ask Members to express their assent to the Resolution which has been placed before them and show their respect to the Flag by getting up and standing in their places for half a minute.

The motion was adopted, the whole Assembly standing.

Mr. President: I have to make one announcement before we adjourn. A question was put to me yesterday about the future programme. I have had consultations with some of the Members and with the staff of the Constituent Assembly. I am in a position to state that it is possible to complete the discussion of the Report of the Union Constitution Committee within this month and, if we do that, say by the 30th or 31st of this month, we might adjourn this session. We shall be required to be here again on the 15th of the next month when power will be actually transferred to the people's representatives by the Representative of the British Government. When Members come here for that function I suggest that we might continue our sittings after the 15th August and take up the Report of the Union Powers Committee. If this is acceptable to the House (*Hon'ble Members: 'yes'*) we may also have the Report of the Minorities Committee and we may hope to dispose of that also during the next session.

The Honourable Pandit Jawaharlal Nehru: Mr. President, Sir, may I respectfully suggest that the two Flags which have been displayed this morning may be specially preserved and subsequently deposited in the National Museum (*Applause.*)

Mr. President: I accept that suggestion.

An Honourable Member: I request you on behalf of the House to convey our homage to Mahatma Gandhi and tell him that we are observing the day very magnificently.

Mr. President: I will do that with the greatest pleasure.

The Assembly then adjourned till Ten of the Clock, on Wednesday, the 23rd July 1947.

CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 23rd July, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

REPORT ON THE PRINCIPLES OF A MODEL PROVINCIAL CONSTITUTION—*contd.*

Mr. President: We shall take up discussion of Clause 15 of the Provincial Constitution, which was held over the other day. That Clause was moved and amendments were also moved. So the Clause and also the amendments are now open to discussion.

Mr. B.M. Gupte (Bombay: General): Sir, before I proceed to the arguments in support of my amendment, I should like briefly to indicate the difference between my amendment and the original Clause and other amendments. In my amendment I have retained the first two sub-Clauses of the original Clause. Then I should like also to emphasize that the ultimate authority who has to deal with the emergency is the same in both, namely, the President of the Union. The only difference between my amendment and the original Clause is that when an emergency arises the original Clause provides that the Governor shall report to the President of the Union, while I have suggested that the Governor may, if necessary, take immediate action and then report to the President. Pandit Kunzru's amendment, I think, merely reiterates and clarifies the original Clause. Then there remains Mr. Munshi's amendment. Essentially, Mr. Munshi's amendment is not different from mine but it is something more. It is a redraft of the entire Clause as it would stand if modified by my amendment.

Proceeding with the argument. I should like to submit, first of all, that the scheme as provided for by the original Clause cannot work at all. Under sub-clause (I), an onerous responsibility has been thrown on the shoulders of the Governor, namely, the responsibility to prevent any grave menace to the peace and tranquillity of the Province. What is the power given to him to meet such a heavy responsibility? It is the power merely to report to the President of the Union, if at all it can be called a power. Even this power,—when is it to be exercised? Not until and unless the Governor, has tried and failed to persuade his Cabinet to initiate legislation which he considers essential for the purpose of meeting this emergency. My submission is that if a problem lends itself to solution by the protracted processes of legislation, then it is not a grave menace at all. If it is otherwise, *i.e.*, if it is really a grave menace, then some negotiation, some discussion with the Ministry is bound to entail delay which no really grave menace can tolerate. For a grave menace does not come in a leisurely fashion. It is a sudden flare up, a violent eruption. In such circumstances, a mere power of reporting is absolutely of no avail. If the Governor has to discharge his responsibility with some chance of success, he must act immediately and for that purpose, he must have the necessary power. That is what has been provided for in my amendment.

[Mr. B.M. Gupte]

It does not therefore mean that my amendment seeks to give unrestrained, unrestricted power to the Governor. In the first place it is stated that he shall act only when immediate action has to be taken. If no immediate action has to be taken, the Governor cannot act. If there is time to communicate with the President and receive instructions, the Governor shall not act. Why should he take responsibility unnecessarily? If there is not time, he shall take initial action and forthwith communicate it to the President. Of course, I may be told that it is the Governor who has to judge whether immediate action has to be taken. I admit it is the Governor who has to judge. But I submit that if he acts wrongly, there is the President to correct him immediately. If he acts perversely, there is the sword of impeachment, hanging over his head.

Then it is provided that he shall not assume the powers of the High Court. The High Court is the bulwark of civil liberties and its authority must ever remain unimpaired. That is another safeguard. Then, the Governor shall have to communicate his proclamation to the President and he shall abide by his directions later on. It means that it is only for two or three days that this power is given to the Governor. As soon as the President has got seized of the matter, the Governor's power comes to an end. Of course, I have provided that the proclamation is to last for 15 days, at the most. If it does last so long the responsibility will not be that of the Governor, but that of the President. Therefore, it is evident that my amendment is designed merely to enable the Governor to hold the fort till the President takes the situation in his own hand.

Then, I am told that in these days, when distances have shrunk tremendously owing to the telephone, the radio and the aeroplane, it will not be necessary to give this extraordinary power to the Governor, and it is enough merely to report to the President. I submit that the very forces which have caused this shrinkage of distances have also contributed to the intensification of the tempo of life and situations which took some time to develop in the placid old days, develop today with baffling rapidity. This argument therefore does not affect the merits of my case.

There are other more through-going objectors, and from the order paper it is evident that some of them have expressed their opposition by tabling amendments for the deletion of the entire Clause. These gentlemen are not satisfied that there should be any emergency power at all either to the Governor or to the President. I am afraid they forget that we are living in a revolutionary age, we are living in almost perilous times. The whole world has become a seething cauldron of economic unrest and political turmoil. A spirit of violence is abroad. It is only three days ago we witnessed one of the ugliest manifestations of it in Burma. Even in India we share these world conditions, and our own peculiar problems have aggravated them. Horrible tales of arson, murder and loot continue to be our daily fare of news. Nobody has any doubt that a new and a great India is being born. But I submit that the new India cannot quickly grow and prosper to its noble destiny unless we are able to maintain the frame work of well-ordered society through this stormy and critical period of our history. The whole atmosphere is explosive. Nobody knows when and where the situation will explode. It has therefore become imperative that apart from the machinery of the Government, there shall be reserved somewhere power to deal with a serious threat to law and order promptly and efficiently. When immediate action has to be taken, it is obvious that that authority must be a man on the spot. If it is to be the man on the spot, who else can that man be other than the Governor, who is elected on the widest franchise? No doubt, in most cases, the Ministry will be able to weather the storm and practically in no case will this extraordinary power be called into action. We shall all be glad if the power rusts in the Statute Book. But occasions may arise when the Ministry may not be able to act as efficiently and promptly as we expect it to do. For such circumstances, power must be reserved in the hands of the Governor.

We are told that this will be an encroachment on Ministerial responsibility. I ask, if the President, in the interests of law and order, can override the popular Ministry, why not the Governor, who is admittedly the head of the province, is much nearer home, and who also is an elected popular leader?

In conclusion, I say if this power, restricted in its scope and hedged round with safeguards, cannot be trusted even for two or three days to a man who has been elected on a wave of popular enthusiasm, and who enjoys the confidence of the overwhelming mass of the people of the province, then the position of the Governor is reduced to that of a dummy and a costly dummy at that; costly both to himself and to the province. For both of them will have to spend lots of money and energy for the adult franchise election. I hope the House will agree that this is not a satisfactory position for a Governor who has been elected on adult suffrage.

That does not mean that I advocate that power should be given merely for the sake of power or merely for the sake of position and prestige of the Governor. I only say, that there may be an emergency, and it has to be provided for and power has to be given to somebody. There is the Governor elected on adult franchise; he enjoys the confidence of the people. Why should he not have the confidence of the framers of this Constitution? Therefore, I commend my amendment to the acceptance of the House.

The Honourable Pandit Hirday Nath Kunzru (United Provinces: General): Mr. President, I move:

“That for Clause 15 the following be substituted:

Whenever the Governor is satisfied that there is a grave menace to the peace and tranquillity to the province of any part thereof, he may, in his discretion, report to the President of the Federation.”

The three amendments that have been moved relate to the same important subject because law and order are the foundation, not merely of the State but of society. It is not surprising therefore that we should be anxious to include such provisions in the Constitution as would ensure the maintenance of peace and tranquillity. But we have to think carefully regarding the means that we should adopt to achieve this object. I propose to deal only with Mr. Munshi's amendment in this connection, as Mr. Gupte himself has said it was better drafted and more comprehensive than his.

Sir, Mr. Munshi's amendment is practically a reproduction of Section 93 of the Government of India Act, 1935. Before we adopt the method laid down in this Act, we should clearly understand the scheme that is embodied in it. This Act did not confer full responsibility on us. The Ministers, though they occupied an important position, were not masters of the situation in their own provinces. The Governor enjoyed Legislative and administrative authority in important fields. In fact, it would be true to say that so far as the Provincial part of the Constitution was concerned, he occupied a central position. Now, do we desire that the Governor in the new order should be as important a figure as he was till the other day? I do not think, Sir, that there is any reason why we should base our Constitution on that distrust which permeates the Government of India Act, 1935. The British Government were afraid that the Indian Ministers would so use their power as to bring about a deadlock and make the maintenance of the British authority impossible. They therefore imposed checks on the authority of the Ministers. Now, surely, we cannot proceed on the same basis. We must trust our Ministers and they must be the central figures in the Provincial Government.

[Pandit Hirday Nath Kunzru]

Sir, some members may be influenced by the example of America where the States have Governors who have the power to maintain law and order. But in the American States there is no responsible Ministry. Besides, even in those States where the powers of a Governor are limited, he occupies the most important position in the eyes of the people, both in the politics and the Government of the State. He further controls the Militia and the Central Constabulary or the State Police Force, if any. He therefore, occupies a position all his own. We cannot by any means reconcile the Presidential and the Cabinet systems. It seems to me therefore that the very principle on which Mr. Munshi's amendment is based cannot be acceptable to us. The Report of the Provincial Constitution Committee proceeds on a different basis from that on which the British authorities proceeded when they placed the Government of India Bill in 1935 before the British Parliament.

Apart from this, Sir, let-us consider how the Governor could act under the Government of India Act, 1935. He was given adequate powers to enforce his decisions. He could take upon himself all the functions of Government when it could not be carried on in accordance with the provisions of the Act of 1935. He controlled the service too. The All-India Services connected with district administration which were under the control of the Secretary of State were immediately responsible to him for their actions. Again, so far as the Provincial services were concerned, their members had a right to appeal to the Governor. Besides, one of the special responsibilities of the Governor was to protect the rights and interests of the members of the Services. The members of all the Services, whether Imperial or Provincial, were there under the ultimate control of the Governor. Apart from this, no change could be made in the rules relating to the organisation and discipline of the police force without his sanction. His authority over the provincial executive agencies was therefore complete. The Governor under the Constitution as it is likely to be,—I mean a Constitution based on the principles laid down in the Report before us—will not enjoy these powers which will be made over to the Minister. How will he then be able to have his orders carried out? His position will be an exceedingly difficult one. He may be an elected authority but in the case of a conflict between him and the Ministers, the position will be one of great embarrassment both for him and for the Ministers. The difficult position in which Ministers will be placed is obvious. Their prestige will go down in the eyes of the public and the services to the extent that the Governor is able to control the Services, and this will undoubtedly lead to administrative complications. They will be in the same predicament in which they are now *vis-a-vis* the Governor. Sir, we have to consider whether the method that has been suggested of ensuring the maintenance of law and order will be suitable on general grounds for securing the object that we have in view. Is it desirable that we should allow one man to sit in judgement, so to say, over the Ministers? However, wise a Governor may be and by whatever method he may be selected, I submit that it is highly undesirable that his personal view should prevail over the collective view of the Ministers who will be better informed than him. That is another argument and I think a very strong argument for not agreeing to the amendment that has been moved by Mr. Munshi.

Now, Mr. Gupte said—and perhaps Mr. Munshi will say—that the power that has been conferred on the Governor can be exercised by him only in the event of a grave menace to the peace and tranquillity of the Province. Under Section 93 of the Government of India Act, 1935, the Governor can take over the entire Government only when he is satisfied that the Government of the Province cannot be carried on as contemplated by that Act, but it is provided in sub-section (5) of that Section that “the functions of the Governor under this Section shall be exercised by him in his discretion” and that “no

proclamation shall be made by a Governor under this Section without the concurrence of the Governor-General in his discretion". Those who rely on the present Government of India Act should thus realize that whatever the power conferred on the Governor by Section 93 he could take no action without previously consulting the Governor-General. Mr. Munshi's amendment will therefore confer greater power on the Governor than the Act of 1935 does. Now, it may be said that, even if the amendment is passed, it will still be possible for the Governor-General to decide finally whether the Governor's action was justified. I submit, Sir, that the position of the Governor-General will be seriously prejudiced if the Governor takes action of a drastic character without waiting for his decision. If the Governor issues a proclamation assuming all the powers and functions of Government, it is obvious that if the Governor-General disagrees with him he will be forced to resign, but on the other hand, if the Governor-General owing to this consideration, desists from instructing the Governor to withdraw his proclamation he will place himself in a very difficult position. He will be acting against his own judgment and making himself responsible for the consequences of a policy which he disapproves. Mr. Gupte thought that his amendment gave power to the Governor to act on his own initiative for a very short time, and that that was all the difference between his amendment and Clause 15 of the Report. This may seem to be a trifling difference to Mr. Gupte, but to me it seems to be a vital difference. If the Governor-General is really to be in a position to decide what action should be taken. I think it is imperative that the Governor should not be allowed to prejudice the position by over-ruling his Ministers and taking over all authority from them.

I am sensible, Sir, as I have already said, of the fact that this House is very anxious that law and order should not be allowed to break down in any event. The question therefore to be considered is whether we can achieve the end in view without conferring on the Governor the power that would be vested in him if Mr. Munshi's amendment were passed. I have already said that if a Provincial Ministry is to be over-ruled it should not be over-ruled by single man. It should be over-ruled by some authority which would enjoy a more important position in the eyes of the public than the Provincial Ministry. Besides, it is desirable that the collective opinion of the Provincial Ministry should be set aside not by one man but by a body of men who can take into account the circumstances not merely of one Province but of the whole country. We have such an authority in the President and the Federal Government. I submit therefore that such reserve powers as you want to assign to any authority for ensuring the peace and tranquillity of a province should be vested in the Central Government. The Central Government in every country is ultimately responsible for the peace of the country and for every part of it. Since it bears this responsibility, let it be possessed also of the powers required by it to fulfil this responsibility. I submit therefore, Sir, that my amendment is much better than the amendment moved by Mr. Gupte or Mr. Munshi. It is in accordance with the view propounded by Mr. Patel when he moved the consideration of the Report on the Principles of the Provincial Constitution. It achieves all that we want without bringing the Governor and his Ministry into conflict and placing on him a responsibility which he cannot discharge unless the Services are in the last resort made answerable to him. This would be going back to the scheme of the Government of India Act which we have been condemning all these years. I think, Sir, that we are debarred by our principles from accepting the view embodied in this amendment. We must, therefore, adopt the only method permissible in a Constitution which is based on the doctrine of Ministerial responsibility. The solution that I have proposed will not be inconsistent with the principles underlying a Federal Constitution. If my view is accepted, it will only mean that the

[Pandit Hirday Nath Kunzru]

Central Government would occupy a strong position in regard to the maintenance of law and order. This certainly does not militate against responsible government or federal government; and since there is a way, Sir, of ensuring the peace and tranquillity of the country by acting on this principle without infringing the basic ideas that lie at the bottom of responsible government, I venture to command my amendment to the attention of the House.

Shri T. Prakasam (Madras: General): Mr. President, Sir, I heard with great interest and attention the argument of Pandit Kunzru; but I have not been able to follow him when he said that the power should vest with the Centre and that the Governor when he sees any danger to peace must only report to the Centre and take its orders. (*Honourable Members*: “We cannot hear you”). All right.

Apart from the Government of India Act of 1935 or the Act which we are going to pass, it is a matter of mere commonsense that when there is a great danger of a breach of the peace, the man on the spot should have the power to deal with it immediately and should try and prevent it and then report it to the Centre. This is the ordinary commonsense view which is embodied in any statute in any country. And I expect this Constituent Assembly which is a sovereign body, when it is enacting the very first statute, conceding freedom of action and provincial autonomy to the provinces and also establishing freedom for the whole country, taking power away from Great Britain, it will see to it that the law and order does not break down in the very first minute, or in the very first few minutes, and to see that the man on the spot does not have to stand there, looking at the happenings and merely reporting it to the President of the Union Government and trying to get orders from him. I would, submit, Sir, that such a course should not be adopted by this Constituent Assembly. It is against the very elementary principles of doing duty. I do not care, Sir, whether it is the Governor, or whether it is the Minister or whether it is a Police Officer that is in charge of this business. That officer that person on the spot must have the authority to deal with the situation and try to prevent a breach of the peace first. And it is only when the situation goes beyond his power from the very outset or when he is collapsing that he would order for the military or any other source of help from the Centre or from the President of the Union.

Pandit Kunzru was arguing that what was conceded under the Government of India Act of 1935 to the Governor should not be adopted by us here. I was not able to understand him. The Governor under the Government of India Act, 1935, is not the same as the Governor that this Constitution is providing. It is not an Englishman who will be the Governor of a Province. Under this Constitution it is the man who is elected by adult franchise, by the whole Province, who will be the Governor. Having clothed him with such a position and having made him feel that he was the man responsible not to any particular community or section of the Province, but responsible for every one in the Province who elected him to that office, having clothed him with such a position, is it right for any of us to say, “let him be all this, let him be a man elected by all the people, let him be anything, but we should not entrust him with that authority which the Government of India Act, 1935, had given to the Governors”.

Sir, we have been working with the Governors under the Government of India Act, 1935, since 1937. We had to deal with bad situations, very grave situations even during my own short period as Prime Minister. Allow me, Sir, to tell you and the Honourable Members of this House that if the troubles that has overtaken Northern India and other parts of India had not overtaken the South of India, it was not because occasion did not arise for such troubles, but it was because the matters could be dealt with by vigilance

on the spot, without waiting for a single minute for anybody's orders. There was a communal clash threatened, of a very serious type in South India. How was the situation met? Not a single death occurred, though it was a very serious situation. How was that prevented? Our Muslim League friends and all the leaders of the people in the Province were also very good and alert. The moment trouble was sensed, at dead of night they came and knocked at our door and said there was danger. What were we to do? We immediately went to the spot. It was Providence that helped us to prevent blood-shed and death. It was the people, both Muslims and Hindus who saved the situation. Members of both communities formed peace committees and they began to parade the area even before the police or the military could come to the spot. And it was managed so well that nothing happened although the whole of that zone all along the railway line from that point to the northernmost point was most inflammable.

Again, let me point out that, during the worst stage of the famine, food trains could not pass from Madras along the line to a distance of fifteen hundred miles. And it was the police who were entrusted with the duty of managing it. When they knew that the train was to be interrupted by the forces that had been organised for that purpose, they were got ready, and protection was given all along the line for 1500 miles so that the food train could pass and the danger could be averted. How could anyone expect the person in charge of law and order or even the Governor who also was having authority under the Government of India Act of 1935 to report it to the Centre, to the President of the Union Government, and await his orders? Is it not very dangerous that such a thing should be done? I did not expect this proposal to come up in this form. I know when this debate was going on in another place the first attack was upon the post of the Governor himself. That I can understand; if you attack the Governor's appointment itself and eliminate him altogether and make the Ministry responsible, that would be a different matter. But it was not so. I must congratulate the leadership and the Provincial Constitution Committee that had drafted this Provincial Constitution. They have lifted up the whole nation in one stroke and saved, us from the troubles that had overtaken us till now by reviving adult suffrage. Adult suffrage is not a new thing, as imagined by some of our friends, handed down to us by Great Britain. Adult suffrage you will find inscribed on the stone walls of a temple in the village of Uttaramerur twenty miles from Conjeeveram,—the whole structure of democracy of those days just a thousand years ago,—many of us imagine that it is Great Britain that has given us the democratic process of election; that is not so. You will find on the stone walls of that temple written in the Tamil language an inscription to the effect that there was democratic election carried on then on the basis of adult suffrage a thousand years ago. There was adult suffrage as stated there. There were no wooden boxes which could be used as ballot boxes, but cadjan leaves were used as ballot papers and pots as ballot boxes. That is the way in which they carried on the administration of the country, even in the villages; and it is the misfortune of this country that we have fallen on evil days and came under the rule of different kings. All our ancient things disappeared and we have become slaves, as it were, and whatever has come to us, we imagine as having come from Great Britain. Having revived adult suffrage, having clothed the Governor under that suffrage with a unique position—I am glad it was not copied from the American or Australian or Canadian or any other Constitution—this Committee and this leadership had the vision to see the position of the country at present. How are we to manage matters now? I was an advocate of the British system of democracy and the same was the feeling of some of those friends who have tabled these amendments. I was very anxious that the British system should be copied by us. It was copied by us and we have gone through all kinds of experiences. Our leaders have gone through all kinds of experiences and having regard to all our conditions and sufferings they have suggested this device of an elected Governor on adult suffrage by which they have lifted the nation in one stroke to the skies, because they have made everyone in this country

[Shri T. Prakasam]

feel, man and woman, for whom the Congress had been fighting all these years, that at last it is their Government, that they are appointing their Governor, the man who will be responsible to them. The Governor should have power to do something. If something is going on in the presence of the Governor, is he not to interrupt it and prevent it on the spot when it lies in his power? To suggest that nothing should be done and the Governor should not be made to exercise the power of Governor of the 1935 Act is not sound and correct. Anything good may be taken even from the Constitution of 1935. Everybody must accept the proposal without a single word of demur in this matter. I am very sorry that this retrograde step has been proposed that the whole thing should be postponed until the Union President sends reinforcements or advice or gives directions. I earnestly request the House not to accept any such suggestion. We would make the whole world laugh at us if we say that without meeting a situation on the spot he must come to this place. We will be making fools of ourselves if we adopt this amendment.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Sir, the motion before the House raises a vital issue and I would request the House very carefully to consider the pros and cons with meticulous care before they come to any decision. Sir, coming from an unfortunate part of this country where the breakdown of the machinery of law and order and the non-intervention of the administrative head in the matter has been causing tremendous bloodshed and incalculable suffering and hardship, I feel called upon to put in a few words in support of the amendment moved by my Honourable friend Mr. Munshi. What does this amendment seek to achieve? It proposes certain extraordinary powers for the Provincial Governors to be exercised by them in their discretion in very emergent circumstances. The House will note carefully that these powers do not form part of the ordinary routine work of the Governor; it is not part of his normal duty as Governor, but these powers are to be exercised by him only in emergent circumstances, if circumstances so demand that swift action is essential for preventing a total collapse of the machinery of law and order and even for restoring the machinery of law and order if it has already been thrown out of gear. I ask every member of this House whether he really wants to deprive the administrative head of a power like that to be exercised by him only in emergent circumstances. I quite appreciate the good point made by my Honourable friend Pandit Kunzru but one may respectfully differ from him. I want to point out to him that I have no very strong criticism to make against Section 93 of the Government of India Act, 1935. In my view that Section embodies certain very valuable provisions. Our only grievance is that the provisions of Section 93 have more often than not been abused and not properly used. After all is said and done even best Constitution in the world may not be of any use to the people if the people have not the determination and understanding and good will to work it in the spirit in which it is conceived. Who, after all, is the Governor that will be appointed hereafter under the new Constitution? He is not going to be a foreign Governor. He is going to be an Indian. He is not going to be a nominated person. He is going to be elected on universal adult suffrage and as such he will command the respect and confidence of the people. He will have tremendous prestige behind him. Now, after choosing a person like that for that office, do you propose to keep him in the Government House as a dummy or do you want him to do some work for you when circumstances demand swift and immediate action? There are occasions when he will have to act quickly I quite understand that there is possibility of this power being abused. But let me tell you that this fear is more imaginary than real. The occasions on which he may be called upon to exercise this power would be very rare. What are the objections against this amendment? It is said that the Governor will not have any power over the administrative officers and therefore his intervention would be ineffective.

Now I ask my Honourable friend Mr. Kunzru whether the Union President will have absolute power over the administrative machinery of the Provinces. So in the ultimate analysis the Provincial authority in such cases will not be divorced from that of the head of the Union. There are two checks provided. In the first place the Provincial Governor will be called upon to act immediately and simultaneously report to the Union President the causes which led him to take some particular action. Now, is it expected that a Governor who is elected and entrusted with very grave responsibility, who is liable to be arraigned and impeached if he acts in contravention of the Constitution, will act in an arbitrary and thoughtless manner? I do not believe he will. I believe on the other hand he will act correctly and effectively.

Further, at the most this emergent action will be only a question of a couple of weeks. From the provision it is clear that the proclamation will cease to operate at the expiration of two weeks unless ordered by the Governor himself or the President of the Union. So, unless he finds that the Ministry is divided and there is breakdown of law and order and that the position would deteriorate if prompt action is not taken he will not step in; and when he does he will forthwith report to the Union President who is armed with extraordinary powers. For these reasons I think there should be some provision in the Constitution by which the ultimate responsibility for the maintenance of law and order and responsibility for preventing the breakdown of the administration should be broadly and squarely laid on the shoulders of some person and that person should be the Governor. That function must be entrusted to him for the limited purpose. Sir, I support this amendment.

Mr. President: Before I call upon any other speaker, I desire to say that we have only six days now between today and the 31st of this month and the whole of the Union Constitution has to be got through. I would therefore request the speakers to limit the duration of their speeches so that more members can participate in the discussion. I have half a dozen names with me of members who wish to speak. (An Honourable Member: "*I move for closure*"). There are also other members rising in their places. I will call upon members to speak in the order of their names in my list.

Shri K. Santhanam (Madras: General): Is it necessary Sir, to send up names to you for an opportunity to speak? Could not the members catch your eye?

Mr. M.S. Aney (Deccan and Madras States Group): Is it not enough if the members rise in their places and thus catch the eye of the President if they want to speak?

Mr. President: It is not necessary that the names of members should reach me if they wish to speak. But if any member has sent his name and rises in his place, he will naturally catch my eye first. I shall not go according to the list as it is and would call on members who catch my eye. I would request members to limit the duration of their speeches to five minutes each.

The Honourable Mr. B.G. Kher (Bombay: General): Mr. President, I do not propose to take even five minutes, I rise because the matter is of such importance.....

B. Pocker Sahib Bahadur (Madras: Muslim): On a point of order, Sir, I would like to know whether it is not necessary that all members who have given notice of amendments should speak first so that all the amendments may be discussed together?

Mr. President: So far as this Clause is concerned, all the amendments have been moved and the amendments and the Clause are for discussion.

B. Pocker Sahib Bahadur: I have given notice of an amendment to this amendment. I request you to allow me to speak at this stage. It may perhaps be taken as moved.

The Honourable Sardar Vallabhbhai Patel (Bombay: General): It could not be taken as moved now. So many members have already offered their remarks. As he has not moved it up now, nothing can be done now.

Mr. President: So many have spoken already and the Member did not move his amendment earlier. His amendment was received on the 21st July. On that very day all the other amendments were moved. If the Member had any intention of moving his amendment he could have called my attention to it then.

The Honourable Mr. B.G. Kher: Mr. President, Sir, I rise to oppose the amendment moved by the Honourable Pandit Hirday Nath Kunzru. As I said Sir, I would not have intervened in this debate had I not felt that the amendment moved by the Honourable Mr. Kunzru was of such a nature that it was the duty of everybody to oppose it. I submit that it has only to be read to show how futile it is. What it reads is this:

“Whenever the Governor is satisfied that there is a grave menace to the peace and tranquility of the Province or any part thereof, he may, in his discretion, report to the President of the Federation.”

The Honourable Pandit Hirday Nath Kunzru: It is the same as the amendment proposed to be moved by Pandit Govind Ballabh Pant.

The Honourable Mr. B.G. Kher: Then two of you will have to be blamed instead of one.

Now, I do not know if there is a clause like this in the Burmese Constitution, if there is any such Constitution, but I shudder to think what would have happened if what has happened in Burma were to happen under this Constitution. Here is a person elected on adult franchise getting more allegiance from the people than even the Prime Minister. All that he can do is to send a telegram to the President of the Union and await results. Then, Sir, it is a pity that the Honourable Member does not provide as part of his amendment what the Governor has to do if the telegraph or the telephone communication is cut off. Whenever an emergency takes place,—and I have seen, Sir, that even at a short distance of about 15 miles from Bombay it was not possible for people to get into communication with the Governor, or the Prime Minister or any other authorities for less than 20 hours,—what is the Governor supposed to do? He is to report to the President. Therefore even in these days of modern communication, if all that a Governor elected on adult franchise has to do is to send a report to the President of the Union and watch the results, I shudder to think what the consequences will be. I therefore oppose the amendment which, if accepted, will do the greatest harm.

Apart from that, experience has shown, as previous speakers have pointed out, that in a country where those who are in power are subject to party politics. It is necessary to have somebody who will be above intrigues, above party turmoils and who will be able to secure the safety of the people, what we are trying to do is to provide that the Governor should shoulder the responsibility and then should communicate the gravity of the situation to the President of the Union who is assisted by his Cabinet and that the President will either confirm the action of the Governor or differ from the action taken by him. If you have a Governor elected on adult franchise, do not make him only a figurehead, simply sending telegrams to the President of the Union. I oppose the amendment that has been moved by Pandit Kunzru.

B. Pocker Sahib Bahadur: On a point of order, Mr. President. I gave notice of an amendment to the amendment of Mr. Munshi. I was under the impression and rightly so that it is the duty of the President to call upon persons who had given notice of amendments to move those amendments. I did not think that it was necessary to stand up and ask for permission to move my amendment. I was not asked to move my amendment on the 21st. Only Mr. Munshi's amendment was moved and further discussion was adjourned. I therefore request that I may be allowed to move my amendment.

The Honourable Sardar Vallabhbhai Patel: When the President has given a ruling on a point of order, can the same point be raised again?

Mr. President: When a ruling has been given by the President the same point cannot be raised again. In this case, before we closed the discussion, I made it clear that all the amendments had been moved. At that time the Honourable Member did not draw my attention to the fact that his amendment had not been moved. I am afraid I cannot allow him to move at as this stage.

Dr. P. K. Sen (Bihar: General): Mr. President, Sir, I will conform to the whole some time-limit which you have fixed, and I shall be as brief as I possibly can. The question before the House involves some fundamental principles. Frankly, my views are strongly in favour of the amendments tabled in the names of my Honourable friends Mr. Munshi and Mr. Gupte. Whatever may be my view, I am quite prepared to subordinate them because I know that the wisdom and sagacity of this House will choose the right course. Let there be no illusions. First of all, it is an emergency measure and an emergency does not happen everyday. An emergency is an emergency, it cannot be defined, it cannot be described in all its features. It appears to come in upon us suddenly but in fact it comes by insidious stages, and the amendment contemplates that the Governor should be a man of insight and foresight, firmness and promptitude who will understand and know at what stage he should step in and stop the rot. That I understand is the conception of the Governor that we had in mind when we decided upon electing him on adult franchise. What we wanted to secure was that he should be the people's man and should have the whole province behind him, every man and woman should we thought, come to the polling booth having in mind the sort of men he or she is voting for, the man who will have the power and initiative to do the right thing at the right moment. It is impossible to imagine that the Governor should wilfully try to override the ministry. It is accepted on all hands, since we have adopted the parliamentary form of Government, that the ultimate executive authority resides in the Council of Ministers headed by the Prime Minister. When the Prime Minister is working in perfect unison and harmony with the other Ministers, when there is no wheel clogging other wheels when all the wheels lubricated by mutual understanding and goodwill run smoothly it is then that this democratic form of Government fulfils its proper functions. But it is apprehended there may be a sudden emergency which may not be within the power of the Ministry to cope with. It may be that there are factions, disagreements, disunion among the parties. Every form of party Government is subject to these disadvantages. In case there is such a position in case we find that every wheel, instead of helping the other wheels to do their work clogs the rest, preventing the State machinery from running smoothly and further when there is danger ahead to cope with, it is only then that, as the amendment contemplates, the Governor should be in a position to take all powers in his own hands and having taken necessary action, immediately report to the President of the union so that the President in his discretion may then do the needful. This is the whole extent of the emergency powers to be vested in the Governor. The question therefore arises "Can we be confident that this democratic form of Government, this parliamentary form of Government, will always run so perfect that there will be no occasion for any such emergency powers?"

[Dr. P.K. Sen]

In case we are so confident, it follows that there will be no occasion for the Governor to exercise these powers. But again, I ask can we be so confident? Have we had such a long experience of this form of Government that we feel that it can never be necessary for anybody to go over the head of the Prime Minister or the Council of Ministers and to take the initiative in his own hands? The fact is, there is a dread of what is called 'one-man rule'—and it is this dread that accounts for the strong opposition to the amendment. Not even for 24 hours, it is said, can we tolerate 'one-man rule'. It is against the fundamental principles of democracy. But it seems to be forgotten that it is when the democratic machine break down, or is incapable of coping with the situation, that the amendment contemplates vesting the man whom we have elected by adult franchise of the whole province and who undoubtedly enjoys our confidence, with limited emergency powers. Without such powers the Governor of a province would be a mere figure-head. The Governor that is contemplated in the section where his election is provided for is a Governor who can handle an emergent situation, and it is for that reason, I take it that the election on adult franchise was decided upon. I am quite prepared, as I have said to subordinate my own view but I do hope that we shall be under no illusions to the effect that we are subjecting ourselves to one-man rule even for a short time. It is an emergency measure and it is only justifiable as an emergency measure and on that ground, I do submit that this amendment should be accepted and passed.

The Honourable Pandit Govind Ballabh Pant (United Provinces: General): Mr. President, I am really sorry that I have to speak on this Resolution, I had no intention of doing so, not because I have no opinions, but because I do not ordinarily like to challenge publicly the views, expressed by my esteemed colleagues. But, unfortunately for me, Pandit Kunzru blurted out that the amendment which he had moved had originally appeared in my name, which is a fact and which I cannot deny and Mr. Kher then said he had to couple my name with Kunzru's as the two fools who had joined together in giving notice of such a motion.

The Honourable Mr. B.G. Kher: I did not say so.

The Honourable Pandit Govind Ballabh Pant: You did not in so many words.

I am glad that he now realises that what he said was not what he meant and I am not sorry. But all the same while I am bound by the decision of the Party and have to support Mr. Munshi's amendment, I think I must give my reason why I had the temerity and the presumption to give notice of this amendment.

Mr. President: May I point out that the House is not concerned with any decision of any Party?

The Honourable Pandit Govind Ballabh Pant: I have no objection to that, but still I feel that Members should be guided by the collective wisdom of many than by their own individual intelligence. At least I am prepared to merge my own in that of the bigger group. But still I have to tender my explanation for my attitude and the reasons which weighed with me then. The point is this. If there is a grave menace to peace and tranquillity, then how is such a delicate situation to be handled and by whom? Now you have to take into account the scheme of the Constitution which we have already accepted. I fully realize that we have agreed that the Governor will be elected by adult suffrage but by adopting that method of election we do not convert him into a *Sahasrabahu*. He will still have not more than two hands and two eyes. The question is what will be the agency and under whom will the services be functioning. If it is considered that the Governor, being elected by the adult suffrage, should have control over the executive in the day-to-day

administration, I can understand his ability to handle a delicate situation, but to keep the Governor aloof from the entire sphere of administration and then to ask him to put in the most delicate moment when those in charge of the administration are supposed not to be quite equal to it, is to create chaos and to make confusion worse confounded. One can understand the Governor being in charge throughout and thus being in a position to handle a delicate situation. But to keep a man out of water and when there are storms to ask him to keep the boat sailing is to court disaster. That can never work, that is my apprehension.

The Governor has no power ordinarily and even now the Governor is to be no more than a reporter except for two weeks. How is that poor man during these two weeks to acquire all that capacity, that intelligence and that knowledge, which he does not normally possess? The system of democratic Government means Government by the people through their elected representatives. Now what is really the position which you are contemplating? It is this; the Governor does not agree with his Ministers. He cannot persuade the Legislature to agree with him and to accept his point of view. It is always open to the Governor to go to the Legislature to address them and to tell them that a delicate situation had arisen, that the Ministry had unfortunately not been able to take the correct decision and that it was time for the Legislature to revise its attitude towards the administration and those in charge of it if the Governor fails to convince the Legislature, and if he fails to convince the Cabinet which consists of not one or two, but I think of a number between 15 and 20 he will be still empowered to override the unanimous opinion of 400 members of the Lower House, the 60 members of the Upper House and the 20 representatives of the Legislature included in the Cabinet. When there is a grave and delicate situation and when there is no agency under him, how can that poor man shoulder such a burden? That is the issue that you have plainly to face: and I say if it were only this much and no more, I would not have given notice of that amendment, but the thing is that it also tends to impair the integrity of the services, it introduces an element which upsets the psychological basis on which democracy stands, it asks people to look for protection to a man who has no power to protect them. It asks the services to be prepared for a contingency which will never arise and in which they will have to carry out the order of somebody other than the Ministers. It is fraught with grave danger. I may also disclose for the edification of Mr. Kher if he is not already aware of it, that it is not Mr. Kunzru or myself alone who happen to hold this opinion. This question was considered at very great length. I had an opportunity of placing my point of view before the joint meeting of the Provincial Constitution Committee and the Central Constitution Committee and it was accepted by both that the Governor should not be clothed with such authority as is now suggested in the amendment moved by Mr. Munshi. The matter was considered by the Provincial Constitution Committee and they also finally accepted the view that the Governor cannot possibly discharge such a heavy responsibility. While I am sorry for having lost company with Mr. Kher, I have found compensation in many others who were associated with me in these Committees. So the loss, though regrettable, is no irreparable.

Mr. Kher enquired if wires are cut, if the Ministers are assassinated, what will happen? I saw such a contingency will never happen. I will never allow my Ministers to be assassinated. So long as I am the Prime Minister, nobody will be allowed to assassinate the Ministers. If I cannot discharge that duty, I will step out. If the Prime Minister cannot defend himself and his Ministers, it is time for him to step out and make room for somebody else, for some other sturdier Prime Minister to come and take his place. He asked what will happen if wires are cut. I will see that no wires are cut.

He asked what will happen if all the Ministers are assassinated. I ask what will happen if the solitary Governor, who has to report, who has to save the wires, who has

[Pandit Govind Ballabh Pant]

to keep the road free for the passers by, is killed? People forget that even if the Governor is killed, even if the Prime Minister is killed, there is the House there is the Legislature and it steps in and takes all the steps necessary in order to safeguard peace and tranquillity. The amendment that has been moved is neither, if I may say so, fish nor fowl nor good red herring. But it has still the odour of rotten fish. I am not free to utter these words. You have to swallow the rotten fish.

Now, Sir, you have to look at the scheme of the Act from which this Section 93 is being copied. Under this Act, the control of the services is essentially vested in the Governor. The Secretary of State's Services are under the control of the Governor. They look to him for protection and for promotion. As you may be aware, you cannot transfer a Secretary of State's Service man from one place to another under the 1935 Act without the approval and consent of the Governor, with the result that he is the man who is really in charge of the executive and he is the man who is responsible for having created the emergency. In spite of his being in complete control of the services, he allows the situation to develop in such a way. He must face the music for which he is mainly responsible. But while under this 1935 Act the Governor is not altogether free to adopt such an attitude himself, and he has to obtain the consent of the Governor-General, and the Governor-General in his turn is answerable to Parliament, here the Governor is responsible to nobody. There is no House which can call him to account for having committed a grievous blunder in a very delicate situation. I shudder to think of this amendment. In a very delicate situation when the Ministry should be free to handle things in the best manner possible the Governor may meddle and prevent the Ministers from handling the situation in a sound, proper and fair way. In a very delicate situation just when the Ministry should have a free hand, the Ministry will be fettered with the result that a crisis will develop even where a crisis could have been avoided. This is my apprehension.

I am afraid. I have taken too much time. There is a lot to be said. With the little experience that I have got in this line, I can give you many illustrations. I still feel that the amendment of which I gave notice was not unsound.

The Honourable Mr. B.G. Kher: On a word of personal explanation Sir. I only want to say that I did not mean to give any offence to Pandit Pant and I am not aware of having said anything to hurt his feelings. Mr. Pant has taken it very personally

The Honourable Pandit Govind Ballabh Pant: No, no. Not at all.

The Honourable Mr. B.G. Kher: It was only in debate.

The Honourable Mr. Hussain Imam (Bihar: Muslim): Mr. President, after the illuminating speech of Pandit Pant, my task has been eased a great deal. I hold the same opinion that Pandit Pant holds and Pandit Kunzru has expressed. I feel that this amendment has been ill-conceived, that it is undemocratic and that it is not based on sound logic, and is actuated, perhaps by some ulterior motive. I am sorry to use this word; but I take my cue from the joking remark of an ex-Congress man, a colleague of mine in the Central Legislature who said that perhaps it might have been aimed at demobilising the leftist element if ever it should get control of the Provincial Ministry. As I said, this was a joking remark.

My whole opposition is based on two factors. In the first place, in every constitution which I have looked through, where the Ministry is responsible to the Legislature, there is no provision of this nature that the Governor can take over the governance in his own

hands. He can dismiss the Ministry and call for another if he feels that the Ministry has lost the confidence of the House.

He can, if he finds that the House is not behaving properly, dissolve the House but this motion is the strange innovation which was created by the British Government in the peculiar circumstances of India to have a Section 93 which is being perpetuated. The circumstances, as Pandit Pant has pointed out, were different. The Governor there was really a party. He had certain interests which were adverse to those of the Ministry and it was essential for him to be armed with certain powers, Ordinary laws are suspended more often than is realized. There are different methods of suspension, different degrees of suspension. For instance, you have Section 144 suspending the liberty of personal association. You have, if there is a grave financial crisis, a moratorium where the ordinary laws of limitation are stopped. If you have a grave menace to the peace of the country, there is Martial Law where for a certain time you establish military rule. So the degree of suspension differs in different occasions. Secondly, I fail to realize how this omnipotent person known as the Governor can, within the short space of 14 days, change over the whole face of the Province where the Ministers who had been working for years together were not able to do it. What is the special agency and authority which he will use which is not available to the Ministers? He can, even in the existence of a Ministry, pass an Ordinance. He can even in the presence of the Ministers with the concurrence of the Ministry, establish Martial Law. But without doing any such Act, merely by assuming power to himself he will be publishing to the world that 'Now I have suspended the villains of the peace who were merely existing as a sort of stop-gap and instigators'. The meaning of this section is indicated by the following wording:

"It is not possible to carry out the Government of the Province with the advice of his Ministers."

So what it means in reality is that the danger to the peace and tranquillity is brought about at the instigation of the Ministers. Merely by the suspension you generate such an atomic power that peace and calm prevails. But after 14 days what will happen? Will the same bad lot who were regarded as responsible for all this danger to the peace, be brought back. In that case what will be their prestige and what will be their position? With what face can they ask their subordinates to carry out their orders when the subordinates know that their orders are to be carried only as long as the Governor is not invoking his special powers? There is no provision that this power of suspension will not be utilized times out of number. It is once suspended; after two weeks the Governor allows the constitution to prevail but the next day again he suspends the constitution and this process of limitation can be repeated *ad nauseam* without any restraint. In fact, the position of the constitution in the Province in which this power is utilized will become so that I feel that it is the Ministers who should be protected. I, as you know, am not a champion of any executive authority. This may in the end turn out to be the establishment of an autocratic rule if it is sanctioned by the President of the Union. If the President of the Union feels that in a Province a Ministry has come into power which is not acceptable to the Union Executives, then that Ministry will not function and cannot function. I looked into the Union Constitution to find a counterpart for the use of his power by the President. I regret to say that in the Union Constitution too no provision has so far been made. Probably when the motion is moved, a like amendment will be placed therein giving the President autocratic power to carry out the Section 93 Government which had been rightly hated throughout India by all sections of the people. I for one, do not hold a brief either for the Governor or for the Ministry. I have had, during this short period that the Constitution has been in working order, many occasions to differ with the Ministers. I have had occasion to differ with the method in which the Section 93

[Mr. Hussain Imam]

Government was carried on. But I feel with all its defects, the ministerial method is a democratic method and Section 93 helps autocracy and it may at some date lead to the establishment of a regime in the province which may not be acceptable to the people. Sir, I therefore oppose the motion of Mr. Munshi.

Prof. N.G. Ranga (Madras: General): Mr. President, Sir, I am very vehemently opposed to the point of view placed before this House by the two previous speakers. It is exceedingly difficult to understand how one of my own leaders who has had experience of running the Ministries should have so completely ignored the very recent experience of Burma. Let us bring back to our mind what has happened there. Supposing any such mishap happens here in India, and half a dozen Ministers including the Prime Minister are done away with, who is there to be in that Province to straightaway make a report to the Federal President and invoke his aid? Not anyone of the Federal Union Ministers? and the Central or Federal President cannot very well immediately charter a special plane and run down to Madras or even Lucknow and then help these people who are helpless by invoking the aid of the Federal and Provincial triops. It is extraordinary that experienced people should come here and seriously place before us views in diffance of the actual experience that is going on in our own place.

Think again, Sir, of the possibility, not of the kind of Congress party that we have today, having overwhelming majorities in the various Provincial Legislatures but the possibility of a number of competing political parties coming into the Legislatures and Coalition Ministries only becoming possible as a result of a sort of grouping of a number of groups and parties and the Prime Minister being only a little more than a sort of a figure head; then are we to understand at that stage a man of the stature of Pandit Pant will then suddenly come to incarnate as Prime Minister and go to the Governor and say 'I do not want your interference. I will be able to look after myself'? Even a man of the stature of Pandit Pant, Sir, will not be able; under those circumstances being the Head of a Coalition Government, to look after himself. There will be occasions, when the Prime Minister himself or at least some of the Ministers will surely go to the Governors and request him to invoke his special power in order to save them in spite of their own Ministry, and to save them from some hooligans or *goondas* or organized bandits in the country.

Some such reserve power has got to be placed in the hands of the Governor but who is this Governor? Another friend comes and tells us 'Do not make him an autocrat'. What does he mean by autocracy? Does he mean that a Governor who has been selected by adult franchise is to be considered as an autocrat? Well, he may also become an autocrat. So many people who had been elected by adult franchise also became autocrats. Quite true. That is why we have already provided the power for the Legislatures to impeach a Governor if he were to exceed his powers. If he were to misbehave himself, as long as you have got a reserve power there in the possession of the Legislature itself, why on earth should we be afraid of the Governor either becoming an autocrat or treating his Ministers as if they were his chaprasis?

Then, there is the other point raised by Mr. Pant. He asked "what sort of experience can this Governor possibly have? Here are his Ministers dealing with day-to-day administration, who have been accustomed to take decisions on responsible occasions, whereas this man sitting as a sort of body knows nothing. When a grave crisis comes we are asked to invoke his aid. How would it be possible for him to come to a right decision?" May I remind him that it is his duty, strong as he is as Premier in his Province, and the duty of his other Ministers to keep the Governor in daily touch with the

administration? It will be the duty of the Governor to become experienced and he would be a fool indeed if he does not grow experienced by the advice that is being given by his Ministers and Prime Ministers like Pandit Govind Ballabh Pant. Therefore, Sir, the Governor will be an experienced person. He has got to be an experienced person, a trustworthy person and a man with a sense of responsibility if he were to be able to commend himself to this adult suffrage and get himself elected in the first instance. Secondly, after his election he is being advised not only by the Prime Minister but also by his Ministers. He has got a right to be present at their Cabinet meetings; he has got also to be advised by all of them collectively and in the light of all this experience that he gains it would be possible for him to judge at the right moment whether an emergency has actually arisen at all, and if it does arise, he must possess the necessary emergency powers.

Another question has been put to us. "What powers has this Governor got? Whom has got under him to order about?" Just now, my friend Mr. Hussain Imam told us that if you were to clothe him with all these powers, the Civil Services would only look to him and not to the Ministers for allegiance. Exactly so. The Civil Services will learn to look both to the Ministry as well as the Governor. Always the Governor represents the whole Ministry. So the Civil Services as well as the Reserve Forces and Police Forces will learn to obey the Governor also. The Ministers may be powerless or irresponsible for the time being. Then, what would happen to these Ministers, our friend has asked, if in a crisis they found themselves completely unequal to meet it and, therefore, they allow the Governor to have these emergency powers?

Very well then, after the emergency is over, if the Ministers are found to be absolutely useless by the majority of the members of their own Legislature, they will have to make place for another ministry. If however, the Legislature has confidence in them and they are able to carry on, let them carry on the administration. If, on the other hand, the Legislature as well as the Ministers come to the conclusion that the Governor has misused his powers and created an emergency, then it would be within their right to move for the impeachment of this Governor. When you have provided for all these safeguards, I cannot understand how my leader Pandit Govind Ballabh Pant comes here and places before us these untenable arguments against this very wholesome amendment.

Sir, one more point and I have done. Let us remember that this Governor is to be elected by adult suffrage. Let us remember that this man is to be there continuously for five years whereas his Ministry may last for three months, or four months or six months. Let us not forget the recent experience in Madras. We must clothe this permanently placed man with as much power as we possibly can so that there may be some stability, some continuity, some security for the masses of the people for the safeguarding of their civil liberties.

Lastly, Sir,—and this is my conclusion,—I am speaking here as one of the Leftists in this country. I have been a Leftist ever since I started my political career. I am afraid I have not the Ministerial experience of my friend Pandit Govind Ballabh Pant and may be it is because of that that I am still able to speak in the name of all the Leftists. All the Leftists will consider this thing to be one of the safeguard against any kind of hooliganism, or organised banditry as recently occurred in Burma, which we want to prevent in our own country.

Mr. Shankar Dattaraya Deo (Bombay: General): I move closure, Sir.

Mr. President: Closure has been moved. The question is.

That the question be now put.

The Motion was adopted.

Mr. President: The Mover may reply.

Mr. M. S. Aney: Mr. Munshi never spoke on his own amendment.

Mr. K. M. Munshi (Bombay: General): May I speak?

The Honourable Mr. Jaipal Singh (Bihar: General): On a point of order Sir. Mr. Munshi when he moved his amendment the other day told that he would reserve his observations for today, as also did Mr. Gupte. I think we must give him an opportunity to speak.

An Honourable Member: If he has not spoken, it is not our fault.

Seth Govinddas (C. P. & Berar: General): On a point of order, Sir, The House has accepted closure and now only the Mover can speak. If Mr. Munshi did not want to make any remarks, why should we ask him to do so?

Mr. K.M. Munshi: I am not very keen to speak.

Mr. President: I think Seth Govinddas has raised a correct point of order. The Mover of the Resolution will now speak.

The honourable Sardar Vallabhbhai Patel: Sir, in effect, there are two amendments to the Motion that has been moved by me. One is by Pandit Hirday Nath Kunzru and the other by Mr. Gupte, who accepts the amendment of Mr. Munshi. In fact, Mr. Munshi's amendment is an improvement of language on Mr. Gupte's amendment. In substance both are the same. Now, as I have already mentioned in my introductory remarks when I moved this Motion, this is a very controversial matter. There are two points of view. There is no doubt that an encroachment of this kind on the powers of the Ministry is bound to be resented and is bound to create difficulties also, and in a democratic constitution it does not fit in properly. Therefore, I can fully appreciate the objection, and the force with which the objection has been put, by our distinguished Prime Minister, Pandit Govind Vallabhbhai Pant.

On the other side, there are other Prime Ministers and others who have experience of working the constitution. They equally feel that in the present conditions of the country it is a dangerous thing not to provide for emergency of such a nature as is mentioned or as is contemplated in the amendment of Mr. Gupte, namely when there is a complete breakdown of the machinery of law and order and if any such event as the recent unfortunate incident in Burma takes place or a similar tragedy of such a nature arises, or, as we have seen incidents like the recent unfortunate ones in our own country in some provinces take place,—if such a situation arises, it would not be enough for a machinery in the province to report to the Centre but there should be something more effective. We should have something else so that the law and order machine could function without waiting for a moment. Otherwise, there are dangerous consequences likely to follow.

These are the two points of view, and as Pandit Pant has said, there is much to be said on his behalf, and equally, there is much to be said on the other side also. Common mortals have to follow the path of collective wisdom and take the opinion of people who have experience. The weight of opinion as it appears from the debate here is that we must have some sort of provision as is contemplated in the amendment

It do not propose to take up the time of the House any more, because there has been considerable debate and the *pros* and *cons* have been discussed thoroughly. Both those who argue in favour of and those who argue against have only one thing in their minds—what should be in the new constitution for the good of the country—that is the only point

of view that they have in mind. We have all to learn by experience. We have never maintained that we cannot improve or modify this constitution, if by experience we find that there are difficulties in its working. As I have already said, it is the spirit in which the constitution is worked that matter. There is no reason to suppose that our President, or the Governors elected by universal adult franchise will be engaged in conflicts with the Ministry. But even if any such unfortunate event take place, we have the power to open the matter again. We are free to do so. We do not have to go to the British Parliament or look to any outside authority to improve the Constitution. I, therefore propose to accept the amendment of Mr. Gupte, as amended by the amendment of Mr. Munshi.

Mr. President: I will put Pandit Kunzru's amendment first:

'That for clause 16, the following be substituted:

'Whenever the Governor is satisfied that there is a grave menace to the peace and tranquillity of the Province or any part thereof he may, in his discretion, report to the President of the Federation.'

The amendment was negatived.

Mr. President: Then I shall put Mr. Munshi's amendment, which is the amendment of Mr. Gupte, since Mr. Gupte has accepted Mr. Munshi's amendment.

That for amendment No. 8 in Supplementary List of Amendments, dated 16th July 1947, by Shri B. M. Gupte, the following be substituted:

"(1) Where the Governor of a Province is satisfied in his discretion that a grave situation has arisen which threatens the peace and tranquillity of the Province and that it is not possible to carry on the Government of the Province with the advice of his Minister in accordance with the provisions of Section 9 he may, by Proclamation, assume to himself all or any of the functions of Government and all or any of the powers vested in or exercisable by any Provincial body or authority: and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions this Act relating to any Provincial body or authority:

Provided that nothing in this sub-section shall authorise the Governor to assume to himself any of the powers vested in or exercisable by a High Court or to suspend either in whole or in part, the operation of any provision of this Act relating to High Courts.

- (2) The Proclamation shall be forthwith communicated by the Governor to the President of the Union, who may thereupon take such action as he considers appropriate under his emergency powers.
- (3) The Proclamation shall cease to operate at the expiration of two weeks, unless revoked earlier by the Governor himself or by the President of the Union.

The amendment was adopted.

Mr. President: The Resolution, as amended, becomes the substantive proposition and I put it to vote.

Clause 15, as amended, was adopted.

REPORT ON THE UNION CONSTITUTION

Mr. President: We shall now take up the discussion of the Union Constitution Report. The first Clause of Part IV was moved by Pandit Jawaharlal Nehru. We are now to take up the amendments to that clause. I have got a very large number of amendments of which notice has been given.

Shri Gokulbhai D. Bhatt (Eastern Rajputana States Group): *[Mr. President Thursday was the last day for submitting amendments to the rules framed by the Union Powers Committee. But now that you have fixed the order of business, you could kindly extend the time for submitting amendments to the Report of the Union Powers Committee]*

Mr. President: *[I informed the House yesterday that the time had already expired.]*

Prof. Shibban Lal Saxena (United Provinces: General): Sir, in Part III of the Memorandum on the Union Constitution, it is stated.

“Here enumerate the Fundamental rights and principles of State policy as passed by the Constituent Assembly.”

But, Sir, some of us have given notice of amendments to these Fundamental Rights and Principles of State Policy. I have in particular an amendment to add a fresh clause to the Fundamental Rights and Principles of State Policy, saying that “Slaughter of Cows shall be forbidden in Bharatvarsha by law.” I would like to know when I shall have the opportunity to move that amendment.

The Honourable Sir. N. Gopalaswami Ayyangar (Madras: General): The clauses relating to the Fundamental Rights were discussed in this Assembly and so far as putting them into the draft text of the Constitution is concerned, these clauses were passed at a previous session. The Member who has just spoken has asked when he and others who have given notice of amendments to the clauses relating to Fundamental Rights will have the opportunity of moving such amendments so that the House might consider them. I think, the proper time for moving all such amendments is when the draft text of the Constitution incorporating the Fundamental Rights is taken up for consideration at the final session of this Assembly. I think Pandit Jawaharlal Nehru made the position perfectly clear. He said that when that draft text was brought before the House members would be free to move amendments not only to the wording of the draft, but also to the substance of the draft.

Mr. President: I think that makes the position perfectly clear. It was made clear by Pandit Jawaharlal Nehru also. The amendments to the Draft Constitution, dealing with the Fundamental Rights can be moved at the final session.

An Honourable Member: We have not approved of all the clauses in Fundamental Rights.

Mr. President: We shall deal with them when they come up? Amendment No. 61 on the Order Paper—Shri Vijayavargiya.

Shri Gopi Krishna Vijayavargiya (Gwalior State): *[Mr. President. I do not want to press my amendment because of the views expressed here, after I had moved my amendment. But there are many things to which I consider it necessary to draw your attention. This Section deals with the method of election of the Head of the Federation. According to the amendment, all the units of the States will participate in the election of the President. But the States Legislatures are very faked-up and crude. They will affect the result of the election. Therefore, I moved an amendment that the Union President should be elected directly on the basis of adult franchise, so that the people—even the poor ones—may have the opportunity of exercising their votes for the election of the President. Now I do not want to press my amendment in view of the opinions expressed

*[]*English translation of Hindustani speech.

here. I would say only this much that there will be no uniformity among those Who will elect the President, because on the one hand the elected members of the provincial legislatures will take part in the Presidential election and on the other hand, the members of the State Legislatures which are irregularly constituted. This will be grotesque. The States have only parodies of legislatures. They have nominated members, landed aristocracy and other representing special interests. So long as there is no democracy in the States, there is great danger for our Federation. The States representatives will take part in the election of the President. There may be many other dangers too. Having all these in view, I deem it desirable that the States representatives should be properly elected and necessary safeguards should be incorporated whereby the nominated members, jagirdars and others belonging to special interests in the States legislatures, may not be allowed to vote for the election of the President.

Federation is going to be established in our country but as yet, we do not know if all the States will join the Indian Union and what attitude they will adopt towards it. We do not know as to how the participating States will affect the Union. I represent the States people and I think it necessary to incorporate some measures as safeguards against possible dangers. The danger is real. The elected members of the States Legislatures will seriously affect the result of the election of the Union President. Many States ministers are bringing various amendments seeking to secure more favours for the Princes in the draft constitution. This is not in the interest of the people. I desire that the Union President should be directly elected on the basis of adult franchise. This would satisfy the people the States. Even the poor ones will have the right to vote for the election of the President. However, this method is not going to be adopted and for various reasons I do not want to press my amendment. But I wish to point out that in view of the conditions prevailing in the States, we must be cautious about the intended amendment from the States ministers. I do not move my amendment.]*

(Messrs. A. K. Ghosh and S. Nijalingappa did not move their amendments—Nos. 62 and 63.)

Mr. H. V. Kamath (C. P. and Berar : General): I am told that the Hindi equivalent of 'President' will be decided upon when the Hindi draft of the Constitution comes up for discussion. Therefore I do not wish to press this amendment (No. 64) at this stage.

(Shri Balkrishna Sharma did not move his amendment—No. 65)

Shri Gokulbhai D. Bhatt: *[Mr. President, the amendment I wanted to move was in connection with the word, 'Rashtrapati' or the President. He should be named as 'Rashtrapati' or 'Neta' or 'Karandhar'. But I am told that this will be decided after the report of the Committee set up for this purpose has been submitted. Therefore, I do not move my amendment.]*

(Messrs. M. Ananthasayanam Ayyangar, Mohanlal Saksena, B. M. Gupte and Jadubans Sahai did not move their amendments—Nos. 67, 68, 69 and 70).

Shri K. Santhanam (Madras: General): It was suggested by Pandit Nehru that we might begin with Part IV.

*[]*English translation of Hindustani speech.

Mr. President: Yes, we have taken up Part IV and we are on Clause I.

Shri S. Nagappa (Madras: General): We are awaiting the Minorities Report and I do not therefore intend to move this amendment No. 71 at this stage.

Mr. T. Channiah (Mysore State): Mr. President, Sir, I move the following amendment, namely:

“That in sub-clause (1) of Clause 1 after the word ‘elected’ the words ‘by rotation either by the North of India or South of India’ be inserted.”

Sir, why I have suggested this system of election to the Presidentship of the Federation is due to the following reasons: The election of a President to the Federation by rotation either by the North of India or by the South of India gives a fair representation and satisfaction to the people of India who stand geographically divided into two distinct divisions, namely, the South or the North of India. The people in these parts of India have got a distinct culture and methods of thinking and languages of their own, acclimatised to the conditions of those parts. More than anything else, Sir, there is in existence the lack of realisation of the universal brotherhood and due to various reasons each man or woman has got a love of his or her own clan and does not realise to the extent possible the interests and rights of other people who are equally entitled to such rights or privileges. Such people are struggling hard to put forth their claims that their man should be elected as the President of the Federation, totally unmindful of the realisation of the universal brotherhood.

Secondly, Sir, the next feeling that comes and predominates in most of the people is this, namely, our man, our home, our State or our province, or does the President belong to North of India or does he belong to South of India and so on. So, Sir, we see how the people are forced to think under various circumstances and that broadmindedness limits itself to think in a selfish way.

Mr. H. V. Kamath: On a point of order, Sir. Can an Honourable Member read forth a manuscript speech?

Mr. T. Channiah: Again, Sir, let us take for instance, the existence or predominance of any one majority party in India. Such an organisation tries to put a man of its own as the President of the Federation and never allowing any other smaller organisation to take its chance. Granting that any smaller organisation takes its chance, there will be a sort of feeling in the minds of the bigger Organisation that it should try to overcome the difficulty at the earliest opportunity.

There is again, Sir, the problem of the existence of innumerable castes in India. One community struggles to get over the other and at every stage each Community tries to get power and recognition in the administration of every Government. That is but natural.

Apart from these, Sir, there will be great discontent among the minorities like the depressed classes and Muslims, when their claims are overlooked and when their very existence is not felt sufficiently either in the administration of the country or when their claim for Presidentship is not contemplated at all.

Just as we have got the love of clan in India, so also we have been observing by experience the North Indian employee in North India will look down upon a person coming from South India and *vice versa*. So, Sir, under these circumstances we see that

each one of us is struggling for some power or other in the administration of the country. When once the power is attained by some people the interest and care on the part of the person so chosen to that high power naturally neglect the interests of the other people and in the ultimate scramble for power, we the common men would have really lost the very democratic principles for which every common man is aiming to enjoy.

So, in order to create harmony of feeling among the people of India and for the proper justification of the President to be elected for the Federation, it is quite necessary to adopt the system of the election of the President to the Federation by rotation either from the North of India or South of India.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I move:

“That in sub-clause (1) of Clause 1, for the words ‘as Provided below’ the words ‘in the manner set out below’ be substituted.”

I may explain that this is only a drafting amendment. It is merely a restatement of the text in different words. With these few words I beg to move my amendment.

(Amendment Nos. 74 to 84 were not moved.)

Rai Bahadur Syamanandan Sahaya (Bihar: General): I beg to move:

“That in paragraph (b) of sub-clause (2) of Clause 1, the words ‘or where a Legislature is bicameral the members of the Lower House thereof be deleted.’”

Sir, Clause 1 lays down the procedure for the election of the President. It says that the election shall be by an electoral college consisting of (a) the members of both Houses of the Parliament of the Federation, and (b) the members of the Legislatures of all the Units or, where a Legislature is bicameral, the members of the Lower House thereof. It will be seen. Sir, that in the election of the President, the members of the Upper House are being excluded from taking part. I would submit in this connection that, as this House has decided that the Provinces have the option of having a second Chamber, it does not look graceful that we should exclude the members of such Upper Houses, who will be there by election, from taking part in the election of the President. In fact, if members of the second Chambers are considered unsuitable for taking part even in the election of the President of the Indian Federation, why have second Chambers at all? In your wisdom, of in the wisdom, of the Home it has been decided that second Chambers will find a place in the Constitution of the Provinces subject, of course, to the expressed desire of the Province concerned. That being so, I think it is only fair that the member of the Upper House or the second Chambers, as you may be pleased, should be allowed to vote in the Presidential election. That such second Chambers are needed has been accepted in the Union Constitution, because at the Centre you have provided for a second Chamber. Second Chambers have now been existing in different Provinces and functioning for some time and I do not think I shall be contradicted by anybody if I state that if anything, they the second Chambers, have served a useful purpose by pointing out to the lower House errors and omissions in the legislation coming up before them from the Lower House. In most cases I believe the suggestions of the Upper House have been accepted by the Lower House. I can say this from the experience I have of my own province of Bihar. There appears to be a fear, I suppose, in the minds of those who desire to debar the members of the Upper House from taking part in the election of the President. That fear emanates from the fact that the representatives in the second chambers generally belong to the propertied classes. In the first instance, I do not see why this House should

[Rai Bahadur Syamanandan Sahaya]

decide that propertied classes should be debarred from taking part in the election of the President. For the election of the Governors in the Provinces, we have already decided that it should be by adult franchise, and that every person whether he is a propertied person or otherwise, will be entitled to take part in the election. Why then the distinction in the Presidential election?

We have not yet laid down the franchise for election to the second Chamber. It is open to this House to lay down such a franchise that the Upper Chamber will not merely be representative of the propertied classes of this country. We may lay down the franchise in such a way that men of experience in different walks of life in this country, in industry, business, administration, public life etc.,—may hold a good proportion of the membership of the second Chamber. I am sure it will be conceded that the opinion of such representatives who will be men of experience should be taken in such an important matter as the Presidential election and nothing should be done by which we deprive ourselves of the views that those representatives in the second Chamber may have. There is another aspect to the question also. From all the amendments which members have tabled to the provision for election of the President, it will be clear to you, Sir, that there is a large section of this House which desired that the election of the President should be by adult franchise. Now, if that is not possible Sir, I say that as many people as possible should be enabled to express their opinion in the matter of the election of the President. We were not able to accept adult franchise on account of practical difficulties perhaps, but we should not further narrow down the circle and debar elected representatives of a section of the Provincial Legislature, constituted under the constitution framed by us from taking part in the election of the President. Considering how many important works we have to undertake and the rather difficult position in which this country may be placed in the future. I think it would be unwise to debar men of experience from taking part in important business of the country, especially in the matter of the election of President where in principle it will be agreed that it should be the right of every citizen to take part. I would suggest to the Honourable the Mover that this limitation on the members of the Upper House should be removed and that they should be permitted to take part in the election of the President.

There is another matter also which requires consideration by this House. In the note appended to sub-clause (2), it is laid down that:

“The provision about weighting of the votes according to the population of the Units is necessary to prevent the swamping of the votes of a large Unit by those of a much smaller Unit which may happen to have a relatively large Legislature. The mode of weighting may be illustrated thus. In a Legislature where each Legislature represents one lakh (100,000) of the population, his vote shall count as equivalent to 100, that is 1 for each 1000 of the population; and where the Legislature is such that the Legislator represents 10,000 of the population, his vote shall count as equivalent to 10 on the same scale.”

Suppose in a province under this arrangements the members of the Lower House of the Legislature of that province have 1/10th of the vote of the members of the Legislature of another province, if the members of the Upper Chamber of the former province do not vote, then to the extent that the Upper Chamber represents the people that province suffers. By debarring the members of the Upper House from taking part in the election of the President, we will be debarring some provinces from exercising their full voice based on the total population of the province.

Sir, I have nothing more to say. I hope this suggestion of mine will appeal to the Honourable the Mover.

Mr. K. Chengalaraya Reddy (Mysore State): Mr. President, Sir, I beg to move the following amendment that in sub-clause (2) (b) of Clause 1, for the words “the members” wherever they occur, the words “the elected members” be substituted. The amended clause will read as follows:

“The elected members of the Legislatures of all the Units or, where a Legislature is bicameral, the elected members of the Lower House thereof.”

Sir, it will be seen that the President of the Union is not going to be elected on the basis of adult franchise directly but by an electoral college. There has been a fairly decent amount of opinion in favour of the President of the Union being elected on adult franchise, but since the whole constitution is based on the Ministerial type of Government rather than the Presidential type, it is as well that we should elect our President by an electoral college. Now, Sir, the electoral college that is contemplated in this sub-clause is divided into two sections; clause (a) covers the members of both Houses of Parliament of the Federation. Regarding that, there can possibly be no objection. Then comes clause (b) which covers the members of the Legislatures of all the Units. I have no difficulty in accepting it so far as the Provincial Legislatures are concerned because in the Provincial Legislatures in the Lower House all the representatives are elected on the basis of adult franchise. My difficulty is with regard to the States Legislatures. So far as the States Legislatures are concerned, it will be readily conceded that the Constitution of the States Legislatures will not be on a uniform basis. The various States Units will have different kinds of Constitutions according to the various stages of evolution that they may have arrived at. Since I contemplate that some of the States Legislatures may have nominated representatives, I want to restrict the voting power to the elected members only. It may be argued that by moving this amendment, we are assuming and agreeing by implication to the existence of nominated members in the States Legislatures.

I do not think, Sir, that would be the result, because I for my part will say that this amendment, if it is accepted, would be an incentive to the Unit Legislatures of the particular States concerned to do away with nomination and to provide for election right through in the Constitution. If some minorities which are being now nominated to the State Legislatures are not given the right to participate in the election of the President of the Federation, it is very likely that such minorities or any other interests may ask for election instead of nomination, so that their representatives may have the valuable right of participating in the election of the President of the Federation. So, Sir, views from any point of view I trust this amendment would be acceptable to the House. It is looked forward to by some that before the Constitution is actually completed the State Unit Constitutions may be so drawn up as not provide for any nominated members in their Legislatures. If that happens, I will welcome it. In that case it would be time enough when drafting the Constitution to omit this particular differentiation which has been contemplated by my amendment. For the present, Sir, I move this amendment and hope that it will be accepted by the House.

Shri Gokulbhai D. Bhatt: * [Mr. President, mine is an amendment to the amendment of Mr. K. C. Reddy. His amendment reads:—

“The elected members of the legislatures.....”

* [English translation of Hindustani speech begins.

[Shri Gokulbhai D. Bhatt]

I want that the word 'territorially' should be put before the word, 'elected members' and it should read:—

“The territorially elected mmebers.... of the legislature.....”

The reason for my amendment is this. There are special constituencies from which the members are elected. The elected members from special constituencies cannot be considered as real representatives of the people. But I thought that this might be further restricted.

I want to draw your particular attention to this point—that the elected members must be genuine representatives of the constituencies which they represent. I do not want to press this amendment any further. I want to draw your attention to the fact that as most of the elected members representing the special Constituencies are *Zagirdars* and *Zamindars*, they should not be considered as genuine representatives of the people.]*

(Messrs. Biswanath Das, R. R. Diwakar, Yudhisthir Mishra and Jai Narayan Vyas did not move their amendments).

Prof. Shibbanlal Saxena (United Provinces: General) *[Sir, my amendment is that for sub-clauses (2) and (3) of Clause 1, the following may be substituted:

“The Rastrapati shall be elected directly by the people on the basis of adult suffrage.

This is a very serious matter and I deeply feel that the scheme that we have accepted in the provincial constitution in regard to the election of Governors, should be adopted in the Union Constitution as well. In the provincial constitution we have decided to elect the Governor on the basis of adult suffrage. Shortly before we heard the forceful speeches of Pandit Pant and Mr. Kher, and in the end Sardar Patel accepted Mr. Munshi's amendment which lays down that a Governor elected on the basis of adult suffrage will have some special powers which he will use in times of crisis. It is clear from this, that Mr. Patel and this Constituent Assembly recognise what moral strength the Governors, elected on the basis of adult suffrage, will have and what will be its advantage. In the same way, I think, the “Rashtrapati” should also be elected for adult suffrage.

It is certain that a person elected by twelve to thirteen crores of voters of the country, will have incomparable moral strength and dignity. He will be a man of the people and their true representative. Besides, in my opinion, for fulfilling our pledge for re-establishing unity in our country, which is broken up today and may be further broken up in view of the present efforts of some States, the election of the 'Rashtrapati' by adult suffrage will be very helpful. Then, even the poorest person in every part of the country from Travancore to Kashmir and from Calcutta to Bombay, will feel that he has the right of electing the President. He will then fully realise the dignity of an Indian and thus the roots of Indian unity will get stronger and stronger and the feeling of seceding from India, which is at present noticed in Hyderabad, Kashmir and Travancore will no more exist in the country. Even the people of those parts, which have seceded from India, will have a strong desire of reuniting with India. Therefore in the present circumstances particularly, I think that the election of the 'Rashrapati' on the basis of adult franchise is very necessary and will prove to be very useful.

*[English translation of Hindustani speech begins.

This is also the “national genius” of our country. We are hero-worshippers. By having an austere man and a genius as ‘Rashtrapati’ our country will make speedy progress. A ‘Rashtrapati’ elected by twelve to thirteen crores of voters will be a genius and will command moral support. With a population of 35 crores, we will be the greatest independent nation in the world. A ‘Rashtrapati’ elected by twelve or thirteen crores of voters will enjoy unique moral prestige in the world. His individuality and moral strength will be very helpful to the country in the field of international politics. It will also appease the sentiment of hero-worship of the people of our country.

Today Mahatma Gandhi is the father of our nation even though he has not been elected to be so. All of us call him ‘Bapu’. He is like a permanent president of our nation. An elected Rashtrapati will reach his position to some extent only if he is elected by twelve or thirteen crores of voters as their ‘Rashtrapati’. He will thereby gain great moral prestige and honour and even though he may be aloof from every day work, he will benefit the country a good deal.

The draft constitution before us is an admixture of two constitutions. One of them is the American Constitution under which the President is directly elected on the basis of adult franchise. The other is the British Constitution under which the Prime Minister is the leader of the majority party in the parliament. But in England too, there is a King who has great dignity and the people respect him more than any Prime Minister. Under the constitution he is not free to take any action independently but he plays a useful part in improving the administration. The ‘Rashtrapati’ in our constitution will fulfil the purpose served by the British King. I know that many of our leaders are not in its favour and they will oppose it. They say that when we have accepted a parliamentary form of government, we would like to have a constitution in which the leaders elected by the Assembly and the Legislature will represent the whole nation and will have the responsibility of its administration and therefore to talk of the election of the ‘Rashtrapati’ on the basis of adult suffrage will be a sheer waste of time and will create unnecessary confusion. I do not agree with this. In my opinion, the party which will triumph in the presidential election in the country, will be in a majority in the Legislature and will possibly command a majority in the federal Legislature also.

For example, we elect Babu Rajendra Parsad, the President of the Constituent Assembly, as our president and Sardar Patel or Pandit Jawaharlal as premier. These two leaders will help and co-operate with each other. They will not be at loggerheads against each other. Pandit Pant while just now supporting another motion asked as to what will happen if the President dies. I say that if the President is not there, we will have the Prime Minister. His ministry can function and immediately conduct a second presidential election. In such an eventuality as we find in Burma, where the Prime Minister and his ministers have been murdered, the ‘Rashtrapati’ can manage the administration of the country and form another ministry. I say that the election of the ‘Rashtrapati’ will enhance the prestige of the country. Even though we do not give him powers, he will have his special influence on the administration by virtue of his position. Mahatma Gandhi is not even a *four anna* member of the Congress but everyone knows that every action in the country is taken on his advice. He is the architect of the present free India. I hold that the presidential election will be beneficial to us in every way but as I am not free in the matter, I do not press this amendment.] *

*]English translation of Hindustani speech ends.

Mr. D. H. Chandrasekharaiya (Mysore State): Mr. President, Sir, the amendment that stands in my name runs as follows:

That the following new sub-clause be added after sub-clause (3) of Clause 1 (3A):—

“The President shall be alternately elected from the State and the Non-State Units.”

You know, Sir, that the President of the Federation is proposed to be elected through an electoral college consisting of the members of the two Houses of the Federation, and the members of the Legislatures of the units of the Federation. From this it is evident that the members from the States will not be in a position to successfully contest the elections by putting forward a candidate of their own for the Presidentship at any time because the members from the non-State Units will form an overwhelming majority of the electorates.

The population of the States is nearly 91 millions. That is to say, it forms nearly one-third of the population of the provinces forming the Indian Union and nearly more than four times the population of the Pakistan Units. The States representatives to the two Houses of the Federal Parliament, though forming a minority yet constitute an important part. So far as the Council of States is concerned, 71 members are contributed by the States alone out of a total of 287 members of that body. Similarly, the House of the Peoples which is formed on the population basis, will contain an appreciable number from the State Units. In these circumstances, it would be just and proper that the State Units should be given a chance to put up their own candidate for the Presidentship exclusively for every second term. If that is considered to be a somewhat extravagant demand it may be provided that at least for every third term, the States may put forward their own candidate for Presidentship.

You know, Sir, the States form an important element in the life of the country. After the 15th August, the States too will attain a status of independence just as other elements are going to do. But I for one would wish that the States, whether big or small, will not remain aloof and isolated. They must join hands with the Indian Dominion now and with the Indian Federation or Indian Union after the Constitution is framed. For this purpose a certain amount of goodwill and accommodation towards the States is very necessary. I believe that a provision of the kind proposed in this amendment will go some way towards establishing that happy relationship between the States and the non-State elements of our country. With these words, I commend this amendment for the kind consideration and acceptance of this House.

Mr. President: There is another amendment in your name.

Mr. D. H. Chandrasekharaiya: The next amendment which I am proposing reads as follows:

“That the following new sub-clause be inserted after sub-clause (4) of Clause 1:

“(5) Provision should be made for the President to take the oath of office as in the Constitution of U.S.A.”

One of the most important responsibilities cast on the President of the Federation is that he should preserve the Constitution and protect it from being violated. For any violation of the Constitution, he is removable from his office through impeachment. On account of that it would be necessary and proper that the President should give undertaking

in terms, of an oath to that effect. Almost all Constitutions, especially Federal Constitution provide that an oath should be taken by the head of the Executive. For instance, in the United States of America, the President of the Federation takes an oath of allegiance before he enters on his duties, in the following words:

“I do solemnly swear and affirm that I will faithfully execute the office of the President of the United States and will to the best of my ability preserve, protect and defend the Constitution of the United States.”

The Irish Constitution has a similar provision in its Constitution and it is to this effect:

The President shall enter upon his Office by subscribing public in the presence of members of both Houses of the National Parliament and Judges of the Supreme Court and the High Court and other public personages the following Declaration:

“In the presence of Almighty God I do solemnly and sincerely promise and declare that I will fulfil my duties faithfully and conscientiously in accordance with the Constitution and law and that I will dedicate my abilities to the service and welfare of the people of Ireland. May God direct and sustain me.”

Any one of these forms will do for our own Constitution and the President of the Federation should also take a similar oath before he takes up his duties.

I therefore commend this amendment to the kind consideration and approval of this House.

Mr. President: It is 1 O’Clock now. So the House will adjourn till 10 O’Clock tomorrow.

The Assembly then adjourned till Ten of the Clock, on Thursday, the 24th July, 1947.

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CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 24th July 1947

The Constituent Assembly of India met in the Constitution Hall at Ten of the Clock on Thursday, the 24th July, 1947, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

Mr. President: I understand that there is one member who has not signed the Roll. Will he please do so now?

The following member signed his name in the Register:
Kunwar Shamsheer Jang. (Residuary States Gp.)

ELECTION OF MEMBERS TO STEERING COMMITTEE

Mr. President: There is a motion in the name of Mr. Satyanarayan Sinha regarding election of some members to the Steering Committee. Will he please move it?

Mr. Satyanarayan Sinha (Bihar : General): Mr. President, Sir, the motion which stands in my name reads as follows:

“Resolved that this Assembly do proceed to elect, in the manner required under rule 40(5) of the Constituent Assembly Rules, two members to be members of the Steering Committee.”

Two of the Honourable Members of this House, Maulana Abul Kalam Azad and Mr. Mane, have resigned from this Constituent Assembly and therefore under the Rules of Procedure they cease to be members of the Steering Committee to which they were elected by this House. I therefore propose that their vacancy should be filled. The manner in which the election will be held will be determined by the President.

Mr. President : Does any one wish to say anything on this Resolution?

Honourable Members: No.

The motion was adopted.

Mr. President : Nominations for the two vacancies in the Steering Committee will be received up to 1 P.M. tomorrow and elections, if necessary, will be held at 4 P.M. on the 26th in the Under Secretary's Room, No. 25, on the Ground Floor, Council House. The election will be by the system of proportional representation by the single transferable vote.

REPORT ON THE UNION CONSTITUTION-*Contd.*

Mr. President: We shall now proceed with the discussion of Clause 1 of Part IV of the Union Constitution.

Shri Sri Prakasa (United Provinces : General): What about my motion which is on the agenda for this morning?

Mr. President: I think it is for tomorrow.

Shri Sri Prakasa: I am sorry.

The Honourable Sir N. Gopalaswami Ayyangar (Madras : General): There is one amendment which has not been moved.

Mr. President: There are several amendments which have not yet been moved. I shall be coming to them.

Shri K. Santhanam (Madras : General): I rise on a point of order. I understand the Constituent Assembly Office has not circulated amendments which have been given notice of three or four days ago because you had fixed a time-limit for amendments before that date. But you have ruled that when any amendments are given notice of at least one day in advance of the date on which the motion is made, we will be allowed to move the amendments. Otherwise, the whole discussion will become useless because when we are proceeding certain amendments become necessary. For instance, I gave notice of an amendment on Monday. It was the result of discussion between friends and it was necessitated by imperfect drafting. It has not been circulated at all. When I enquired, I heard that all these amendments are simply filed in the office and nothing is done. I think it will put us to a great deal of hardship if things are done like this. I hope you will give a ruling on the subject.

Mr. President: I have given sufficient time for amendments to be put in by members and we can see from the list of amendments already circulated that we have, got a very large number of amendments to the various clauses. I am told that even after the expiry of the time-limit which I placed, quite a large number of amendments have come in. If the House so desires I shall have no option but to circulate them too, but then it becomes very difficult to keep pace with these amendments which go on, coming in without end and interruption. So we must stick to the time-limit by which amendments should be put in.

An Honourable Member: The time-limit is automatically fixed by the time taken up here.

Mr. President: It means then that all the amendments will have to be circulated as they come in.

Shri M. Ananthasayanam Ayyangar (Madras : General): That is the practice in every legislature. With very great respect, Sir, I say that your ruling is against Rule No. 32. Rule 32, Sub-Clause (3), says that except as permitted by the Chairman, notice, of an amendment must be given at least one clear day before the motion. In the Assembly every clause is moved and as the discussion proceeds, and when amendments suggest themselves to the Members, we give notice of them 24 hours in advance, of the actual discussion. That is all that we have to do. I submit, Sir, that it cannot be fixed that the time should be two days in advance. It will be reducing the whole thing to a formal and dead affair. If there is not sufficient staff in the office to deal with the amendments, the office has to be enlarged and not our rights curtailed.

Mr. President : I should like to be enlightened on this point by some-one who has experience of legislatures. I want to know what is the procedure followed generally. Mr. Purshottamdas Tandon might perhaps enlighten me. A large number of amendments keep on coming from day to day; what is the usual procedure of dealing with them?

The Honourable Shri Purshottamdas Tandon (United Provinces: General): Sir, the usual practice is for amendments to be tabled as the consideration of a Bill proceeds, but every amendment has to be handed over to the office some-time before the particular clause to which it relates is taken up for consideration. For instance, if you are taking up a clause, today and the rule requires that 48 hours, notice must be given of an

amendment, the amendment to be moved must have been sent to the office 48 hours before the time at which it is to be considered today. That is all. It is not necessary that all the amendments should be delivered to the office before the consideration of the Bill is taken up.

Mr. President: Then we shall follow that procedure and all amendments of which notice is given in time under Rule 32 will be circulated.

Dr. P. S. Deshmukh (C.P. & Berar: General): Sir, in that case, can I move my amendment to Clause 1 of which notice was given on Monday?

Mr. President: So far as Clause 1 is concerned, it was moved several days ago and amendments given notice of after the clause was moved cannot be taken into consideration. We shall now proceed with the other amendments. Shri Chandrasekharaiya moved both his amendments yesterday. Does Mr. A. K. Ghosh wish to move his amendment No. 96?

Mr. A. K. Ghosh (Bihar: General): No.

Mr. President: Sir N. Gopaldaswami Ayyangar has an amendment.

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, my amendment seeks only a slight verbal change, that in the last sentence of sub-clause (2) of Clause 1, for the words "the votes of the Unit Legislatures" shall be substituted by the words "the votes of the members of the Unit Legislatures". The amendment hardly requires any explanation.

Mr. President: Another amendment is by Mr. J. N. Vyas.

(The amendment was not moved.)

I take it there is no other amendment to Clause 1. If any Member has got any other amendment to this clause which I have left out, he will please take this opportunity of moving it, and not complain later that he did not get an opportunity to do so.

As there is no other amendment, we shall now proceed to discuss the clause and the amendments which have been moved.

Syed Kazi Karimuddin (C.P. and Berar: Muslim): Mr. President, Sir, sub-clause (2) of Clause 1 says:

"The election shall be by an electoral college consisting of—

- (a) the members of both Houses of Parliament of the Federation, and
- (b) the members of the Legislatures of all the Units or, where a Legislature is bicameral, the members of the Lower House thereof."

All the amendments which were moved to have the election of the President on adult suffrage have been withdrawn; but I want to bring home to the House why this election should be made on the basis of adult suffrage.

The decision on this point mainly rests on the point of view whether the executive should be non-parliamentary or parliamentary. I have been of the view that in India, looking to the conflicting political parties diverse ideologies and many diverse factors, for the maintenance of peace and tranquillity and for the effective representation of all parties in the Cabinet. It is necessary that there should be a non-parliamentary executive. The only reason that has been advanced why adult suffrage should not be introduced is that a huge machinery will have to be set up for dealing with the elections and the energies of the nation will be consumed in holding these elections. But that is absolutely no reason. In a country like America, the election of the President is held on adult suffrage and

[Syed Kazi Karimuddin]

my submission is that if every fifth or every fourth year the election of the President is held, and held on the basis of adult suffrage, it will educate the masses. Momentous economic problems of great magnitude will be brought to the forefront. The masses will be educated if the election of the President is held on an all-India basis. Under the present sub-clause 2 of Clause 1, the President will be a puppet of the majority party and the persons, who have fought the elections partly on provincial basis and partly on the all-India basis will elect the President for the whole Union.

Yesterday, while discussing the powers of the President, we felt that very wide powers had been given to him. He will be entitled even to suspend any part or the whole of the Constitution of a province. A President who will be afraid of the majority party and be elected by the electorate under sub-clause 2, will not, my submission is, be a man who will represent the entire nation on an all-India economic basis or on all-India issues. I have one more difficulty and that is very important. In order to suit the States, we have agreed that the members of the States' Legislatures shall be members of the Lower House of the Union. It is a patent fact and is known to everybody that there is no popular rule in the States, and the members of the Legislatures in the States probably will be those who have been nominated by the States or who will not be the real representatives of the people. By electing a President by such representatives who will form one-third of the voters practically, the President will not be representing the people of the States but those who are nominated by the States Rulers. Under these circumstances, it can never be said that the President will be the true representative of the people of the States. Under these circumstances I earnestly appeal to the House that if you want democratic rule, if you want that the President shall be the true representative of the people who vote on adult suffrage, under the electoral college mentioned in sub-clause 2 to Clause 1, as regards the States particularly, he can never be representative of the people of the land. Therefore I oppose this amendment.

Mr. Mahomed Sherif (Mysore State): Sir, I am of the opinion that the President of the Union should be elected on the basis of adult franchise. It would be in the fitness of things that the person who would be at the helm of affairs and to whom so many powers would be given and so many responsibilities, should be one who must be elected on this basis. Every voter who is qualified to vote should have the satisfaction that in the election of the person who should govern the country, he should have a voice. It was argued that if this method is to be followed, it would intelligence of the people is not very high; that this method will not work satisfactorily, and that corruption, bribery, and so many vitiating factors will operate. It seems to me, Sir, that these difficulties will be more than offset by the advantages accruing therefrom. The election will be a great education by itself. It will lead the people to further their political insight which they have got and it will be advantageous in more than one way.

In these circumstances I would suggest that the President should be elected on the basis of adult suffrage. As I said such an election would have the seal of approval from the point of view of the voters. With these remarks I oppose this motion.

Mr. Tajamul Husain (Bihar: Muslim): Sir, sub-clause (1) of Clause 1 of Part IV lays down that the head of the State shall be called President and that any person or citizen of the Republic who has attained the age of 35 can be elected as President of the Republic. An amendment has been moved, Sir to the effect that the election of the President should be held in rotation, that is to say, that for one term of office the President

shall be elected from the north of India and for another term of office from the south of India. The reason advanced by the Honourable the Mover is that the people of South India are total different from those of Northern India. I submit, Sir, that is a very dangerous principle to adopt. If you want to accept this principle that there should be a reservation of seats for the election of the President, every province may claim that in turn the President should be elected from a particular province.

I will give you an example. The people of Western Bengal may very well claim that they are a different people from the rest of India.

An Honourable Member: No, no.

Mr. Tajamul Husain: I am glad that there is a voice saying no, no. And there should be no difference between one province and another. Therefore I submit, Sir, that the office of the President being the highest in the realm and he being the biggest dignitary of the Republic, we should have the best man. It does not matter from where he comes. It is quite possible that when the election is being held a Bihari, or a Christian, or a Jain, or a Parsee may happen to be the best man at that time. He may be elected President. Therefore, I have come here to oppose this amendment.

Paragraph (b) of sub-clause (2) of Clause 1 of Part IV lays down that the Upper House of a province where there are, two Houses, should not have the right of choosing the President of the Republic. An amendment has been moved by Rai Bahadur Syamanandan Sahaya of Bihar that that right should be given to the Upper House as well you will find that under sub-clause (a) both the Houses of the Central Legislature have been given the right of electing the President of the Union. There is no difference between the Upper House of the Central Legislature and the Upper House of a Provincial Legislature. Both have got special representation. If you do away with the Upper House then that is a different matter. I might support-you on democratic principle but we have decided that we are to have an Upper House for the Central Legislature and there are going to be Upper Houses in some provinces. In that case I would submit that the qualifications of the members of the Upper House of the Central and Provincial Legislatures being the same, the members of the Upper House of a Provincial Legislature may be allowed to participate in the selection of the President of the Republic. To me it appears there is no reason why the members of the Upper House of a Provincial Legislature should be deprived of their right, their privilege and their pleasure of choosing their own President of the Republic.

I oppose the amendment of Mr. Syamanandan Sahaya.

Mr. H. R. Guruv Reddy (Mysore State): Mr. President, Sir, yesterday I was listening with very great interest to the discussions about nominations and particularly about the 'principles underlying nominations. One of our worthy colleagues was saying that the system, of nominations, particularly in States, should be done away with, and that if those nominations are adopted elsewhere, they would not be objectionable. Sir, I fail to see the reasoning of this part of the proposition. If nominations are bad, they are bad everywhere and, if they could be accepted, they ought to be accepted on principle everywhere. I fail to see why we should attach sanctity to nominations if an elected person adopts it and consider his action just and proper and right too, and at the same time consider nomination by a ruler of a State or under his direction as something fundamentally wrong and bad. There is no justification for accepting this principle of nomination in one place and rejecting it in another. If you want to do away with nominations, let us do so boldly. But, if for reasons of representation of various interests nominations have to be resorted to, certainly let us have nominations both in the States and in

[Mr. H.R. Guruv Reddy]

the other Units. No one need be afraid that these nominations will be overwhelming in number. There is no need to fear that the ruler of a State would choose a person who would undo the good things that others attempt to do. In fact, if there is danger ahead, the ruler ought to be presumed to act suitably and put in persons who would represent all interest I would therefore repeat that if nominations are to be adopted in this House or by the President of the Federal Legislature, what reason is there to say that that system would be bad elsewhere?

The other idea that was put forward by one of the speakers was that it would be a method by which we could coerce the States or other Units to adopt the method of election. That word 'coerce' is something very jarring. It is not a good and sound principle that we should coerce any person to accept or adopt our view. Our endeavour should be to win him over to our view. Therefore, Sir, once the principle underlying nominations is adopted here by the President, is ought to be allowed to be adopted elsewhere also on principle. But, as I said, I am basing my arguments on principles and not on facts. I would appeal to this august House that as the system of nominations has been accepted under the Constitution put forth for India, it ought to be allowed in other places also and it would certainly meet out justice to that section of the population which would be unrepresented otherwise.

Sir, I now pass on to the more interesting, if more disturbing factor, namely the North and the South, the States and the non-States. Sir, personally I feel that the North is not separate from the South, nor is the South separate from the North. I am one of those who believe that any one who is given an opportunity, if he has got the requisite qualifications otherwise, should come up. It is only an opportunity that is sought for. It is not a territorial division. We know certain reasons why the North and the South are frequently apprehensive of this or that thing. A man like me coming from the South, the Mysore State, feels that the North has been getting larger representation on this Constituent body than in is due to it and that hereafter it should not be so. Sir, while I honestly feel that the South has been neglected for sometime for various reasons, I do not put the blame for it on anybody or on any section. But I do feel that the South is to some extent neglected. But then it is a question of opportunity being given to the people of the South. If opportunities are allowed I am positive that persons coming from the South can, equal if not surpass those coming from the North.

Sir, this question of States and non-States is really perplexing. Coming from a State I very much desire that an opportunity is given to someone from the State to be the Chief of India. But then it is again a vicious thing. The States form only one-third of the entire Dominion. And then the qualifications and other considerations that are to be laid down for this purpose is another disturbing factor. So far as I am concerned, I cannot agree to the separation of States and non-States for the purpose of election. As I said, given the requisite opportunity, given the requisite representation to the States, anyone who has got that courage of conviction to speak out boldly, honestly and fearlessly ought to find a place in the Indian Constitution.

Sir, it is difficult to create a reservation either for the non-States or for the States or even to set up a rotation as it were, in the Constitution. I emphasise the word 'Constitution'. Sir, these are things which should be looked into and provided for in what we know as 'convention'. We are starting today with a new Constitution for India and the Constitution itself provides for a change. We can work for another three years and if we find any difficulty we could have the Constitution changed suitably. Apart from that, I would never invoke the aid of the legislature for the

purpose. As I said, it is only a healthy convention and good feeling and understanding between the North and the South and between the States and the non-States that can solve the problem. No legislation can solve it.

In this connection I would like to draw your very kind attention to the Madras mayoralty. There was a lot of bickering so far as the Madras mayoralty was concerned. Some years ago, it should be said to the credit of Sir Ramaswami Mudaliar that he, when he had something to do with that mayoralty, set up a convention. And that convention is being now respected and persons of various communities and various sections are being elected according to the convention laid down. It is not difficult for us to take this illustration and to follow it up even in the election of our President. Sir, I would once more state that it is convention, good understanding, good feeling between the North and the South, between the States and non-States that will solve this problem, not any law or any clause in the law.

Sir, with this I pass on to another very small matter but which looms very large, the question of the oath which was very ably put forth by my worthy colleague as an essential matter, and I do not know that lacuna crept into this report on the Union Constitution. No provision has been made here for the oath. Sir, it is a common thing all over the world, in all well-established Governments, that the Head of the State takes the oath on his entry into that high office. It would be becoming and worthy of our Indian Government that the President should take the oath before an appropriate authority that he would safeguard the constitution that is being framed now and which he is going to work.

With these remarks, Sir, I commend the amendments and principles I have just put forward to the acceptance of the House.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Sir, I do not want to make a speech. I want to suggest that the pace at which we are moving is very slow. At this rate I am afraid we won't be able to stick to the time-table. I suggest that now that we are discussing only the principles of the constitution, speeches may be confined to the particular clause or amendments under discussion and not touch the entire field of the Indian Union Constitution.

Mr. President: I entirely agree with you that we should not discuss the entire field of the Constitution but must confine ourselves to the particular amendment that has been moved or the particular clause which is under discussion. I would also request members to limit their speeches to five minutes, unless in a particular case I find that the question that is being discussed is of such a nature that it requires a longer time.

Mr. H. V. Kamath (C.P. and Berar: General): Sir, two amendments moved on the floor of this House yesterday, one by my friend, Rai Bahadur Syamanandan Sahaya, and the other by my friend Mr. Channiah.

Mr. Sahaya's amendment is to the effect that, where the legislature is bicameral, the members of the Upper House, also must have the right of voting in the election for the President. I stand here, to oppose that amendment. It was asked why, when the members of the Upper House of the Union are allowed to vote, the same privilege should not be extended to members of the upper chambers of the Units. If my friend looks at Chapter II, he will find that the Council of States is proposed to be set up on a different basis from that of the upper chambers of the Units. Moreover, we have visualised the President as being all integral part of the Federal Parliament which will be composed of the President and the National Assembly, the National Assembly in its turn being composed of the Council of States and the House of the People. Where the President is an integral part, an essential part of the Federal Parliament, it stands to reason that both Houses should take part in the election of the President.

[Mr. H.V. Kamath]

The other amendment was moved by my friend, Mr. Channiah. That amendment is astounding, bordering on the ridiculous. At a time, Sir, when we have regretfully accepted the division of India on a communal basis, at a time, Sir, when fissiparous and centrifugal tendencies are holding the field. At a time, Sir, when most of us here want to see the unity of our country restored to its pristine condition, it is amazing that a member of this House should stand up and draw a distinction between the north and south of our country. I was inclined to think that at least after the march of Agstya across the Vindhya and after the battle of Rama with Vali and Ravana, this difference between the north and south of India had been obliterated. We have heard of the Maginot Line in Europe; we have heard of the Siegfried Line in Europe; we have heard of the Curzon Line, the Durand Line in Europe. If Mr. Channiah's amendment is accepted the day will not be far off when we will have a Channiah line in India between the north and south of India. When we are trying to build a strong State, when we are trying to wipe away all the differences of the past, when the division of the country on a communal basis has been accepted most reluctantly, it is amazing that an amendment of this kind should be propounded on the floor of this House. Precisely for that reason, Sir, I am opposed, for the present at least, even to a linguistic division of provinces. Let us for the present bend all our energies to the task of building up a mighty Indian Union: and let us bend our energies to the task of restoring the unity of our country. Let us, Sir, realize the goal which we have fondly cherished of a strong united India, an independent India marching forward for the welfare of India and the peace of the world; an India where all Indians, be they Hindus, Muslims, Christians, Parsees or Sikhs all small march together, as citizens of one common Motherland, a united, strong and independent India. That is the theme, Sir, which is uppermost in our minds. We are still hoping to realize the dream when the unity of our country will be restored. It is in the spirit of the words of that famous song, which is on the lips of all Indians today;

हर सूबे के रहने वाले हर मजहब के प्राणी
सब भेद और फरक मिटा के सब गोद मे तेरी आके गूंथे प्रेम की माला
सूरज बनकर जग पर चमके भारत नाम सुभागा

(*Har sooba ke rahanewale har mazhab ke prani*

Sab bhed aur farak mitake sab goda me teri ake goonthe prema ki mala.

Suraj bankar jag par chamke Bharat nama subhaga.)

that I oppose the doctrine which was propounded yesterday by my friend Mr. Channiah seeking to divide the North from the South. One of my friends, Sir, said that the South has been neglected. I fail to see how or in what way the South of India has been neglected. If my friend says that the South means only Madras. I differ from him. I would like him first to define the South of India, whether the South means only Madras or Madras plus Bombay and the various other component parts. I for one think that the South has not been neglected. Today it is the two States in the South. Hyderabad and Travancore which are giving us the headache. If it is the result of neglect and if it is the result of being unimportant, I do not know, Sir, what my friend means. These two States of the South today, Sir, are giving most of our statesmen and our leaders a big headache. If my friend thinks that Southern India has been neglected. I do not know, Sir, how he can forget the eminent and leading politicians from Bombay and from Madras who have contributed to the political development, the political evolution of our common Motherland.

Then, Sir, a point was made out that the oath should be taken by the President of the Federation. I agree, but this is not the place where the oath should be mentioned. The oath will certainly find a place in the

Constitution when it comes to be finally drafted. Here we are discussing merely the principles of the Constitution therefore I think that here the mention of the oath to be taken by the President is out of place. For that matter, Sir, we can as well say that the members of the Legislature too should take an oath of allegiance to the country, but you are not mentioning anything like that. They are mere details which are to be taken into account when the Constitution is actually drafted. I therefore, Sir, shall not take the time of the House. I oppose the amendments which were moved by Rai Bahadur Syamanandan Sahaya and my friend, Mr. Channiah.

Shri Ajit Prasad Jain (United Provinces : General): *[Mr. President, I support the resolution moved by Pandit Jawaharlal Nehru. The method suggested herein for the election of the President is very appropriate, some of the members present have proposed that the President should be elected by adult franchise. Many arguments have been advanced against this proposal. At one place the resolution says different weight will be attached to the votes of different members, *e.g.* the vote of the member representing lesser number of people will be considered less weighty and that of the member representing greater number of people will be considered more weighty. I would like to say this much that this balances the defects caused by indirect election. The example of America has been cited where the population is 130 to 140 millions and the President is elected on the basis of adult franchise. I beg to point out that in America it was considered desirable that the Presidential election should not be direct but through "Electoral College". We too have here a proposal for the formation of an Electoral College, the members of which will be elected by the people. Thus the election of our President will also be according to the choice of the people. I had only to say this much but I feel one difficulty in the scheme sponsored by Pandit Jawaharlal Nehru. According to it, the President will be elected through an electoral college. All members of both the Houses of the Federal Parliament—The Council of States and the House of People—will be the members of the electoral college and they will participate in the Presidential election. The members of the Provincial legislatures and the States legislatures too have been given the right to participate in the Presidential election. So far as the votes of the members of the Unit legislatures are concerned, it is said in the proposal that different weightage will be given to them. For example one vote of a member representing ten thousand voters will be considered equal to 10 votes of a member representing one million voters, Sir.

So far as Unit legislatures are concerned this method is very appropriate and desirable. But it has not been clearly stated in the proposal, whether any weightage will be given to the votes of the members of the Federal Parliament (House of People and Council of States) or what will be the value of their votes or the relative position of those votes. One of the interpretations of the proposal relating the unit legislature appears to be that in the present state of affairs, each member of the House of People has merely one vote. If this is correct, I consider the proposal very wrong. In the draft proposal presented to us, it has been stated at a later stage that on an average a member of the House of People represents one million voters. If he gets merely one vote, this means that members of the Unit legislature who represent only ten thousand voters get 10 votes and a member of Federal Legislature, *e.g.*, the House of People who represent one million voters gets only One vote according to the present scheme. In my opinion this is not fair. The question of giving due weightage to the votes of the members of the Federal Parliament should be reconsidered so that the people might be properly represented.

There appears another difficulty. It is possible that state may have some sort of nomination and would be difficult to say as to what would

*[English Translation of Hindustani Speech begins.

[Shri Ajit Prasad Jain]

be the value of the votes of the nominated members. Again, there might be some constituencies which are not territorial for example, the university and the Labour Constituencies. So far as the provinces are concerned, we have decided that there would be territorial constituencies and there shall be no special constituencies. But in States it is possible that there may be some territorial and some non-territorial constituencies and some nominations as well. Another difficulty may arise from the method suggested for giving weightages to different votes of nominated members. If you decide that some sort of weightage should be given to the votes of the members of the Federal Parliament also, although the proposal contains no mention of it—the difficulty arises as to what would be the weight of the votes of the members nominated to the Council of State.

However, I wish to draw your attention to the necessity of a clear provision for classifying and giving weightage to the votes of the members of the Federal Parliament.

With these few words, I hope that you will consider my suggestions.]*

Mr. President: I have got three more names in the list. I find some more members standing up wishing to speak. We have already taken one hour today and we took about one hour yesterday on this clause. If we go on discussing at this rate, I do not think we shall be able to complete even one Part by Thursday next when we wish to close. I therefore desire to request the members to cut down their speeches to the minimum and if any point has already been discussed by any member, not to speak on the same point and repeat the same arguments.

Dr. P. S. Deshmukh: May I suggest, Sir the system of giving names should be stopped and opportunity should be given only to that member who catches the eye of the President?

Mr. President: I accept that, Hereafter, I shall not accept any slip. Any one who catches my eye will be allowed to speak.

Mr. Yudhisthir Mishra (Eastern States Group 1): Sir, I support the amendment of Mr. K. Chengalaraya. Reddy to sub-clause (2) (b) of Clause. Mr. Reddy has moved an amendment to substitute the words “elected members” for the word “members”. It would appear to many of the honourable members present here that the word sought to be inserted is unnecessary and superfluous, because under the present constitution, the provincial legislatures would have no nominated members. But I would like to remind the honourable members that there is no corresponding change in the constitution of the State legislatures. In many of the States, especially in the smaller ones, there is an overwhelming number of nominated members in the legislatures. In fact, in some of the States, there is no legislature at all. I represent the Orissa States and I would submit before this House that in some of the States there is no legislature at all. Wherever there is any legislature, the number of nominated members is so large, that the elected representatives have no voice in the Legislative Assembly. In some of the States, the State Congress and the Praja Mandals have boycotted elections to the Legislative Assembly in view of the unsatisfactory franchise. Wherever there is a legislature, the franchise is narrow and based on communal lines, and it has a large number of nominated members. Sir, if you allow the nominated members to take part in the election of the President, then, some of the States may set up inadequate and bogus representative assemblies and try to influence the election by undemocratic methods. It would be a mockery of democracy if the nominated members are allowed to take part in the election of the President of the future Republic of India. I therefore support the amendment which has been moved by my honourable friend Mr. Reddy.

At the same time, Sir, I would oppose the amendment moved by Mr. Chandrasekhariah. He says that the President shall be alternately

*English Translation of Hindustani Speech ends.

elected from the States and non-States units. It is an insult to the States if such a limitation is placed on the election of the President.

Mr. R. K. Sidhwa (C.P. and Berar : General) : Mr. President. I had no desire to enter into this debate but for one point which was raised by my Honourable friend Mr. Reddy from Mysore State, who advocated the rotation system for the election of the President and in support of that he quoted the instance of the mayorality of the Municipal Corporation of Madras.

An Honourable Member: There are two members from Mysore. The reference may be clarified, Sir.

Mr. President: (To Mr. Sidhwa). You have made a mistake with regard to the name of the speaker.

Mr. R. K. Sidhwa: He came from Mysore. Sir, It is true that in the Municipal Corporation of Madras, there is the rotation system for the election of the Mayor. In the first year a Brahmin is elected, in the second year a Non-Brahmin and in the third year a Harijan. A similar convention prevails in the Bombay Municipal Corporation. In the first year a Hindu is elected in the second year a Muslim, in the third year a Parsi and in the fourth year a Christian. A similar system exists in the Karachi Municipal Corporation also. In the first year a Parsi is elected, then a Muslim, then a Christian and then a Hindu. Also in the Calcutta Corporation, a similar system exists. As I have something to do with this rotation system, in the Municipal Mayoral elections in India, I may say that this rotation was introduced to give an opportunity to every community for the purpose of presiding over this Only honoured office. It is only an honoured office, I repeat, Sir. The Mayor has absolutely no power except that he presides at the meetings of the Municipal Corporation. Let me assure you, Sir, he has no executive power although he is the first Citizen of the city. Therefore, you cannot compare the mayorality with the election of the President. The President of India will be the best man. He will have many executive powers. He will have to select a Premier and he will have to select his Ministers. He will have power of dissolution of the legislature, Over and above all, Sir, under the proposed constitution, lie will be the Supreme Commander of the Army. Do you want, under these circumstances, Sir, the President to be elected by rotation? I shall certainly strongly oppose the President being elected on any kind of communal basis or the rotation or province wise system being introduced. We must have the best man for the President. If the President elected is the best man, we shall elect him for a second time—the best man whosoever he may be he may have become from the north, south, west or east. We cannot tolerate the election of the President community wise, or province- wise or anywise as I stated. The convention introduced in the election of the Mayor does not apply in the election of the President. The Mayor is merely a figure-head. He only presides over the meetings. He has no executive power. The convention is only meant to give opportunities to the several communities to occupy the honoured and dignified post of the first Citizen of the city. You cannot mix up therefore the conventional system in the election of the President. I therefore strongly oppose this. There is no amendment to that effect, but implicitly or explicitly no reservation or no convention should be made even by our topmost, leaders that, we shall elect the President province-wise or from the north, south, west or east of India, or we shall elect a Parsi, a Christian or a Muslim. The best man should be elected. I therefore, Sir, strongly oppose the convention of election provincewise to the office of President.

Shri R. V. Dhulekar (United Provinces : General): *[Mr. President, I desire to speak a few words in support of the clause which has been

*[English Translation of Hindustani Speech begins.

[Shri R. V. Dhulekar]

moved much has been said in support of it but I would not say anything about them. I would draw your attention to only two matters.

Firstly, some members have said that the system of election is very irregular in the States and some of the States representatives to this Assembly have been nominated either by the government or by the rulers and they should not be allowed to take part in the election of the President. In fairness, we must admit that the rulers, participating in the Constituent Assembly were subjected to such injustice at the hands of the British government that they have grown apprehensive that if they join the union they would be crushed. A burnt child dreads fire. We must not think that they are degraded and demoralised Indians. Personally I think that they were placed in such circumstances under the British government that they could not follow the policy which they should have. Therefore, I do not think it proper to raise this point that the nominated members should not be allowed to participate in the Presidential elections. In my opinion we must accept their request that they should be given time so that they may fully realise on joining the Union that the rulers and their people will have the same rights and status that we have. When they have realised the advantages of joining the union, their autocracy will automatically vanish and the rulers will soon feel that they are common Indians and they have the same rights that the common people have.

The second thing to which I desire to draw your attention is this.

According to this clause regarding the members of the Provincial legislatures it will have to be considered as to how many people they represent; and in order to give weightage to the votes, the word "weightage" has been included here. In my opinion, it is unnecessary. It is quite possible that some members might have said that at some places with lesser population they had got comparatively more seats than those having greater population. But in my opinion, no member, whether returned from any provincial legislature or State legislature should be considered so narrow minded that he would demand weightage for his votes in the presidential election. I know, in my own province, some members represent 50 thousand voters while some represent ten thousand and others fifteen thousand voters.. But after being elected, he does not think it at all that he represents so many people. He considers himself only a member of the legislature and behaves in a 'way befitting his dignity'. Therefore the inclusion of the word 'weightage' appears odd but at the same time there is no harm in it and hence I do not oppose it.

With these words, I support the clause.]*

Mr. President: The Mover, Pandit Jawaharlal Nehru, may now reply to the debate.

The Honourable Pandit Jawaharlal Nehru (United Provinces: General):
*[Mr. President, there are many amendments. But the greatest emphasis has been laid on one point: the election of the President on the basis of adult franchise, *i.e.*, everybody should take part in the election. Another amendment is that the word "Rashtrapati" should be substituted by the word "Neta" or "Karandhar". Still another amendment is that the President should be elected alternatively from the North and the South. Again, there is an amendment which says that the members of the Upper Houses also should take part in the Presidential election. There is yet another amendment; but I do not know whether it has been moved or not. According to this amendment, the President should be elected from the States and non-State portion of the Indian Republic (by rotation) alternately.

Lastly, there is an amendment which deals with the oath of allegiance.

] *English Translation of Hindustani Speech ends.

*[English Translation of Hindustani Speech begins.

I regret very much that I cannot accept any of these amendments except the one proposing that the word "member" should be substituted by "elected member", though the word "elected" is not a definite improvement. The draft would have thoroughly clarified the point: but in spite of this, if you wish to add the word "elected", I am ready to accept it. Something has been said about the oath also. It is obvious that it will figure in the Constitution. At this stage, it does not seem necessary.

So far as the question of the election of the President, from the North and the South and from the States or non-State units is concerned, it seems to be wrong in principle. It is not desirable that we elect the President, once from one class and the next time from the other, and framing of rules and statutory provisions for this purpose is highly undesirable.

In answer to the query, as to why members of the Upper Houses should not take part in the presidential election. I submit that there will be much difference between the Upper Houses of the States Units and those of the provinces. I cannot say which of the units will have an Upper House. Another point is that the States and the Provinces will have different standards. Nobody knows what principles the States and the provinces will adopt. If this right is conceded to the Upper Houses it will create confusion. Therefore, in my opinion, the proposition is correct that in the Centre, both the Houses shall have the right to take part in the presidential election, and in the units only the Lower House. There is a complexity which has not been clarified *i.e.*, whether the units will have greater rights than the Centre, whether the members of the Central Legislature will have one vote or more to balance the voting strength of units. It is for our advisers to make this point clear. Therefore, for the present, in my opinion, as I have already stated and as has already been printed it should be left as it is. I have already stated in the beginning, and I repeat it once again and if you, too reflect over it, you will arrive at the same conclusion, that it is best to leave this choice unfettered. I am not prepared to believe that adult franchise is absolutely essential. Obviously, the number of those who will elect the members of the Assembly will be in millions and they are expected to be proper persons. Therefore, when the members of the Assembly themselves are being elected by the votes of millions where is the necessity for electing the President by adult franchise? Therefore, if you desire to frame and promulgate your constitution without necessary delay, then we should avoid complications; otherwise we will not be able to frame our Constitution in the least possible time, and act on it.

If you want to elect the President by adult franchise, then this would mean that we will have to waste much of our time in holding (Presidential) elections and we will not be able to act according to our new Constitution. Therefore, it is my desire that this resolution should be accepted in the form I have put before you.]*

Mr. Mahomed Sheriff: *[Will you kindly throw some light on one matter? You have referred to election in Clause 2(a). When you accept the principle of nomination in this amendment, then why do you not accept this amendment also? Why this contradiction between the two?]*

The Honourable Pandit Jawaharlal Nehru: *[Which clause did you read?]*

Mr. Mahomed Sheriff: *[Page 9, Clause 14 (a).]*

The Honourable Pandit Jawaharlal Nehru: *[The question of my accepting or rejecting nomination is not in issue. I accept that particular type of nomination which is recorded herein, that is to say; nominees of units and "scientific bodies" should be taken. This is not the question. I have already said that the President should be elected by the votes of the elected members.]*

] *English Translation of Hindustani Speech ends.

*[] *English Translation of Hindustani Speech.

Mr. President: I will now put the amendments to vote first. The first amendment which I have to put is the one moved by Mr. Channiah:

“That in sub-clause (1) of Clause I after the word “Selected” the words “by rotation either by the North of India or South of India” be inserted.”

May I point out to the member the great difficulty which I have felt with regard to this. The clause as it sought to be amended by him will read:

“The Head of the Federation shall be the President to be elected by rotation either by the North of India or South of India.”

That is to say, the members alone of the North in one year and alone of the South in the next election will take part in the election, but I think he means not the members who will take part in the election, but the President himself. I have pointed this out, and shall now put the amendment to vote.

The amendment was negatived.

Mr. President: The next one is by Mr. Naziruddin Ahmad:

“That in sub-clause (1) of Clause 1, for the words “as provided below” the words “in the manner set out below” be substituted.”

It is a verbal amendment. I do not know if it is necessary. Anyhow, I shall put it to vote.

The amendment was negatived.

Mr. President: Then there is the amendment of Rai Bahadur Syamanandan Sahaya:

“That in paragraph (b) of sub-clause (2) of Clause 1, the words “or, where a legislature is bicameral, the members of the Lower House thereof” be deleted.”

The amendment was negatived.

Mr. President: There is an amendment by Mr. Chengalaraya Reddy that:

“That in sub-clause (2) (b) of clause 1, for the words “the members” wherever they occur, the words “the elected members” be substituted.”

This has been accepted by the Mover.

The amendment was adopted.

Mr. President : Then there is an amendment by Mr. Chandrasekharaiya that the following new sub-clause be added after sub-clause (3) of Clause I:—

“3(A) The President shall be alternately elected from the State and the non State Units.”

The amendment was negatived.

Mr. President: There is another amendment by Mr. Chandrasekharaiya that the following new sub-clause be inserted after sub-clause (4) of clause 1:—

“(5) Provision should be made for the President to take the oath of office as in the constitution of U.S.A.”

The amendment was negatived.

Mr. President: The next is, Sir, N. Gopaldaswami Ayyangar’s amendment:

“That in the last sentence of sub-clause (2) of Clause 1, for the words ‘the votes of the Unit Legislative’ the words ‘the votes of the members of the Unit Legislatures’ be substituted.”

The amendment was adopted.

Mr. President: I think these are all the amendments that have been moved. Of these two have been carried. Now the Resolution as amended is put to vote.

Clause 1, as amended, was adopted.

Mr. President: Now we pass on to Clause 2. Pandit Nehru may move the clause.

CLAUSE 2

The Honourable Pandit Jawaharlal Nehru: Sir, I beg to move:

(1) The President shall hold office for five years : Provided that—

(a) a President may by resignation under his hand addressed to the Chairman of the Council of States and the Speaker of the House of the People resign his offices,

(b) a President may for violation of the Constitution be removal from office by impeachment in the manner provided in sub-clause (2).

(2) (a) When a President is to be impeached for violation of the Constitution the charge shall be preferred by either House of the Federal Parliament but no proposal, to prefer such charge shall be adopted by that House except upon a resolution of the House supported by not less than two-thirds of the total membership of the House.

(b) When a charge has been so preferred by either House of the Federal Parliament the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation.

(c) If as a result of the investigation a resolution is passed supported by not less than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated declaring that the charging preferred against the President has been sustained, the resolution, shall have the effect of removing the President from his office as from the date of the resolution.

(3) A person who holds or who has held office as President shall be eligible for re-election once but only once.”

There are, Sir, we might say, three parts of this Resolution; one relating to the term of office—five years. Now, this is not a matter of high principle, but after consideration we thought five years will be a suitable term. Four will be too little and more than five certainly too much. The rest of it deals mostly with the impeachment of the President. And lastly, this clause says that a person can only hold office twice, that is to say, not only twice successively, or consecutively, but twice altogether. That means, no man can be President for more than ten years altogether in his life. The question, as is well known, has often been discussed in the United States of America, and normally speaking, nobody was supposed to be President beyond the second term. In the course of the last war, of course, President Roosevelt actually went into the fourth term; but as a matter of fact, ten years is about as much as any normal human constitution can bear this heavy burden. Presumably, when a person becomes President, he will not be too young. He may be in the late forties or fifties and I think it is not right for person to be asked to assume this burden beyond ten years. President Roosevelt, under the stress of circumstances carried on for the fourth term, but he only carried on for two or three months after his election. So I submit that this rule about not holding office more than twice is a good rule and we should adhere to it.

For the rest, I have little more to say. In case there are amendments, I shall deal with them at the end of the debate.

Mr. President: I have got a number of amendments to this clause. Mr. Pataskar.

Mr. H. V. Pataskar (Bombay : General) : I do not wish to move my amendment.

Mr. President: Mr. Shibbanlal Saksena.

Prof. Shibban Lal Saksena (United Provinces : General) : Sir, I have given notice of an amendment to the effect:

“That in sub-clause (1) of clause 2, for the figure “5” the figure “4” be substituted.”

Just now Pandit Nehru was explaining why this term of five years has been fixed upon and said that it was neither too long nor too short for the term of the President. I quite agree with him. But I would like to point one serious flaw. Later in Clause 13, sub-clause (5) it is stated :

“The House of the People, unless soon dissolved, shall continue for four years from the date appointed for its first meeting and no longer.....”.

[Prof. Shibban Lal Saxena]

That means that the life of the House of the People will be four years. Similarly the life of our Provincial Legislatures is also four years. This means that in the first election the President will continue for one year after the life of the Provincial Legislature or the life of the House of the People comes to an end. In the second election, he will be elected after two years after the elections for the House of the People, in the next election after three years and so on. Thus at the time of electing the President the legislatures may become quite out of date and may not truly reflect the public opinion in the country at the time. Every fourth election of the President will be by legislatures due to expire a few months after. This will be a most undesirable situation. It may be urged that legislatures will not always run their fixed four year terms and some may have to be dissolved earlier. This is true, but such dissolutions of legislatures will be rare. Members of some fifteen legislatures will elect the President. If one or two among them have been dissolved before completing their normal term, and their members are freshly elected at the time of the President's election, still the members of the remaining thirteen or fourteen legislatures will not be freshly elected, and the overwhelming majority of the electorate will not truly reflect public opinion in the province at the time of the President's election. Therefore it will be much better if the election for the Presidentship is also held once in four years along with the general election to the Provincial legislatures.

It may be argued that when the general elections take place there will be none left in office after dissolution of legislatures except caretaker governments and it is necessary to have at least the President who will not be a caretaker President. But I submit Sir, the President will vacate his office only when his successor has been elected, so that the office will never remain vacant, nor will it ever be occupied by a caretaker President. Under the 5 years system, it is also possible that when a legislature is elected sometime at the end of the fourth year of the President's term of office, the new members may lose the chance of electing the President during their life time.

I wanted to bring these defects to the notice of the House, but I do not want to press my amendment.

Mr. President: Then you do not move your amendment?

Prof. Shibban Lal Saxena: No.

Mr. President: Hereafter, I think I shall have to ask the members first to move their amendments and then deliver the speech. Mr. Mahomed Sherif.

Mr. Mahomed Sheriff: Mr. President, Sir, my amendment is:

"That in sub-clause (1) of Clause 2, for the figure "5" the figure "4" be substituted."

That means that instead of holding his office for five years, the President shall hold it for four years. My intention is to make the life of the legislature and the tenure of office of the President the same. That will be in consonance with the strict principles of democracy. The Report says that the legislature should last for four years; if that is so, then immediately the legislature goes, the President also must become *functus officio* and if he still remains President that will be against the principle of democracy. It might possibly be argued that after four years the elections would take place and if the President, should be *functus officio* then, who should carry on the administration? For this I would suggest that two or three months before the expiry of the four years the election of the President may be held, so that the termination of the four years the President would have been elected.

With these observations, Sir, I move my amendment.

Mr. D. H. Chandrasekharaiya (Mysore State): Mr. President, Sir, the amendment which stands in my name runs as follows:

“That in sub-clause (1) of Clause 2, for the figure and word “5 years“, the following word be substituted :

“4 years or until the election of a new President whichever event happen later”.”

Under our constitution the term of office of the President is proposed to be fixed at five years, while the terms of the lower houses will stand at four years. Under this arrangement the President becomes one year behind hand during the second term of the Lower House, two years behind hand during the third term and four years behind hand during the fifth term. Thus you will find that the President becomes more and more removed from the popular house, as we advance from the second to the fifth term. This is a state of affairs which cannot be accepted with any reason or logic.

The President is proposed to be elected by the members of the Federal and Unit legislatures. It would therefore be right that the Presidential election should reflect the opinion of the legislatures concerned and if the Presidential office becomes old and does not properly reflect the opinions of the legislatures, then there might arise the possibility of conflicts between the President and the legislature concerned. It is to avoid this possibility that the term of office of the President should be made coterminus with the terms of the popular houses of the Centre and the Units.

It may be argued that one year extra is proposed to be added to the term of office of the President, in order that discontinuity in the policies and measures of administration should not happen soon after the legislatures come to an end. I do not think that this will really happen, taking the experience of countries where this system actually prevails. But even granting for argument's sake that this difficulty is bound to occur, it may be easily avoided by continuing the same President for a short time longer till the new legislatures come into being and the new President is elected.

Let me refer to the practice adopted in a few well known constitutions of the world. In the U.S.A the President is elected for four years and he continues during two periods of the lower house. In Switzerland the Federal Council is elected for four years, that being the period fixed for the lower house, as well in the Soviet Union the People's Commissars are elected for four years, while the Council of the Union lasts for the same period of four years. In Ireland the period of the President is 7 years and the same is the period for the lower house. Thus the practice elsewhere seems to be that the period of the term of office of the President coincides with the life of the lower houses. I think it would be worthwhile to adopt the same practice in our constitution. I do not think that there is any particular charm in the number Five. Therefore taking the practice obtaining elsewhere into consideration and in view of the advantage of fixing the same period for both the term of office of the President and the term of the lower houses. I feel that the amendment I have proposed is a very sound one and I hope that the House will kindly accept the same.

(Amendments Nos. 102, 103 and 104 were not moved.)

Mr. H. V. Kamath: Sir, as the President's position under the constitution is such that he is not likely to misbehave I do not think it is necessary or me to move my amendment No. 105.

(Amendment Nos. 106 to 120 were not moved.)

Rai Bahadur Syamanandan Sahaya (Bihar: General): Sir, my amendment runs thus:

“That the following new sub-clause be added after sub-clause (3), of Clause 2 :

‘(4) A person who has been removed from the office of the President under sub-clause 2 will not be eligible for re-election for two terms’.”

[Rai Bahadur Syamanandan Sahaya]

With your permission and with the permission of the House I would like to amend my amendment and drop the words "for two terms" occurring at the end. My amended amendment will then read: "A person who has been removed from the office of the President under sub-clause 2 will not be eligible for re-election." The principle suggested in this amendment is of course so obvious that I will not endeavour to place arguments in support and I have no doubt that, in drafting this matter will be set right. A similar amendment was moved to the Provincial Constitution. Hence I thought I might as well place this amendment for your consideration in connection with the Union Constitution.

Mr. H. V. Kamath: Mr. President, as my amendment to sub-clause (3) of Clause 2 is unnecessary I am not moving it.

Mr. President: There are all the amendments, of which I have notice to Clause 2. If there are any others. Members who have given notice will please tell me and take this opportunity of moving them. As I see none rising, I think the House can now proceed to the discussion of the Clause and also the amendments.

Is there any Member desiring to speak on this Clause? (*Honourable Members "Vote"*).

The Honourable Pandit Jawaharlal Nehru: There are two amendments moved to this Clause neither of which raises any question of high policy, the last one especially stresses an obvious thing. It is impossible, practically speaking, for a President removed from office to stand for re-election. I do not imagine any high principles involved in this. We are dealing with important matters. If something else has to be done about it, it will be done later.

As regards the amendment concerning the term of years, that too is not a matter of big policy. We fixed this period for various reasons into which I need not go now, one of them being not to just fit in with the four-year period of the other elections. Now, many members seem to think that, while the elections to the provincial and other legislatures will take place once in four years, this alone will take place every five years and that after sometime it may so happen that the electors will be rather old in the sense of being elected three or four years previously. Well it may be that the five-year period for the President will be a fixed term unless the President dies or is impeached or something happens to him. But, so far as the other provincial, etc. elections are concerned it is obvious and it is highly likely that the four-year period will not be strictly adhered to. Elections will necessarily have to be held from time to time. Something may happen; the Ministry might change; it might lose the confidence of the House and so many other things may happen and there will be so many of the provincial legislatures that you can not say at any time that the membership has remained constant without a change. Membership of the legislatures will be changing from year to year or from quarter to quarter so that this objection that the 'Rashtrapati' will be chosen by an electorate which itself has been chosen several years previously does not hold at all. There will be a changing electorate all the time and the four-year period is only maximum period. The electorate may remain unchanged for one year or 6 months and fresh election will take place as it now does. I submit therefore that, in the balance, the five-year period is better.

Mr. President: I will put the amendment to the vote. The question is:

"That in sub-clause (1) of clause 2, for the figure "5" the figure "4" be substitute."

The motion was negatived.

Mr. President: Now I shall put the next amendment to the vote. The question is:

“That in sub-clause (1) of Clause 2, for the figure and word “5 years” the following words be substituted :

‘4 years or until the election of a new President whichever event happens later.’”

The motion was negatived.

Rai Bahadur Syamanandan Sahaya: Sir, I wish to say a word at the stage I do not think it will be right to take a negative vote on my amendment (No. 121). I would rather leave it to the drafters. A negative vote on this amendment will mean that in the opinion of this House an impeached President will be eligible for re-election. If the Hon’ble Mover is not in a position to accept my amendment I would withdraw it rather than risk a negative vote.

Mr. President: I take it that the House grants him leave to withdraw his amendment.

The motion was, by leave of the Assembly, withdrawn.

Mr. President: The question is that Clause 2 be accepted.

The motion was adopted.

CLAUSE 3

The Honourable Pandit Jawaharlal Nehru: I beg to move that Clause 3 be adopted. It runs as follows:

“3 Every citizen of the Federation who has completed the age of thirty five years and is qualified for election as a member of the House of the People shall be eligible for election as President.”

This is a very simple proposition and I do not think any argument is needed to support. It has been believed that a person who has not achieved much by the age of 35 is not going to do much later. Nevertheless, normally speaking in India, and more especially in other places, men up to 35 sometimes do not even get a chance to achieve much. Others hold the field. In any case, the age 35 is not a high limit. I think it is a fair limit. It means that a person who is chosen shall have at least a dozen years or so of experience. I think it is therefore a fairly safe age or debarring the candidates. I hope the House will accept the Clause.

(Amendment Nos. 123 to 128 were not moved.)

Mr. H. V. Kamath: While not moving my amendment, I would however, seek clarification from Pandit Nehru on one point. The expression used for a similar purpose in the Provincial Constitution was “reached the age of 35 years” and here we are using the phrase “completed the age of 35 years”. I do not know why we are adopting different language here. Do the two phrases mean one and the same thing?

The Honourable Pandit Jawaharlal Nehru: I am sorry I did not hear a word of what Mr. Kamath said. Anyway I am not responsible for the Provincial Constitution. I consider this a better wording. To say ‘completed’, means definitely what it says. What the other wording means I do not know. (*Laughter*).

(Messrs. Thakur Das Bhargava, Rajkrushna Bose and H. V. Kamath did not move the amendments in their names.)

Mr. President: I think these are all the amendments of which notice has been given. I think there is no other amendment. I shall now put the clause to vote.

Clause 3 was adopted.

CLAUSE 4

The Honourable Pandit Jawaharlal Nehru: I move Clause 4, Conditions of President's office.

“(1) The President shall not be a member of either House of the Federal Parliament and if a member of either House be elected President, he shall be deemed to have vacated his seat in that House.

(2) The President shall not hold any other office or position of emolument.

(3) The President shall have an official residence and shall receive such emoluments and allowances as may be determined by Act of the Federal Parliament and until then, such as prescribed in schedule.....

(4) The emoluments and allowances of the President shall not be diminished during his term of office.”

There is one small matter which I thought might be cleared up and I shall await an amendment to clear that up. In sub-clause (1), it says “The President shall not be a member of either House of the Federal Parliament.” Obviously he should also not be a member of any provincial legislature. I believe some amendment will be moved to this effect. If so, I will accept it.

Nawab Muhammad Ismail Khan (United Provinces: Muslim): May I ask the Mover as to what he means by the words “The President shall not hold any position of emolument.” Does he also mean that he cannot be a director of a company or merely that he cannot hold any position of emolument under the Government?

The Honourable Pandit Jawaharlal Nehru: He shall not hold any other office or position of emolument, whatever it may be. He cannot hold any other office which brings him some gain.

Nawab Muhammad Ismail Khan: I hope you will make it quite clear.

The Honourable Pandit Jawaharlal Nehru: It is perfectly clear. It is dead clear. As the House knows, the convention is that even the Ministers should not hold directorships of companies. That is the convention in many countries although it cannot be the law. So far as the President is concerned, he should not hold any directorships or any position of profit or gain in business.

Dr. B. Pattabhi Sitaramayya (Madras: General): But that is not conveyed by the wording.

Mr. President: We shall have a discussion of the clause when all the amendments have been moved.

(Messrs. Seth Govindas, Ajit Prasad Jain, S. V. Krishnamurthy Rao and Naziruddin Ahmad did not move their amendments.)

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I beg to move that for sub-clause (2) of Clause 4, the following be substituted:

“(2) The President shall not hold any position or office under the Union or under any Provincial Government, or in or under any local authority or in or under any business concern (whether incorporated or not) in any honorary capacity or for any emolument allowance.”

Sir, I find that this point has struck some honourable members of this House. What the report says is that the President shall not hold any other office or position of emolument, but it may be that he may hold an honorary office in a business concern. If he is concerned with any religious charitable, educational or similar other institution, there can be no objection, but I think, if he is connected with any business concern even in any honorary capacity, it will be open to serious objection. Any businessman can ask the President to be a patron of his business and he might secure good business because of that. That would be throwing the President into the arena of party politics. I would submit that this sort of business connection should not be allowed. I am only urging this to enable the drafting committee to consider this point. This is all that I desire to submit to the House.

Mr. H. V. Pataskar: Sub-clause (2) of Clause 4, gave rise to doubts and and therefore I tabled this amendment which stands in my name, "nor shall he be interested in any business or profession for gain or profit". Since I now understand that it is not the intention that the President should hold any interest in any business, I am not moving this amendment. All the same, I would request that when the final draft constitution is prepared, this should be made more clear.

Shri T. A. Ramalingam Chettiyar (Madras: General) : My amendment refers to appointments after the President has held office. I will leave it to the Mover to accept it or not, as he likes, and if he does not accept it, I do not want to press it.

The Honourable Pandit Jawaharlal Nehru: What is the amendment referred to it?

Mr. President: The amendment which Mr. Ramalingam Chettiyar has given notice of is "that the person who has held office as President shall not be eligible to be appointed to any salaried office in the Federation" *i.e.*, after he has ceased to be a President, he shall not be appointed. The amendment is not moved formally. Therefore we shall proceed further.

(Messrs. D. Govinda Doss, P. Kakkan, V. I. Muniswami Pillay and P.M. Velayudapani did not move their amendments).

K.T.M. Ahmed Ibrahim Sahib Bahadur (Madras: Muslim) : Mr. President, Sir, I move:

"That in the last sentence of sub-clause (2) of Clause 1, for the words 'the votes of the Federal Parliament and until then, such' be deleted."

Now, Sir, the President of the Federation is the supreme executive authority of the whole State and as such he should be completely free from any party influence when once he is elected. But if the determination of his emoluments and allowances are dependent on any Act of the Federal Parliament it is quite possible that he will be conscious of the fact that the determination of his salary is subject to party influence and that his actions may on occasions be swayed by such consciousness. It is therefore meet and proper, Sir, that the President's salary should be placed beyond any party influence in order to ensure impartiality in his actions and therefore I have moved this amendment. I hope it will be accepted by the Honourable Mover.

(Messrs. B. M. Gupta, R. K. Sidhwa, Biswanath Das, Thakur Das Bhargava, Syamanandan Sahaya and S. Nijalingappa did not move their amendments).

K.T.M. Ahmed Ibrahim Sahib Bahadur: Mr. President, Sir, I move:

"That in sub-clause (4) of Clause 4, for the word "diminished", the word "altered" be substituted."

[K.T.M. Ahmed Ibrahim Sahib Bahadur]

In the draft it is provided that the salary of the President shall not be diminished, but at the same time there should also be no provision for the increment of salary during his tenure of office as President. The reason is the same as I pointed out when I moved the previous amendment., *i.e.*, the President should not be in any way conscious that his salary is dependent on any Act of Parliament and it is absolutely necessary that the quantum of his salary should be determined by the Constitution Act itself.

Mr. Ramnarain Singh (Bihar: General): *[Mr. President, I propose:

“that the President must not be a party-man”.

When the Objectives Resolution enunciating our objectives was moved in the House I put in an amendment that a proviso that no party would be deemed legal in this country, should be incorporated in the constitution. Every party whether named after any person or following any particular principle should be declared illegal.

The reason for my amendment is this. In many countries of the world there are party governments and they flatter themselves with the thought that they are democratic. What does democracy mean? It means, “Panchayati Rajya”—the peoples’ government. The very word makes it clear that the party system of government is poles apart from democracy. In India it is believed that the “Panch”, is God Himself and its rule is God’s rule. I venture to say that the very term party system deteriorates at times into a government of the wicked and the sly. Sometimes it seems as if there is no gentle soul in the party. A few sly persons from a party and establish their own government in the name of Democracy. I appeal to the members of this Assembly that the party system be abolished. So long there is a party true of democracy cannot exist. The party system is fatal to democracy.]*

The Honourable Pandit Jawaharlal Nehru: *[Mr. President, on a point of order. I would like to know what bearing this speech has on my motion.]*

Mr. President: The amendment which he has moved is ‘that the President must not be a party-man’.

The Honourable Pandit Jawaharlal Nehru: I should like to understand its bearing.

Mr. President : He wants to put a disqualification on a candidate who wants to stand for Presidentship.

The Honourable Pandit Jawaharlal Nehru: A disqualification which can be measured, weighed, computed somehow. It must have some relation to fact.

Mr. President: So far as the amendment is concerned, I cannot rule it out.

Mr. Ramnarain Singh: *[Yes, I will just tell you. I am condemning here the party system and suggest to the House that our President should not be a party man. What I mean is this that often the party system of government is mistaken for democracy or Panchayati Rajya. To make it clear let me put a concrete example. Suppose a particular party has 300 members in the Assembly.]*

Mr. President: *[Please do not discuss the party system at length. You just make out your point that the President should not be a party man. Merits and demerits of the party system cannot be discussed here.]*

*[]*English translation of Hindustani Speech.

Mr. Ramnarayan Singh: * [I submit to your ruling, Sir, I shall not discuss that. But it is difficult for me to support the amendment unless we condemn the party system. However, I shall not further press it at the moment. If given a chance, I shall speak on its later. Now I conclude with the remark that it is absolutely essential that the President must not be a party man.]*

The Honourable Sir N. Gopaldaswami Ayyangar : Sir, I wish to move an amendment to sub-clause (1) of Clause 4. It is in the following terms:

“For sub-clause (1) of Clause 4 the following be substituted:

“The, President shall not be a member of Parliament or of any, Legislature and if such a member be elected President, he shall be deemed to have vacated his seat in Parliament or in the Legislature concerned.”

The Principle of sub-clause (1), which, now, according to the draft above the House, applies only to the Federal Parliament will be extended by this amendment to membership of the legislatures of the Units. I have advisedly used the terms ‘Parliament’ and ‘Legislature’, because, under the principles adopted for drafting in connection with this document, “Parliament” applies to the legislature of the Federation and the word ‘Legislature’ is confined to the legislatures of the Units. I have nothing more to say.

Mr. President: All the amendments have been moved. The original proposition and the amendments are now open for discussion.

Shri K. Santhanam : Sir, I accept the clause as it is; but I do feel that it requires to be filled up in the drafting stage.

My honourable friend Mr. Ram Narayan Singh moved an amendment which in its present form is not suitable. The President has to stand as a party man. But it is essential that after the election, he should give up all his association with any political party.

As you know, there has been some discussion as to whether the Speaker of the Assembly can continue to be a party man. It has not yet been decided. I hope in the new Constitution, the President, the Governors and the Speakers, will all cease to have connection with any political party.

Then, again, there are business connections. Of course, “position of emolument” may cover many things; but it will not cover other things. Take for instance the holding of shares in a company. It is not possible to prevent the President from holding shares; but it is essential that as soon as he is elected, he must declare his holdings in any company so that the public will know. During his term of office, he should not be allowed to acquire any shares or immovable property except through a special procedure. We must keep the President far above all these complications. Otherwise, all kinds of rumours and slander will be set afloat. I hope the Drafting Committee which will be set up for drafting will go into the matter and give us a good, comprehensive draft which could be put into the constitution.

Pandit Lakshmi Kanta Maitra: Mr. President, Sir, I wish to, put in half a dozen sentences in connection with the amendments which have just been moved.

In reply to the question of my Honourable friend Mr. Ismail, the mover of the resolution has made it perfectly clear that the Union President will not be entitled to hold any office in any joint stock or limited company. He cannot be a Director of a registered or unregistered body. He cannot be in receipt of any salary or emoluments from any quarter. The principle is very salutary and sound. He should be a man who has no other allegiance except to the State, a man who has for the time being dedicated his whole energy to the service of the State. He should be in a position to give undivided attention to his office.

* [] *English translation of Hindustani Speech.

[Pandit Lakshmi Kanta Maitra]

While I am clear on this and the House will agree to this, that he should not hold any office of emolument, I think we should go a step further. I am inclined to think that the President should not hold any honorary office. For instance, he cannot be the President of a Chamber of Commerce; he cannot be the President of a Trade Union organisation and the like. My idea is that from such honorary offices also he should be excluded, because, his position might be utilised for furthering sectional interest. I am not moving a formal amendment. I hope and trust that the honourable the mover of the resolution, when it goes for final drafting, will take note of these things and see to it that in the final draft these things are included.

We are all agreed that the President should be a man, who like Caesar's wife, should be above suspicion. To ensure this, all these steps should be taken and even the extreme step proposed by my honourable friend Mr. Ram Narayan Singh should be taken into consideration. You cannot eliminate a party man from standing for the Presidentship. But as soon as he gets into the office of Union President, he should certainly sever all his political connections and political affiliations, and he should cease to be a party man. That goes without saying. Keeping in view all these things, I hope the honourable the mover will, at the final stage, take such steps as will make the position of the President unimpeachable and above suspicion.

Mr. M. S. Aney (Deccan and Madras States): Mr. President, Sir, I have to make one or two suggestions in regard to the words "Position of emoluments" so that when this memorandum goes back to the Drafting Committee for final draft, they may be taken into consideration.

It has been pointed out, and rightly too, that the words "position of emolument" are not comprehensive to include many position in which emoluments are had by persons and therefore the words have to be made more clear. I may point out one or two instances which probably you may not have noted. For example in the C.P. and Berar, there is a system of hereditary village officers known as Patels and Patwaris. Again there are persons who are called *Ex-Pargana* officers styled Deshmukhs. Deshpande, etc. They were real Pargana officers in olden times and in recognition of that fact, certain emoluments are given to them by the British Government. My honourable friend Dr. P. S. Deshmukh who is our colleague in this House belongs too that class. They get certain emoluments which are known as *Rasams*; these persons are called *Ex-Pargana* officers. Up to this time, in all matters of elections, Patils, Patwaris and these Pargana officers in C. P. and Berar used to be considered as not holding a position of emolument debarring a citizen from standing as a candidate for election. The second thing I want to mention is there are members of the old Royal family who are getting certain political pensions. They are not called emoluments. Are we to consider that persons in this position should be debarred from standing for election as President? It is not an emolument but a compensation paid for what was taken from their royal ancestors. It is something in the nature of a private property of the man. These are the three kinds of emoluments, two of which are particularly peculiar to the provinces in which I live I therefore wish that the Committee which is going to draft the Constitution should consider these points while drafting with a view to exclude them from emoluments, in this clause.

With regard to the amendment of my friend Mr. Ram Narayan Singh would like to state that if a man, no matter what party he belongs to, once occupies the Presidentship, he must sever his connections with the party and remain a non-party man, but you cannot expect a man to be a non-party man before he does take that place. It is something like asking

a fish not to be in the water. A person must belong to some party, it may not be a political party like the Congress, it may be some other party, he may belong to some religious party. A man being a social being, is supposed to belong to some kind of a party or group and if we use that word 'non-party man' it will be difficult to elect a President. Therefore, although I cannot subscribe to that particular amendment which he has suggested, I accept the principle that once he is elected to that position, he is expected to be a non-party man and he should sever his connection with his party and remain there as a man belonging to all or as a man belonging to none. He must take one of the two positions and only in that case he will be in a position to discharge his duties properly.

Mr. President: Mr. Sri Prakasa.

Shri Sri Prakasa: Listening, Sir, to some of the speeches almost compels me to repeat what I said in another place that it seems that some members at least are of the opinion that the President should be a person who has no ostensible means of livelihood. (*Laughter*). I think, Sir, that we should have some trust in the person whom we are putting up for the Office of the President. We should not fetter him in any way. If we do not like the man's profession, then we need not put him up at all. But if we like the man, we can trust him to do his best as President and not allow his profession to interfere with his actions. We can understand your prohibiting a man from practising law or practising Medicine as long as he is the President of the Republic but it would not be fair to, expect him to give up all or any means of livelihood that he may possess as a non-President simply because he is elected to the office of the President.

How, I ask, would it be possible for a person to transfer all his property, if he has any house property, landed property, shares, etc. to someone else who should keep all these things in trust for him against the day when he returns to non-official life? How are you going to be sure that the person is going to get back on relinquishing his office, all the property which he possessed before he became President? I could agree, if you have a provision that a person who has once been a President will be guaranteed a sufficient competence for the rest of his life. In that case I can understand any member wanting to deprive the President of all or any of his possessions that he may have had before. Even lawyers find it difficult to go back to their profession after they have been out of it for a long time. I am particularly worried about persons who like myself, may possess some landed property. (*Laughter.*) Before all these landed properties are abolished in your province and mine, there may be some provision made for persons—not that I am a candidate—who are in that position so that they could stand for the Presidentship. There may be some provision so that persons who are in the unfortunate position of possessing some properties of that nature may not be wholly debarred.

Sir, it would not be fair either for the person who is put up for the Presidentship to be required to declare all the shares that he may possess in various companies. Suppose he forgets one or two non-paying shares that he possesses *e.g.*, in the *National Herald* of Lucknow.....

Shri Balkrishna Sharma (United Provinces: General): May I know on a point of information, *viz.*, why has he taken it for granted that the person will have divest himself of all his properties as soon as he takes up his office.

Shri Sri Prakasa: I thought that was what Mr. Santhanam was after.

Shri K. Santhanam: I merely wanted him to declare his shares so that we will know.

Shri Sri Prakasa: I think, Sir, we must look at the man whom we are putting in the President's position and not at his property or at his shares or anything else. If we trust the man, we ought to put him in that office. If we don't, we ought not to put him there. Even if you make a beggar a

[Shri Sri Prakasa]

President, he can be as dishonest as the biggest shareholder or anyone else. Honesty does not necessarily depend upon the economic position of the individual. Honesty is something apart. What we want is that our President should be a person above suspicion; and whether he is already possessed of any property or not does not really matter. I think we should not hedge in the position of President by any of the provisions that we are seeking to introduce.

Shri M. Ananthasayanam Ayyangar: Sir, it is rather surprising that we should hear these words from our friend Shri Sri Prakasa. It is not that he has entirely misunderstood the scope of the amendment. If he should be chosen as the President, let him continue to be in possession of his properties. But we will assume he becomes the Commerce Member. He ought not to deal in shares the moment he becomes a Member. Otherwise, if a Commerce Member of any Government or the President gets into the share market, there is an assurance that that particular share for which he goes in is a sound one. The next day he may sell them away. He will be in a position to monopolize the shares. We are not going to clothe the President of the Federation with such powers to traffic in immoral business—there are various kinds of immorality. Now, Sir, my friend Mr. Santhanam's amendment is that we should insist, upon the President to declare what shares he possesses. My friend Mr. Sri Prakasa says there may be a share lurking in some corner and he may not know. I don't think he will be so negligent about his own affairs. But he expects the President to be negligent about his affairs. As regards business, even if he is a honorary President or Director of a business, and may receive only sitting fees, all the same when he has to give assent to a particular Bill, he may be induced to send it back, particularly if those provisions affect his bank or concern. I don't mean to say that a particular thing will arise but it shows the necessity why the President should not be connected with these directly or indirectly.

Then as regards his being a party man, Sir, it is impossible unless he is a wooden block or a wooden tool. He ought to belong to one party or other. After he is elected, it must be obligatory that he should resign all his connection with the previous party and absolve himself of the allegiance that he owes. To that extent, one may reasonably expected but to say that he ought not to be a partyman is impracticable. I am trying to find out one but I am afraid we may not be able to get a non-party man at all. I can only think of a pial school teacher as a non-party man. Even he may be inclined in favour of his District Board President who may be a party man. Therefore, it is impossible to come across a non-party man in any sense of the word. It is enough if he gives up his connections with his party after he becomes President of the Federation or the President of the Union. I do say, Sir that all these limitations and qualifications are necessary so as to ensure that proper administration and proper men will be available.

Mr. President: There is no other speaker. Has the Mover of the clause anything to say in reply?

The Honourable Pandit Jawaharlal Nehru: Sir, a great deal has been said about the emoluments of the President. It seems to me that it is very difficult to make lists of offices which he should not hold. Only a general principle can be laid down and carefully no doubt, but subsequently the rest depends a great deal on convention. If you start making long lists, it means that there may be many things left out which he can do. So normally speaking, one will have to depend upon convention. The point is that he should not be actively connected or associated with the management of any gainful office. Obviously, in the modern world, if he is a at all well-to-do, he will have some shares or like Mr. Sri Prakasa he may be a landholder or he may have some other property. There is

no chance as far as I can see of Mr. Sri Prakasa being prevented from standing for the Presidentship and I would deem it a calamity if it were so. So I submit that at this moment one need not go further into this question but leave it as it is,—and not only for the drafting but for the convention to grow up.

In one matter I am inclined to agree with what Mr. Santhanam said, although I do not think it is necessary to put it down, and that is that any person in high responsible office should make some kind of disclosure of his connections with business and of his holdings, etc. I think there would be an advantage in that, whether he is a President or whether he is a Minister or any other person in high responsible office. (*Hear; hear.*) I accept. Sir, the amendment moved by Sir N. Gopaldaswami Ayyangar, which clarifies sub-clause (1).

There is the question I believe of the emoluments and allowances of the President. A suggestion has been made that some other words should be used instead of “diminished”. After consideration we came to the conclusion that “diminished” was the right word. We could use “varied” or “increased or diminished” but on the whole “diminished” was considered the best. The point is that the legislature has in its power to do anything it chooses, but it must not exercise its power to the detriment of the person who has been chosen the President. There is no question of increasing his allowances or emoluments unless the Parliament so desires. You need not check Parliament doing anything, but there is the slight danger possibly of Parliament or the people from making the position of the President impossible. Therefore You say it should not be “diminished.” In these days, one does not quite know, suddenly there might be inflation and it may affect the situation so much that all normal standards of salaries and allowances might have to change. So I don't think any change is needed there.

Last of all, the amendment moved in regard to the President not being a party man—now, I don't know, but certainly I have a certain sneaking sympathy with such a proposition. But inspite of that, it seems to me completely impractical. What is a party man? No doubt, one thinks in terms of the huge party machines running political elections. But it is almost impossible for you to advise all of them. There are all kinds of parties and a person does not become bad because he belongs to a small party or a big party. Everybody is associated, I am afraid, with some group or association. The point is that the President should not function as a partyman after he is elected. That, on the whole, is so. I am not myself clear in own mind as to what his relation to the party he belongs to should be after his election. However, the question does not arise. But in any event, he should function as any one should function, whether he is a partyman or not, completely impartially when he is in high office. So Sir, I regret I am unable to accept any amendment except Sir N. Gopaldaswami Ayyangar's.

Mr. President: I will now put the amendments to vote. I will first put the amendment moved by Mr. Naziruddin Ahmad:

“That for sub-clause (2) of Clause 4, the following be substituted:

- (2) The President shall not hold any position or office under the Union or under any provincial Government, or in or under any local authority or in or under any business concern (whether incorporated or not) in any honorary capacity or for any emolument or allowance.”

The amendment was negatived.

Mr. President: Now the amendment moved by K. T. M. Ahmed Ibrahim Sahib Bahadur:

“That in Sub-clause (3) of clause 4, the words ‘as may be determined by the Act of the Federal Parliament and until then, such’ be deleted.”

The amendment was negatived.

Mr. President: There is another amendment by the same member that—
“That in Sub-clause (4) of clause 4 for the word ‘diminished’ the word ‘altered’ be substituted.”

The amendment was negatived.

Mr. President: Then there is an amendment by Mr. Ram Narayan Singh, namely: that the following be inserted as sub-clause (5) of clause 4:

“(5) The President must not be a party-man.”

Mr. Ram Narayan Singh: I do not press my amendment.

Mr. President: I take it the House allows him to withdraw his amendment.

Honourable Members: Yes.

The amendment was, by the leave of the Assembly, withdrawn.

Mr. President: The amendment moved by Sir N. Gopaldaswami Ayyangar is:

“That for sub-clause (1) of Clause 4, the following be substituted:

‘The President shall not be a member of Parliament or of any Legislature and, if such a member be elected President, he shall be deemed to have vacated his seat in Parliament or in the Legislature concerned.’”

The amendment was adopted.

Mr. President: Now the Resolution, as amended, is put to vote.

Clause 4, as amended, was adopted.

The Honourable Pandit Jawaharlal Nehru: Sir, I move:

“*Clause 5.*—Appropriate provision should be made for election to fill casual vacancy is, the detailed procedure for all elections, whether casual or not, being left to be regulated by Act of the Federal Parliament:

Provided that—

(a) an election to fill a casual vacancy shall be held as soon as possible after, and in no case later than six months from, the date of occurrence of the vacancy; and

(b) the person elected as President at an election to fill a casual vacancy shall be entitled to hold office for the full term of five years.”

The word “casual” here has not been very happily used, Sir; but I propose to accept an amendment to delete it from the various places.

Mr. President: I shall take up the amendments now.

(Messrs. B.M. Gupte, A. K. Ghosh, Rajkrushna Bose, Biswanath Das and S. Nagappa did not move their amendments Nos. 151 to 155).

Mr. Naziruddin Ahmad: Sir, I beg to move:

“That in proviso (b) to Clause 5, the words ‘at an election’ be deleted.”

Sir, this is a purely drafting amendment which ought to be accepted.

The proviso says:

“The Person elected as president at an election...”

The words “at an election” are redundant, as he has been elected. The very fact that he is the person ‘elected’ as President makes it perfectly clear that he has been elected at an election. The moment you say ‘elected as President’ the words ‘at an election’ are necessarily implied, and are therefore redundant. My amendment, as I said, is purely a drafting amendment and it should be accepted, for obvious reasons.

(Messrs. K. Chengalaraya Reddy, Shibbanlal Saksena, Gokulbhai D. Bhatt, D.H. Chandrasekharaiya and C. Subramaniam, did not move their amendment Nos. 158, 159, 161, 162 and 163).

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, the Honourable Mover has already referred to the use of the words "casual vacancies" in this clause. This expression has given rise to a number of difficulties which deserve to be avoided. Casual vacancies are generally vacancies which occur in the middle of a prescribed term for a particular office, and when they are filled up, the person who gets into the office is supposed to be in the office only for the remainder of the term. But the whole object of this clause is that the person elected for the vacancy should start on a full term of office, and therefore it is desirable that the drafting of this clause should be so changed as to bring out the intention much more clearly than it does now. For achieving this end, I move the following amendment.

"That for Clause 5, the following be substituted:

'5. *Vacancies in the office of President.*—Appropriate provision should be made for elections to fill vacancies in the office of President, whether occurring before, or at, the end of the normal term of an incumbent of that office, the detailed procedure for elections being left to be regulated by Act of the Federal Parliament:

Provided that in the case of a vacancy occurring before the end of the normal term of a particular incumbent,

- (a) the election to fill the vacancy shall be held as soon as possible after, and, in no case, later than six months from, the date occurrence of the vacancy; and
- (b) the person elected as President at such election shall be entitled to hold office for the full term of five years."

I do not think any more words are necessary to explain it.

Mr. President: The amendments have been moved. The amendments and the Resolution are now open for discussion.

Mr. Jagat Narain Lal (Bihar: General): Sir, I have to say a few words about the amendment moved by Mr. Naziruddin Ahmad. He seems to think that the amendment proposed by him is merely a drafting amendment; but it is not so. Actually the vacancy may be filled in more ways than one. If the vacancy has been filled otherwise than by regular election, say by nomination or otherwise, then the person shall not be entitled to hold office for the full term. Therefore, I submit, Sir, that the amendment proposed by Mr. Naziruddin Ahmad is not an amendment which can be accepted.

Mr. President: There is no one else who wants to speak on the motion. The Mover may now reply.

The Honourable Pandit Jawaharlal Nehru: Sir, I accept Sir N. Gopaldaswami Ayyangar's amendment, that is all.

Mr. President: Then I shall put the amendments to vote. The amendment is:

"That in Proviso (b) to Clause 5, the words 'at an election' be deleted."

The amendment was negatived.

Mr. President: Then there is the amendment moved by Sir N. Gopaldaswami Ayyangar. It has been accepted by the Mover, but it has to be accepted by the House.

The amendment was adopted.

Mr. President: The amendment becomes the substantive clause. Now I put Clause 5, as amended, to the vote of the House.

Clause 5 as amended, was adopted.

Mr. President: It is now just 1 o'clock. The House stands adjourned till 10 o'clock tomorrow morning.

The assembly then adjourn till 10 of the clock on Friday, the 25th July, 1947.

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CONSTITUENT ASSEMBLY OF INDIA

Friday, the 25th July, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The following Member presented his Credentials and signed the Register: Mr. Mihir Lal Chattopadhyaya (West Bengal: General).

AMENDMENT OF RULES

Mr. President: The first item of the agenda this morning is a motion by Shri Sri Prakasa.

Shri Sri Prakasa (United Provinces: General): Mr. President, Sir, I have the honour to move:

That after Rule 5 of the Constituent Assembly Rules the following new rule be inserted:—

“5-A. Notwithstanding the provisions of Rules 4 and 5 above, the Governor-General of India, may in pursuance of His Majesty’s Government’s Statement of June 3, 1947, order; fresh elections to the Constituent Assembly from the areas mentioned in para 14 of that Statement and thereupon the members already elected from the said areas, whether or not they have taken their seats in the Assembly in the manner prescribed in Rule 3, shall be deemed to have vacated their seats; and the members newly elected shall be deemed to have been duly elected as members of the Assembly.

This Rule shall have retrospective effect from June 3, 1947.

Sir, I venture to place this motion before the House with three objects. The first is that I should like to regularise some of the very undesirable incidents that have occurred during the last few months. Secondly, I want to vindicate the honour of this Assembly and, if you will permit me to say so, with respect, your own honour as the President of this Assembly. And, lastly, I should also like to lodge a protest against the manner in which many things have been done during the last few months (*hear, hear*). Many old members of the Assembly who were originally elected were, so to say, summarily dismissed; new elections were ordered and new members were elected in their places.

Sir, when this Assembly was first elected—it does not matter how it was elected—it claimed to be what it obviously was, a Sovereign Body, fully entitled to make its own Rules of Procedure. It was quite clear that an Assembly like this could not go on without any rules for its own conduct and therefore we prepared a regular pamphlet that gave all the Rules of Procedure of this House. No person could claim that he was ignorant of the existence of these rules. If anyone had taken care to look into this pamphlet he would certainly have found Rules 4 and 5 staring him in the face, which laid down in unequivocal language the method by which new members of this Assembly could be chosen after other members had vacated their seats in the manner prescribed. What has happened, however, is that certain negotiations took place between certain people behind the back of this House, certain agreements were come to, some members were, so to say, summarily dismissed from this House, now, elections took place and new members were elected in their places. And we had to acquiesce in that agreement. Whether we like it or not, the fact is that new members have come and old members have

[Shri Sri Prakasa]

gone, and in the bargain our dear country has been cut up into two. I think, Sir, that it is high time that we should at least regularise this procedure by inserting a rule of our own so that we may at least save our faces and be able to say that what has been done has been done according to a definite rule framed by ourselves.

Now, Sir, my second purpose is to vindicate the position of this House and the honour of its President. I looked in vain during those fateful days to see you mentioned anywhere, in the course of those negotiations and to be assured that you were consulted. You may have been consulted as a Member of the Interim Government and as a member of the Congress High Command; but you were nowhere in the picture as President of this Assembly. I have no doubt that if you had been consulted as President of this Assembly, punctiliously careful as you are of the proprieties, you would certainly have asked this Assembly, for its own opinion on the subject.

When, Sir, you asked the Assembly whether it would permit me to move a simple Resolution like this the other day, you will surely have consulted the Assembly on such a vital matter if you had been consulted as President. We would have been amply satisfied if we could have been assured by you that you had agreed to the procedure on behalf of the Assembly, that was not sitting at the time. You were perfectly entitled to act on our behalf. The Assembly, however, if I may say so, has been completely ignored. The other day when Pandit Govind Ballabh Pant referred to some sort of a party mandate, you very rightly got up and said that the Assembly does not recognise any parties. But, if I am not mistaken, over and over again during those fateful days, 'the leaders of the two major parties' were referred to in statement after statement that appeared in the Press. So, while you do not recognise the existence of any party so far as this Assembly is concerned, we have to acquiesce in an arrangement that had been come to behind our backs by what are described as leaders of major parties in the country. In this connection I feel that the insertion of this rule might right the wrong to some extent, and we may at least have the feeling that what has been done has been done according to the rules of our Assembly themselves.

Lastly,—and this is as far as I am concerned the most important Part— I would like to lodge a protest against all that has happened. I do not think it was right either on the part of the leaders referred to in those statements or on the part of the Governor-General not to have consulted you, Sir, as our President and the Assembly in that important matter. You know that those negotiations have resulted in the cutting up of our country which is not to our liking. I have no doubt, Sir, that if the original procedure had been followed, and if all who had been elected to this Assembly had attended it and the matter had been placed before the House in the proper manner, we ourselves might have agreed—gladly or otherwise—to the very arrangement that was finally come to over our heads. We would in that case have had the satisfaction that the representatives of the country met in this Hall, and after solemn deliberation decided that for the time being at least in the interests of the country it would be best if we have two separate Constituent Assemblies and two separate parts of the country governed by two Governments. But, as it is, the whole thing has been flung at our face in a manner which it is difficult for an ordinary person to understand,—much less to appreciate. In any case, as things are, there is nothing else for us to do than to agree, as gracefully as possible, to what has happened. I hope that I shall have the unanimous support of the House to my motion to insert this new rule in the Rules of Procedure of this House.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I find myself in a difficulty in regard to this Resolution. But with regard

to the Honourable Member's desire to regularise any irregularity if there is one, I have full sympathy. Then again, with regard to the vindication of the honour of yourself, Sir, I also fully sympathise. Then, as regard the protest against many things that have happened, I feel that I should express my neutrality. Things happened in an overwhelming manner with which we poor fellows had nothing to do.

Coming to the merits of the Resolution, it says: that the Governor-General of India, may, in pursuance of His Majesty's Government's Statement of June 3, 1947, order fresh elections to the Constituent Assembly from the areas mentioned in para. 14 of that Statement.

Sir, in this famous paragraph are included the following areas:—

(1) Sylhet which is now beyond the jurisdiction of India; (2) West Bengal which is now within the jurisdiction of India; (3) and (4) East Bengal and West Punjab which are outside the jurisdiction of India; and (5) East Punjab which is within our jurisdiction.

Pandit Lakshmi Kanta Maitra (West Bengal: General): I want to know, Sir, whether the Honourable Member is in order in raising a discussion, on the whole of His Majesty's Statement, in connection with this Rule? The Honourable Member has referred to that Statement *in extenso* and to parts of it which have no bearing on the motion before the House.

Mr. President: I think he was referring to paragraph 14 of the Statement because the motion under consideration itself refers to it, and developing his argument. He is in order.

Mr. Naziruddin Ahmad: That is exactly my position, Sir. In fact, these areas are referred to by implication in the resolution under consideration. I was referring to the areas mentioned in paragraph 14.

Then it is said that as a result of the election of those members and in consequence of the proposed election, the members who have already been elected in the first election will from that date be deemed to have vacated their seats. It assumes therefore that till the proposed election the members who were originally elected at the first election would retain their seats, although I understand that all of them have resigned. Then again it is also sought to be made out that upon the proposed election the newly elected members—I believe members who would be elected hereafter—should be deemed to have been elected, and what seems to be impracticable and absurd is that they should be elected with back effect, namely with effect from June 3. I submit that there are three elections to be considered; the first election, the second election through which we, some of new-comers have come, and the proposed third election. The resolution ignores altogether the second election through which some of us have come. Then the implications of this are that the members who were elected at the second election have no *focus standi* as their place will be occupied by those elected at the first election and things said and done by us in this Assembly would have to be erased from the pages of the report. Then, let us consider the probable time when the third election is likely to take place. The second election took place within about a month of the June 3 Statement, that is in the beginning of July. This third election can thus take place within about a month from this date, that is about the 25th August. If that is so, serious complications will arise. The resolution refers to election from all the areas including those areas which will then be outside India. By 15th August, a new transformation in the country will take place. Two new Dominions will come into existence, and it would be a serious proposition to say that the Viceroy, Lord Mountbatten, will order fresh elections from the areas over which he has no jurisdiction. In these circumstances, I submit that resolution is impracticable. It will lead to serious anomalies. The resolution purports—at least so the speaker

[Mr. Naziruddin Ahmad]

made out-to regularise what has happened. It seeks to vindicate the honour of this House. The Honourable Member supposes that those very members who have been elected at the second election will automatically be elected at the third election, if any. I beg to submit that some of us may not be able to come. It may be that we will have a new set of members. In that case, the so-called regularisation of the election of members like us goes to the wind. I will ask, what is to become of our assertion that we have come here as loyal and law-abiding citizens of India? If we go out, will that declaration stand or will that go? Then what will become of the acceptance by Choudhury Khaliquzzaman Saheb of the National Flag on behalf of the League group here, if he fails to come? Then again, what will become of our signatures in the Great Book which is to go down to history? Will they be scored out and erased? What will become of the T.A. and daily allowances which we have received? Will the monies have to be returned or will that be made over to the next set of members to be elected and who are to be our legal heirs and representatives? These are some of the serious anomalies which face us in accepting the resolution as it stands. I have already submitted that I am in full sympathy with spirit which actuated this resolution. The resolution is however impracticable. It is said that the honour of this House will be vindicated by this. I believe that the honour of the President will not only be vindicated but will rather be stultified. The Honourable the President has in his wisdom allowed us to take part in the proceedings and do other things in the House. If the resolution is carried, I think it would stultify the action of our own President. I submit that, if the real desire of the Honourable Member is to safeguard the rights and prestige of the House, we could have done it by straightforwardly declaring that we adopt the second election. That would regularise the second election in a decent manner. That will regularise irregularities if any, and safeguard the honour and prestige of this House. I repeat I am in full sympathy with the spirit which actuated the Honourable Member in moving this resolution, but there are practical difficulties and the best way would be for the House to adopt the second election. With these few words, I submit that the resolution in its practical implications cannot be accepted, and therefore I respectfully beg leave to oppose it.

Haji Abdul Sathar Haji Ishaq Sait (Madras: Muslim): May I draw the attention of the Honourable Member to the last clause of the resolution which says that this Rule shall have retrospective effect from June 3, 1947?

Mr. Naziruddin Ahmad: That does not solve the problem at all. The point is, will those gentlemen, those Honourable Members who have been elected, come back, in a body in the third elections? Can any one guarantee that? If the same Honourable Members are elected once again, then this retrospective clause has some meaning. Retrospectivity with regard to members who would be elected for the first time at the third election has no practical meaning, so far as my humble judgment goes. Then there will be overlapping of two batches of members, the first batch and the second batch who will, according to the Resolution, both be members simultaneously for a period. With these few words, Sir, I respectfully oppose the adoption of this resolution.

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): Sir, I am in entire agreement with the object of the Honourable Mover of this resolution. At the same time, I must say that I find it difficult to understand it. The resolution gives power or seeks to give power to the Governor-General in pursuance of H. M. G.'s Statement of June 3 to do this or that even in the future. I cannot understand at all why the Governor-General should be brought into our rules. Mr. Sri Prakasa's object obviously is to validate something that has been done, something bad according to him, and I agree with him that was not done

with due propriety. I agree that we should validate it but not by making any fundamental changes in our rules, even giving powers to the Governor-General in the future about it. So I suggest, Sir, that instead of considering this resolution as it is in this form, it might be referred to a small committee to redraft it with the object of merely making it a validating measure. I would suggest a committee consisting of Mr. Sri Prakasa, Sir Alladi Krishnaswami Ayyar and Sir B.L. Mitter.

This is a legal matter and so I have suggested the names of these three lawyers although Mr. Sri Prakasa is not much of a practising lawyer. I do not think it will take very much time to redraft it and bring it forward as a resolution, not as an amendment to the rules.

Shri Sri Prakasa: I agree with what my friend Pandit Jawaharlal Nehru has just said. In fact when I tabled this Resolution at the beginning of this Session, the N.W.F.P. referendum was in the offing and there was the prospect of three more members being dismissed—they have since been dismissed and this is the reason why I have given this power to the Governor-General. Now this is finished, and so far as I can find out there is nothing for the Governor-General to do in this behalf so far as the H.M.G.'s Statement of June 3 is concerned. We might just as well have this in the form of a Resolution as suggested by Pandit Jawaharlal Nehru and I am quite agreeable to this Committee being appointed and to bring forward the whole thing in a sort of validating Resolution. In that case I shall ask for leave of the House to withdraw my motion.

The motion was, by leave of the Assembly, withdrawn.

The Honourable Mr. Hussain Imam (Bihar: Muslim): What about Assam? Election is still in the offing there.

Shri Sri Prakasa: This Committee will have to consider Assam also. It is just as well that it should.

Mr. President: I was just going to point out that the Resolution as it is drafted has that lacuna also. It does not cover members from Assam other than Sylhet. So I think the best course is, as has been suggested by Pandit Jawaharlal Nehru, that the matter be referred to a Sub-Committee and the Sub-Committee might redraft the Resolution, because, there is, as far as I can judge, no difference so far as the object is concerned. May I take it that it is the wish of the House that this Resolution be referred to a Sub-Committee consisting of Mr. Sri Prakasa, Sir Alladi Krishnaswami Ayyar and Sir B.L. Mitter?

The motion was adopted.

REPORT OF THE UNION CONSTITUTION COMMITTEE

Mr. President: We shall now go on to the consideration of the Report of the Union Constitution Committee. We shall take up Clause 6 of Part IV.

CLAUSE 6

The Honourable Pandit Jawaharlal Nehru: Sir, I beg to move clause 6 in regard to the Vice-President:

“(1) In the event of the absence of the President or of his death, resignation, removal from office, or incapacity or failure to exercise and perform the powers and functions of his office or at any time at which the office of the President may be vacant, his functions shall be discharged by the Vice-President pending the resumption by the President of his duties or the election of a new President, as the case may be.

(2) The Vice-President shall be elected by both Houses of the Federal Parliament in joint session by secret ballot on the system of proportional representation by means of the single transferable vote and shall be *ex-officio* President, of the Council of States.

(3) The Vice-President shall hold office for 5 years.”

[The Honourable Pandit Jawaharlal Nehru]

I might mention, Sir, that I propose to accept some amendments to this Resolution if and when they are moved. They are rather amendments regarding the wording of the clause and one or two lacunae have to be filled in this clause. With regard to the age of the Vice-President, it is the desire of the House, that his age should be fixed also as 35 as that of the President. I am prepared to accept it.

(Shri A.K. Ghosh did not move his amendment No. 165.)

Mr. Naziruddin Ahmad: Mr. President, Sir, I beg to move that for sub-clause (1) of Clause 6, the following be substituted:

“(1) When the President is absent from the Union or when the office of the President is by reason of his death, resignation or removal from office, or when the President is on account of illness or other cause unable to perform his duties, his functions shall be discharged by the Vice-President during the period (if such absence, of such vacancy or such inability as the case may be.”

Sir, the original Clause contains certain expressions which to my humble mind raise some amount of difficulty. I have suggested this amendment so that the House will consider the difficulty and the House or the Drafting Committee will consider them. The clause allows the Vice-President to function in certain contingencies. Sub-clause (1) refers to the absence of the President. Absence from where is not clear to me. We know that provincial ministers function even in their absence from their headquarters. Does the absence of the President mean absence from the Union, when he goes outside his area to a foreign country or when he leaves his headquarters. I suppose what is meant is “absence from the Union”. That is what I have attempted to incorporate in my amendment. The second difficulty is that the Vice-President should act when incapacity is established. There is great difficulty in determining what incapacity means and implies. The President may act in a certain way. One man might take the view that he has shown incapacity. The President might say that the critic has failed to appreciate his capacity, and many others might be willing to agree with him. There is no court of law or tribunal which can adjudicate upon the incapacity. Then the question arises. “Is the President supposed to be incapable of discharging his duty?” This creates a similar uncertainty. So this uncertainty should be removed. Incapacity is a very doubtful expression which may lead to serious complications and squabbles.

Then the other condition is “failure to exercise and perform his powers and functions”. That is also equally vague. It is not clear as to what is meant by “failure to perform the powers and functions of his office” and this is also open to the same arguments and objections as the word ‘incapacity’. So I have attempted to submit for the consideration of the House a sub-clause which eliminates the fundamental difference, the objectionable features, provided the House considers the same. Apart from that, there is nothing new in the proposed sub-clause which I have submitted, for consideration. I submit that these serious points should be taken into consideration and the principle of the sub-clause which I have submitted may be accepted, if agreed to. We are not now considering the real draft but to eliminate certain difficult problems, certain objectionable features principles. The amendment embodies certain principles and attempts and nothing more. With these words I request the Honourable Mover of the Resolution to consider the same and in possible give effect to the principles embodied therein.

Mr. President: I take it that the word ‘vacant’ is dropped after the words. “..... or when the office of the President is by reason of his death, resignation or removal from office” in your amendment.

Mr. Naziruddin Ahmad: Yes, Sir. The word “vacant” should be inserted. It was due to hurry that I lost sight of it. I am grateful to you for pointing it out. The word ‘vacant’ is to be so read in the context indicated.

(Shri Jadubans Sahai did not move his amendment, No. 167 in the list.)

B. Pocker Sahib Bahadur (Madras: Muslim): Mr. President, Sir, I beg to move:

“That in sub-clause (1) of Clause 6, the words ‘or incapacity or failure to exercise and perform the powers and functions of his office’ be deleted”.

In fact, the reason for this amendment have in some way been explained by the previous speaker. I submit, Sir, that these expressions are not only very vague, but they are also unnecessary and superfluous in view of the other parts of the section where such contingencies can be met. Who is to declare his incapacity or failure to exercise and perform the powers and functions of his office, or what is the criterion or determining it, these are matters too vague and there is no necessity for such a clause at all. Because, if a man is found to be incapable or fails in the discharge of his duty, there is the remedy of removal from office. Therefore, Sir, I do not think that it is either necessary or, advisable to have such a vague clause as that in the Statute. Therefore I move this amendment.

Mr. President: Mr. Gupte, your amendment is the same as the amendment which has just been moved.

Mr. Subramaniam, Mr. Diwakar, Mr. Naziruddin Ahmad, your amendments are the same as the one just moved.

(Amendment Nos. 169, 170, 171 and 172 were not moved).

(Messers. Rajkrushna Bose and Shibbanlal Saksena did not move their amendments, Nos. 173 to 176).

Shri D. H. Chandrasekharaiya (Mysore State): Mr. President, Sir, I beg to remove :

“That for sub-clause (2) of Clause 6, the following be substituted:

‘(2) The Vice-President shall be elected by the same electoral college.’”

Shri K. Santhanam (Madras: General): Sir, there is an amendment in my name in the supplementary list, to sub-clause (1) of Clause 6.

Mr. President: I will take up the amendments in the supplementary list also.

Shri D. H. Chandrasekharaiya: I beg to move:

“That for sub-clause (2) of Clause 6, the following be substituted:

‘(2) The Vice-President shall be elected by the same electoral college as is applicable to the election of the President and by the same method and he shall be an *ex-officio* President of the Council of States’.”

Under the Union Constitution, the President is proposed to be elected through an electoral college consisting of the members of the two Houses of the Federal Parliament and the members of the Unit legislatures, while the Vice-President is elected only by the members of the two Houses of the Federal Parliament. This means that in the election of the Vice-President, the members of the Unit legislatures will have no hand, whatsoever. I for one have not been able to see as to why this difference is made in the method of the election of the President and the Vice-President. The Vice-President is as much an important functionary of the Federation as the President himself. As you know, he is to act for the President during his absence, and, besides he is to preside over an important chamber of the legislature namely the Upper House. I think that the same electoral college which elects the President can be made use, of without much difficulty for electing the Vice-President. In the

[Shri D.H. Chandrasekhariya]

United States of America, the Vice-President is elected through the same electoral college that elects the President. The same method may be adopted here with great advantage. I therefore urge that this amendment of mine is a very reasonable one and that the House will be pleased to accept it.

Mr. President: I think, Mr. Santhanam, you had better move your amendment at this stage.

Sri K. Santhanam: Sir, I move:

“That for sub-clause (1) of Clause 6, the following be substituted:

‘During the interval between the occurrence of a vacancy in the office of President and its filling up by election and when the President is unable to discharge his functions owing to absence, illness or any other cause, his functions will be discharged by the Vice-President’ ”.

This is largely a drafting amendment and many of the other speakers have explained why a change is required. I have tried to put in it the briefest and most lucid form possible.

(Messrs. Rajkrushna Bose, A.K. Ghosh, H.V. Pataskar, Brajeshwar Prasad, H.J. Khandekar and S.V. Krishnamoorthy Rao did not move their amendments, Nos. 178 to 183).

Mr. B. M. Gupte (Bombay: General): Sir, I beg to move:

“That in Clause 6 the following be inserted as new sub-clause (3) and the existing sub-clause 3 be renumbered as sub-clause 4:

‘During the time the Vice-President is acting in the place of the President, the Council may if necessary elect a temporary Chairman’.

Sir, the Vice-President is to be the *ex-officio* President of the Council of States. While he is acting for the President, he cannot function as the President of the Council of States. Therefore Provision has to be made for a temporary Chairman and that is done by my amendment.

(Messrs. Rajkrushna Bose, H.V. Pataskar and Shibbanlal Saksena did not move their amendments, Nos. 185 to 187.)

Shri D. H. Chandrasekharaiya: Mr. President, Sir, the amendment which stands in my name reads as follows:

“That in sub-clause (3) of Clause 6, for the figure and words ‘5 years’ the following figure and words be put in:

‘4 years or until the election of a new Vice-President whichever event happens later’.

The terms of office of the President is fixed at five years and it is proposed to fix the term of office of the Vice-President also for the same period. I do not see any reason as to why the periods for both the President and Vice-President should be one and the same.

It was urged in the case of the President that he should continue for sufficient time so that arrangements for electing a new incumbent may be finished. But such reasons will not apply in the case of the Vice-President and it will be reasonable and advantageous to synchronize the period of the Vice-President with that of the Lower House. As I explained yesterday, what happens under this arrangement is that he becomes more and more removed from the Lower House as it advances from the second to the fifth term. That is a position which is not very happy.

The House may be aware that in the U.S.A. the Vice-President is elected for four years along with the President and the provision for having a Vice-President in the Union Constitution must have been thought of in the light of the precedent existing in the American Constitution. If that is so, we should be ready and willing to follow the practice adopted elsewhere. The American Constitution is more than 150 years old now and considerable experience must have been gained

in working the same. In framing our own Constitution it would be useful to accept the principles or methods adopted elsewhere. It is only by profiting by the experiences of others that we can make our Constitution more perfect and practical than by inventing something new of which we may not know much. I feel, Sir, that the term of four years for the Vice-President is really in the best interest of the country and is a sound constitutional arrangement.

I have suggested that we might fix the normal period of the Vice-President at four years. But as pointed out in the amendment he may be continued for short period thereafter till a new legislature comes into existence and a new Vice-President is elected. This will enable the office of the Vice-President to remain always filled. I therefore commend this amendment to the kind consideration and acceptance of this House.

(Amendment No. 189 was not moved.)

Mr. Naziruddin Ahmad: Mr. President, Sir, I beg to move:

“That in Clause 6, the following new sub-clause (4) be inserted:

‘(4) The provisions of Clause 4 above shall, *mutatis mutandis*, also apply to the Vice-President.’”

In Clause 4 certain conditions are laid down for the office of the President. It seems reasonable that the same, in so far as they are applicable, be also made applicable to the Vice-President. This is only a drafting amendment.

Pandit Thakur Das Bhargava (East Punjab: General): *[Mr. President the amendment which I wish to move is as follows:

“That the following sub-clause be added after sub-clause (3):

‘(4) No person, who has not completed the age of 35 years, can be elected as the Vice-President.’”

There does not appear to me the necessity for mentioning many reasons for (the adoption of) this amendment. By accepting Clause (3), the House has accepted and is committed to the principle that no one below 35 years of age can be the President. And because the Vice President has to act in place of the President therefore there is little doubt, that the Vice-President should not be under 35 years in age. Besides, the Honourable Member (the Mover) has also expressed his readiness to accept this amendment. Therefore I do not want to waste the precious time of this House on other reasons (in favour of this amendment).]*

[Shri Mohanlal Saksena did not move his amendment. (No. 3 of Supp. List D).]

Mr. President: I think these are all the amendments of which I have notice. I take it that no other member has got any amendment of which he has given notice, Now the original clause and the amendments are open for discussion.

Mr. Tajamul Husain (Bihar: Muslim): Mr. President, Sir, sub-clause (1) of Clause 6 lays down that in the event of the President's incapacity or failure to exercise and perform the powers and functions of his office, the Vice-President shall carry on such duties. In other words, Sir, if the President is incapable or fails to carry out his duties, the Vice-President shall act for him. I find, Sir, there are two amendments to this resolution. The amendments are in these words:

“that the words ‘or incapacity or failure to exercise and perform the powers and functions of his office’ be deleted.”

That means that if the President is incapable or fails to do his duty, the Vice-President shall have no power, to act for him. The question that will arise is that if the President is incapable or deliberately does not do his duty, who, will act for him. Suppose he becomes suddenly ill

*[]*English translation of Hindustani Speech.

[Mr. Tajamul Hussain]

or insane. Surely there must be somebody to carry on the duties of the President. With all due respect to the Honourable the Movers of the amendment, I find the amendments are meaningless and therefore I have no option but to oppose it. Now, Sir there are two Officers, Heads of the States; one is the President and the other the Vice-President and if the President is ill, of course the Vice-President will act for him but when the Vice-President is doing the work of the President and acting for the President, there is no provision as to who will act for the Vice-President when he becomes temporary President.

Mr. R. K. Sidhwa (C.P. and Berar: General): Suppose the third man also falls ill?

Mr. Tajamul Husain: If the Vice-President is acting as President, then there should be someone to carry on the duties of the Vice-President. There is an amendment by Mr. Gupte which says that as soon as the Vice-President acts for the President, a Chairman should be temporarily elected to carry on the duties of the Vice-President. Now, Sir, I have been interrupted by my Honourable Friend Mr. Sidhwa from Sind. He says, "Well, what will happen if the third man is ill?" If I were to agree with him I would say "Have the fourth man as well". The only amendment before us is that there should be a Chairman. I support it.

Mr. Bhargava has just now moved an amendment that as there is an age-limit for the President of the Republic there should be also an age limit for the Vice-President. I think, Sir, this amendment is reasonable because after all the Vice-President automatically becomes President, if the President is dead, and it will look very anomalous that when the permanent President is 35 the Vice-President should be 22 or 21 years of age. I support that amendment.

With these words, Sir, I have finished.

Mr. Mohammed Sheriff (Mysore State): *[Mr. President, in my opinion the words "or incapacity or failure to exercise and perform the powers and functions of his office," should be expunged from sub-clause (2). If these words are retained intact, then I think, there will be many complications and we will have to face numerous difficulties. The purport of Section 6 is that the President is liable to be removed from office, if there is not a proper use of the proposed powers. The exercise of the powers that have been proposed for the President, is a "relative term". It is probable that you might consider proper what to me might seem improper and also that others might consider those powers proper which I might consider improper; therefore as I have already stated, this is a matter which is totally 'relative'. For this reason, I think that these words may be deleted and the remaining ones allowed to remain as they are. My other request is that the appointment of Vice-President should be on the basis of Adult Suffrage. While making the speech concerning the election of the President, the point which I kept in view was, that so far President and Vice-President are concerned—their appointments should be by way of direct election. Even though Pandit Nehru has said many things against this principle, I, as a supporter of democratic principles think it proper that the election of the Vice-President should be on the basis of adult suffrage. With these words, I support the amendment which my colleagues have moved.]*

Mr. President: I understand that Pandit Jawaharlal Nehru is in a position to accept some of the amendments. I am asking him to accept such amendments, as this will cut short the discussion.

B. Pocker Sahib Bahadur: On a point of order, Mr. President, I would just like to make this submission. The Honourable Member who spoke just now has evidently dealt with some amendments, of which one is mine own. I am not in a position to know whether he supported it

*[]*English translation of Hindustani Speech.

or he opposed it or what he said. Therefore it is only just and fair that I should know his attitude. May I request you therefore, Mr. President, to ask that gentleman to give a gist of his own speech in English? He is capable of doing that. He knows English well.

Mr. President: I have ruled before this that I cannot compel a member to speak in a particular language and if the member is suffering under that disability, I think he and the speaker can consult each other and find out what the latter's attitude is. (*Laughter*).

The Honourable Pandit Jawaharlal Nehru: Sir, the various amendments that have been moved fall roughly in two or three groups. I agree with most of the amendments in the sense that the wording of this Clause 6, as it has been printed, is not very happy. I think in regard to the first matter, *i.e.* "incapacity", that word is unfortunate. Of all the various amendments put forward I feel that the one which is shortest and clearest is Mr. Santhanam's. That, I think, meets most of the difficulties that have been pointed out. Therefore, I accept it.

I also accept Shri Gupte's amendment:

"That in Clause 6 the following be inserted as new sub-clause (3) and the existing sub-clause (3) be renumbered as sub-clause (4) ;

'(3) During the time the Vice-President is acting in the place of the President, the Council, may if necessary, elect a temporary Chairman'."

Lastly, I accept the amendment of Pandit Thakur Das Bhargava:

"That the following sub-clause be added after sub-clause (3) :

'(4) No person who has not completed the age of 35 years can be elected as the Vice-President'."

I do not think there are any other amendments on my proposal which I can accept.

Mr. Jagat Narain Lal (Bihar: General): I want to have some clarification: Sub-clause (2) provides for the method of election. It says:

"The Vice-President shall be elected by both Houses of the Federal Parliament, in joint session by secret ballot on the system of proportional representation by means of the single transferable vote and shall be *ex-officio* President of the council of States.

In case there is only one Vice-President to be elected, what is the meaning of having the election carried on the basis of proportional representation? We have got in our Constituent Assembly Rules, Rule 6, sub-clause (6) the process of elimination. I just want the matter to be clarified, whether in case there is only one Vice-President proportional representation would be necessary.

Mr. President: I am advised by those who are supposed to know these rules of representation that this system is proportional representation can be applied even in case there is only one vacancy to be filled in.

Mr. Jagat Narain Lal: Sir, I know that even in the case of the election of the President the system of proportional representation has been provided for and we have already accepted that rule. But still, I think it is our duty to point out that where there is only one person to be elected, the process of elimination which we have already provided for in the Constituent Assembly Rules is the best method. In that rule commends itself to the House, I submit, Sir, it is not too late even at this stage, to say that when the final drafting is done we should provide for that rule to apply here, instead of the present one which does not seem to have any meaning in order to fill a single vacancy.

Mr. President: As I have already said, those who are supposed to know these rules tell me that this system can be applied even when there is only one candidate to be elected. But if the Honourable Member has any doubts, I may request Sir N. Gopalaswami Ayyangar to explain that view-point.

The Honourable Sir N. Gopalaswami Ayyangar (Madras: General): Sir, I think there is some want of comprehension of the principle underlying the system of proportional representation. It can certainly be applied to cases where only one vacancy is to be filled. The application of this principle really ensures that the successful candidate should be returned by an absolute majority of votes. If there are more candidates than two, it may be that, if you apply the simple majority rule, the person who does not get 51 per cent. of the votes cast in the election might have to be declared elected; whereas, if you apply the principle of proportional representation, you will, by the system of transferring votes, be able to get a candidate finally declared elected by an absolute majority. That is why, even in cases where the seat to be filled is only one, we provide that it should be by the system of proportional representation by the single transferable vote.

Mr. Jagat Narain Lal: Sir, I do not propose to enter into further discussion about this point; but my purpose only to draw the attention of the House to it. I will read sub-clause (5) of Clause 6 of the Constituent Assembly Rules and draw the attention of Sir Gopalaswami Ayyangar to it. Sub-clause (5) says:

“Where there are only two candidates for election, the candidate who obtains at the ballot the larger number of votes shall be declared elected. If they obtain an equal number of votes, the election shall be by the drawing of lots.”

And sub-clause (6) reads:

“Where more than two candidates have been nominated and at the first ballot no candidate obtains more votes than the aggregate votes obtained by the other candidates, the candidate who has obtained the smallest number of votes shall be excluded from the election, and balloting shall proceed, the candidate obtaining the smallest number of votes at each ballot, being excluded from the election, until one candidate obtains more votes than the remaining candidate or than the aggregate votes of the remaining candidates, as the case may be, and such candidates shall be declared elected.”

I think, Sir, Sir Gopalaswami Ayyangar has been referring to this method. I do not know if the system of proportional representation refers to a method like this.

The Honourable Mr. Hussain Imam: May I explain, Mr. President?

Mr. President: Yes.

The Honourable Mr. Hussain Imam: The basic principles of proportional representation are the fixation of a quota. Fixation of quota takes place by dividing the number of votes by the vacancy *plus* one, and adding one to the result. For instance, if there are 100 voters and the vacancy is one, the quota will be 100 divided by two, which gives 50 *plus* one. So any person who does not secure 51 votes will not be elected. The quota is not filled up if nobody secures this number. The man who gets the least number of votes is eliminated; the votes go to the others successively until a person has secured 51 votes. As soon as 51 votes are secured by a candidate, he will be declared elected.

This is a short method of expressing the idea which prevails in elections in France where also elections are held on the basis that the President must have an absolute majority. There they have repeated ballots; but our framers have shortened the process by adopting the single transferable vote. They have attained the same object which France has, but by a simpler and more straightforward method.

Mr. President: I think we had better leave it at that.

Does anybody wish to speak about the amendments or the original clause?

Mr. Tajamul Husain: Sir, it is all finished. Pandit Jawaharlal Nehru has replied.

Mr. President: No, he has not replied. He has only referred to the amendments he is prepared to accept.

Sri M. Ananthasayanam Ayyangar (Madras: General): Sir, I want the Drafting Committee to take note of certain inconveniences that

may arise by allowing the clause to stand as it is. No amendment is necessary at this stage. The Vice-President can be an outsider belonging to neither the Council of States nor to the Lower House—the House of the People; under the existing law, in the Council of States the President as well as the Deputy President are both members of the House; the Vice-President under the Constitution will be an extra member with a vote in case of difference of opinion. This matter has therefore to be considered. It has to be considered for the reason that we expect both the Houses to be absolutely elected, except in the case of the Upper House where ten seats are reserved for nomination. He may fill one of the nominated seats instead of adding to the seats already provided for in the latter clause.

Secondly, he may be a member of the Lower House—the House of the People in which case provision has to be made that he will cease to be a member of the Lower House the moment he is elected Vice-President of the Federation and *ex-officio* President of the Upper House. Under the existing law, there is provision for a President and a Deputy President for the Upper House, Pandit Jawaharlal Nehru accepted the amendment of Pandit Thakur Das Bhargava, that a temporary Chairman may be elected whenever the President of the Upper House who is the Vice-President of the Union acts as the President of the Union. Instead of that, I would suggest that as soon as the Vice-President is elected for the Union, a Deputy President may also be elected for the Council of States who normally acts when the President is not there. You know, Sir, that in the Assembly there is the President and the Deputy President. The Speaker cannot sit all day long and the Deputy Speaker takes his place now and then. Likewise provision has been made in the Government of India Act for a Deputy President who will constantly officiate for the President in the Council of States whenever the President, even during the course of the day is not able to sit, when the sitting goes on. Therefore, instead of having a temporary Chairman, a Deputy President may be appointed from among the Members of the Council of States to officiate when the President who is the Vice-President of the Union is unable to preside.

Thirdly, he may be a member of any House or any legislature elsewhere, in which case also provision has to be made that he ceases to be member of any of those Houses.

All these, I would like the Drafting Committee to take note of, before they place a detailed Bill, before the House.

As regards the amendment which seeks to reduce the period of five years to four years I see no reason for accepting it. Whether it is four years or five years does not matter so long as the full term of a member of the Council of States is six years which is the normal period after the first retirement by rotation, so that we will not extend it beyond six years.

I therefore find no reason for this amendment and it need not be accepted.

Mr. President: I will now put the amendments to vote. There are two amendments which are in the nature of substitutions of sub-clause (1) of Clause 6 one by Mr. Santhanam and the other by Mr. Naziruddin Ahmad. I will put Mr. Santhanam's amendment first.

The question is:

“That for sub-clause (1) of Clause 6 the following be substituted:

‘During the interval between the occurrence of a vacancy in the office of President and its filling up by election and when the President is unable to discharge his functions owing to absence, illness or any other cause, his functions shall be discharged by the Vice-President.’”

The motion was adopted.

Mr. President: It is not necessary to put the amendment of Mr. Naziruddin Ahmad and Mr. Pocker Sahib.

The question is:

“That for sub-clause (2) of Clause 6 the following be substituted:

‘(2) The Vice-President shall be elected by the same electoral college as is applicable to the election of the President and by the same method and he shall be an *ex-officio* President of the Council of States.’”

The motion was negatived.

Mr. President: The question is:

“That in Clause 6 the following be inserted as new sub-clause (3), and the existing sub-clause (3) be renumbered as sub-clause (4):

‘(3) During the time the Vice-President is acting in the place of the President, the Council may if necessary elect a temporary Chairman.’”

The motion was adopted.

Mr. President: The question is:

“That in sub-clause (3) of Clause 6 for the words ‘5 years’ the following words be added

:

‘4 years or until the election of a new Vice-President whichever event happens later.’”

The motion was negatived.

Mr. President: The question is:

“That in Clause 6, the following new sub-clause (4) be inserted:

‘(4) The Provisions of Clause 4 above shall *mutatis mutandis*, also apply to the Vice-President.’”

The motion was negatived.

Mr. President: The question is:

“That the following sub-clause be added after sub-clause (3):

‘(4) No person who has not completed the age of 35 years can be elected as the Vice-President.’”

The motion was adopted.

Mr. President: I think the sub-clauses will have to be renumbered and the House will give permission to the Drafting Committee to renumber the sub-clauses. I will now put to vote the clause as amended.

The question is:

“That the clause, as amended be adopted.”

Clause 6, as amended was adopted.

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, I beg to move that Clause 7* be adopted. There is very little that I need say on this clause. The executive authority of the Federation in any State has really to be vested in the head of the State; in this case it will be the President of the Federation. The supreme command of the defence forces of the new State is also to be vested in the head of the State and that explains sub-clause (2) (a).

Practically all the amendments that have been given notice of relate to sub-clause (2) (b). On this point I understand a motion will be made by Sir Alladi Krishnaswami Ayyar for adjourning consideration of this particular item as the matter is being examined with reference to certain aspects of the question that have been brought to notice. That examination will, we hope, be concluded in a day or two, and when we meet next on Monday we shall probably be in a position to consider that on its merits.

Sir, I move.

7*: (1) Subject to the provisions of this Constitution the executive authority of the Federation shall be vested in the President.

(2) Without prejudice to the generality of the foregoing provisions:

- (a) The supreme command of the defence forces of the Federation shall be vested in the President;
- (b) The right of pardon and the power to commute or to remit punishment imposed by any court exercising criminal jurisdiction shall be vested in the President, but such power of communication or remission may also be conferred by law on other authorities.

Sir Alladi Krishnaswami Ayyar (Madras : General): Sir, I move that the consideration of sub-clause (2) (b) be postponed I do not think it is necessary to give any detailed reasons for this. The clause requires closer examination with reference to the powers of the provincial Governor, the position of the States, *etc.* and if the House agrees the consideration of this clause may be taken up on Monday.

Mr. President: The question is:

“That the consideration of the Clause be postponed.”

The motion was adopted.

The Honourable Mr. Hussain Imam: Sir, what will be the position about amendments? When the new version of the clause comes up will an opportunity be given to the House to move amendments to it?

Mr. President: Yes, certainly; when certain changes are proposed members will be given an opportunity to give notice of amendments.

The Honourable Sir N. Gopaldaswami Ayyangar: The procedure may be that when this examination is concluded notice of an agreed amendment will be given by somebody and copies of that will be circulated to Honourable Members who will be at liberty to propose amendments to that amendment.

CLAUSE 8

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, I beg to move Clause 8, *viz:*

“8. Subject to the provisions of this Constitution, the executive authority of the Federation shall to the matters with respect to which the Federal Parliament has power to make laws and to any other matters with respect to which authority has been conferred on the Federation by any treaty or Agreement, and shall be exercised either through its own agency or through the Units.”

This merely states the general principle that executive authority is co-extensive with legislative authority. The only exception is in respect of matters which are provided for by special treaties or agreement and that occurs at the end of this clause.

(Amendment Nos. 201 and 201-A were not moved).

Sir Alladi Krishnaswami Ayyar: Mr. President. I have given notice of an amendment to Clause 8 as Clause 8-A.

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, Clause 8 may be put to the House first. The amendment proposed is to have a new Clause as 8-A.

Mr. President: As a matter of fact I have got notice of two amendments, one by Sir Alladi Krishnaswami Ayyar and the other by Mr. Ananthasayanam Ayyangar for the addition of a new clause. I had better dispose of clause 8.

As no one wishes to speak on Clause 8 I shall put it to the vote.

Clause 8 was adopted.

Sir Alladi Krishnaswami Ayyar: Mr. President, I seek to amend Clause 8 in the following manner:

Mr. President: It is not an amendment to Clause 8, but an addition as Clause 8-A.

Sir Alladi Krishnaswami Ayyar: Yes, Sir. I may mention that, in the course of the clause, I have referred to the expression ‘the Union’ and substituted ‘Federation’. I trust the House will give me leave to substitute

[Sir Alladi Krishnaswami Ayyar]

the word 'Federation' for the word 'Union'. That is a slip. This is the amendment I am moving:

"That after Clause 8, the following new clause be inserted:

'8-A (1) The Government of the Federation may, by agreement with any Indian State but subject to the provisions of the Constitution, in regard to the relationship between the Indian Federation and an acceding Indian State, undertake any legislative, executive or Judicial functions in that State.

(2) Any such agreement entered into with an Indian State not acceding to the Federation shall be subject to and governed by any Act relating to the exercise of foreign jurisdiction by the Parliament of the Federation.

(3) If any such agreement covers any of the matters included in an agreement between a Province and a State under Clause 8 of the provincial constitution, the latter shall stand rescinded and revoked.

(4) On an agreement as per the provisions of sub-clause (1) being concluded the Federation may, subject to the terms of the agreement, exercise the legislative, executive or judicial functions specified therein through appropriate authorities.'

In support of this Clause, with your leave, I would like to say a few words. The object of this clause is to bring it in line with a clause already passed by this House in regard to the provincial constitution in the provincial sphere. That confers powers on the provinces to undertake the administration of certain departments ceded to them by a State as a result of an agreement in the provincial sphere. The object of this clause is to give an overriding power to the Federation. So far as sub-clause (1) is concerned, it refers only to acceding States. The acceding States may accede to the Federation in respect of particular subjects. Even in regard to the other subjects, they may be willing to enter into an agreement with the Indian Federation in regard to the exercise of particular functions. The object of this Clause is to enable the acceding States to enter into such agreements with reference to subjects not included in the terms of accession.

The second sub-clause refer to States which do not accede to the Federation, but yet may be willing to enter into agreement with the Indian Federation. Any such agreement will of course be subject to any Foreign Jurisdiction Act that may be passed in the exercise of the plenary powers of the Legislature as a Sovereign Legislature. That makes provision for it. "Any such agreement entered into with an Indian State not acceding to the Federation shall be subject to and governed by any Act relating to the exercise of foreign jurisdiction by the Parliament of the Federation."

The third sub-clause is intended to prevent any conflict between the Provinces and the States on the one hand and between the Federation and the States on the other. Even in the provincial constitutions we have made a provision to the effect that it shall be subject to the control of the Federal Government. The object of this sub-clause is that if an agreement is entered into between the Federation and a State and that agreement covers the field already covered by the agreement between the Provinces and the State, this agreement between the Centre and the State must have dominance over the agreement entered into between the Provinces and the State.

Clause 8(4) simply states what exactly is the effect of an agreement "On an agreement under the provisions of sub-clause (1) being concluded, the Federation may, subject to the terms of the agreement, exercise executive, judicial and legislative functions specified therein through the appropriate authority." It more or less is a provision corresponding to a provision already passed by the House in regard to an agreement between the provinces and the States, I would ask the House to accept the proposal contained In Clause 8-A.

Col. Shri Maharaj Himmat Singhji (Western India States Group): Mr. President, we have had no notice of this amendment. Kindly give us time till Monday to consider it and give notice of amendments if necessary.

Mr. President: This amendment was circulated to members.

Col. Shri Maharaj Himmat Singhji: It was not circulated to us. Many others besides me have not received notice.

The Honourable Mr. Hussain Imam: Notice was received at 4 p.m. yesterday.

Mr. President: Notice was sent at 4 p.m. If the suggestion of the Honourable member is accepted, we should hold this over to enable members to consider this amendment and give notice of amendments to it. I think members should have sufficient time to give notice of amendments, I think on the whole it will be desirable to postpone consideration of this.

The Honourable Sir N. Gopaldaswami Ayyangar: I shall have no objection, Sir.

The Honourable Mr. Hussain Imam: Everybody should have time to give notice of amendments.

Mr. President: Yesterday we decided that notice of amendments can be given to clauses which are to be considered on the following day, by the evening of the previous day. If time is required to give notice of amendments to amendments, I do not know where we will end.

The Honourable Mr. Hussain Imam: The usual practice in such cases is for the Chair to suspend rules of business and to allow the members to move their amendments, if the Chair considers that the matter is urgent.

Mr. President: I think it will be much better to pass it over. So we shall take up the consideration of this at a later date. Similarly, the next addition by Mr. Ananthasayanam Ayyangar may also be held over.

Sri M. Ananthasayanam Ayyangar: I have no objection.

Mr. T. Channiah (Mysore State): There is one amendment standing in my name.

Mr. President: We shall take up all the amendments when we take up the clause.

CLAUSE 9

The Honourable Sir N. Gopaldaswami Ayyangar: I beg to move Clause 9:

“The Executive authority of the Ruler of a Federated State shall continue to be exercisable in that State with respect to Federal subjects, until otherwise provided by the appropriate Federal authority.”

At the present moment, both federal and unit subjects are within the jurisdiction of the executive authority of an Indian State. When federation comes into existence and certain subjects are assigned to the Centre, their administration which is already in the hands of the State authorities, it is proposed, should continue in these hands until the appropriate federal authority makes other provision for their administration. The general principle, as I have already stated in connection with the previous clause, is that the executive authority of the federation is co-extensive with its legislative authority. That principle is respected in this clause. The only thing that is provided for here is that where that administration is in the hands of the State authorities now, that agency should continue, until the federal legislature or other appropriate federal authority chooses to make other provision. That is really for the purpose of preventing a hiatus in administrative jurisdiction particularly at the time of the inception of the federation. There are amendments to this, Sir, but I shall not deal with those amendments in any detail. But there is one amendment in the names of a number of Prime Ministers of Indian States. That amendment is real a reproduction of section 125 of the present Government of India Act. I have since given notice of an amendment in substitution of it and, if the Prime Ministers who have given notice of amendment agree to withdraw their amendment, I shall move mine.

Mr. President: As I understand it, Sir Gopaldaswami, the amendment of which notice has been given by the Prime Ministers is to be inserted as Clause 9-A. It is not in substitution. Is that the one you are speaking of?

The Honourable Sir N. Gopaldaswami Ayyangar: I stand corrected. I think what you have stated is correct, but I say that, if that particular addition which is proposed by the Prime Ministers is not moved, I shall be prepared to move an amendment to Clause 9 which I hope will be acceptable to them.

Sir B. L. Mitter (Baroda State): In view of Sir Gopaldaswami Ayyangar's amendment which he proposes to move, we do not move the amendment which stands in our name.

The Honourable Sir N. Gopaldaswami Ayyangar: I move that at the end of Clause-9 the following be added:

"In cases where it is considered necessary."

These words hardly need any explanation.

Mr. President: We will now take up the other amendments. Mr. Chandrasekharaiya.

Mr. D. H. Chandrasekharaiya: Mr. President, Sir, I beg to move that for Clause 9 the following be substituted:

"The Executive authority of the Ruler of a Federal State shall continue to be exercisable in the State with respect to federal subjects subject to inspection of and the directions from the federal head of the executive."

Sir, the clause as it stands provides for the exercise of authority in regard to federal subjects by the rulers of federating States until other arrangements are made by the federation. Now, this exercise of authority is not made subject to the supervision and control of an appropriate federal authority. Such an uncontrolled exercise of authority in respect of federal subjects is neither correct nor helpful. I have therefore proposed in this amendment that the exercise of authority should be brought under the inspection and direction of the head of the federal executive. This is one aspect of the amendment.

The other aspect is that the State authorities are proposed to be used for administering federal subjects only for a time till other arrangements are made by the federation. My point is that if the State authorities could be used for a temporary period, why should they not be used permanently. Since the exercise of authority by the States is proposed to be controlled and directed by the head of the federation, any mistakes committed can be pointed out then and there and the administration set right. So far as the States are concerned, there will perhaps be a limited number of federal subjects for administration, and in such a case, will not be undertaking a responsibility beyond their capacity to shoulder. Besides, there are bigger States like Mysore, Baroda, etc., which have got efficient modern and well-organised administrations and I am sure that any other arrangement will not come up to the level already attained by such administrations.

It has, however, been proposed by Sir N. Gopaldaswami Ayyangar that the words "In cases where it is considered necessary" may be added at the end of Clause 9 to serve as a compromise between differing views. I do not think that such an amendment will improve the situation very much as it gives room for saying that it is considered necessary in every case.

In conclusion, firstly I propose that provision should be made for inspection and control of federal administration within State limits and secondly, State authorities should be permitted to administer Federal subjects on a permanent basis. I pray that the House will be pleased to consider and accept the amendment proposed by me.

Mr. Himmat Singh K. Maheshwari (Sikkim and Cooch-Bihar Group): Mr. President, Sir, the amendment which stands in my name is a comparatively minor one. It only seeks to substitute for the words "by the appropriate Federal authority" occurring in Clause 9 the words "by virtue of a Federal law" I will read out the clause as it will be if the motion is accepted:

"The executive authority of the Ruler of a Federated State shall notwithstanding anything in this Constitution, continue to be exercisable in that State with respect to matters with respect to which the Federal Legislature has powers to make Laws for that State, except in so far as the executive authority of the Federation becomes exercisable in the State to the exclusion of the executive authority of the Ruler by virtue of a Federal Law."

The word 'authority', Sir, is not so very clear. It might mean and Under Secretary of the Federal Government. What therefore I wish the House to accept is a provision that where the executive authority of a Federation has to be exercised in a State, it should be by means of a Federal Law and not merely by an order of a Federal authority. Perhaps, Sir, the amendment is quite unnecessary because the drafters of the clause might ultimately have intended to make this expression more clear. I am not certain at all and in any case my object will be served if the Drafting Committee will kindly consider this matter at the appropriate time.

(Messrs. Kishori Mohan Tripathi, B. M. Gupta, Bishwanath Das, H. R. Guruv Reddy, Jainarayan Vyas, S. V. Krishnamurthy Rao and K. Chengalaraya Reddy did not move their amendment, Nos. 204 to 210).

Mr. President: I think these are all the amendments of which I have been given notice. Now the clause and the amendments are open to discussion. Does any member wish to speak about either the Clause or the Amendment?

Shri Mahavir Tyagi (United Provinces: General): *[Sir, this part of the Constitution is very important because it concerns a vast number of people of India residing in the States. At present, they enjoy enough powers of internal administration but in spite of this, in every state there is a Resident who represents the Paramount power. He has some voice in the administration and exercises a check on the powers of the rulers. Often he has safeguarded the rights of the people. If with the end of the office of the Resident, the Assembly does not provide some *via media* for safeguarding the peoples' rights, I venture to say, Sir, our functions of constitution-making will not be considered successful. When the States and their people join our Union, it is the duty of the Assembly to look to the welfare of the States' people and protect their rights. I stand here to take a little of your time so that the States people may not have cause to complain that when the question of the peoples' rights came before the Assembly, it remained silent and sacrificed the interest of the people in order to get the co-operation of the rulers. I do not want to delay the proceedings by bringing any amendment, because all the rules and provisos which are being framed here will come up before the Assembly in their final shape. Then it will have the right to scrutinise and change them. What I mean is this: At present there is a Resident who exercises some control and check on the powers of the rulers. But with the abolition of his office there is no machinery to control the authority of the rulers. The Negotiating Committee must place before the House now or later at some opportune stage in very clear terms as to what arrangements it has made to control the authority of the rulers. In the present set up, the rulers have all the powers that the Union will have and also powers which they do not possess at present. Its result will be that the despotic and autocratic States will become all powerful and there will be no check on them. There are many States which have no legislature at all. Under the circumstances if the present wide and discretionary powers are allowed to remain with the rulers, their joining the Union would be an advantage to them. We are paying this as the price to include the States in the

*[English translation of Hindustani speech begins.

[Shri Mahavir Tyagi]

Union. If the rulers are allowed to retain their present absolute powers, every ruler will be a gainer by joining the Union, because the States People have so long been fighting against their despotism with the help of the Congress and other such organisations and now the people will not receive this help any more from them. Henceforth the rulers will use their powers in their own arbitrary manner. Therefore, though it is proper to concede the rulers whatever powers they at present enjoy or to give them power similar to that of the Union, some restrictive provision must be incorporated in the Constitution so that they may not misuse the powers granted to them. When the Government of India Act was being framed in 1935 such restrictive provision was suggested in it in order to check the authority of the rulers. It is clearly stated in the said Act that any law of the States, which is contrary to or is incompatible with that of the federation, shall be deemed null and void and the law of this Federation shall prevail. The only difficulty at present is that instead of one, there are two Dominions now, one of Pakistan and the other of India. Both the dominions are anxious to include in their Dominion a greater number of States than their rival. Because of this rivalry the Princes are raising the price of their co-operation higher. I do not consider it desirable to concede to them more and more powers only in order to include them in our dominion. They are not willing to forego any of their powers in order to join the Union. By joining the Union they will be gainers in as much as they will receive military protection from the Union, but what benefit is that to us? We will only increase a member in our family. The States will receive tremendous help from this vast Dominion but in return for the privileges how many of their rights are they ready to concede to us? We must have everything before us. Every detail of the negotiation that is going on between our Negotiating Committee and the States must come before the House. It is only then, when we have considered all these that we should decide as to what power the rulers should be allowed to retain and what amount of control the Union should exercise over them. This clause, as it stands at present, grants wide powers to the States, but it does not mention as to what power the Union will have over them. I do not want to put any obstacle to the passage of this resolution but I want to that this must be established as a convention that when a member speaks it is not imperative for him either to oppose or support the resolution. When an important matter is being discussed in the House a member must have the right to express his views without supporting or opposing the motion so that his views may be recorded. I stand here only for this purpose that my views may be recorded and our Negotiating Committee may know that a section of the House entertains such views. I want that my speech should bring to light what "liberties" the States have and what further powers we are granting to them, I demand that when we are representing here the people of the States, the rulers must not be given powers beyond what they had. They have had ample powers. When they have joined the Union, the office of the Resident will be abolished and some of the States will become despotic. Therefore, without meaning any offence to and without making any allegation against any State I wish to say that when the States are joining our family—the Indian Union—they must respect the principles of our democracy. Despotic states have no place in our Union. Because of the assurances from some leaders States may fill today that they will have all the liberties in the Union; but I want to make it clear to them that, though the House is accepting all their terms, their joining the Union will put their despotism in danger. India and this Assembly will soon put an end to despotism and the States must join the Union with this definite knowledge. The general public demands it and, if for some reasons this Assembly cannot do away with despotism the nation will, after the expiry of the existing Assembly, call a new Constituent Assembly which will not only solve our economic problem but the political problem too. That revolutionary Assembly will not allow even a trace of despotism to remain in India. The Union of India

will not allow the black spot of despotism to remain long on her fair face. This is what I have to say.]*

The Honourable Mr. Hussain Imam: Mr. President, the remarks made by the last speaker asking for a minimum of democracy in the constituent units of the Federation is one on which I hope there will be no difference of opinion in this House. There are certain standards, and certain measures which are regarded as the bare minimum, as the *sine qua non* of a decent existence; and it is wrong in this age for any one to claim the privilege of divine right to rule as they please. I am one of those persons who believe in moderation as well as in negotiation. But there is a limit beyond which you cannot carry on these two processes. There are certain bedrock principles which have to be accepted. Because of the fact that the foreign Government had sanctioned the existence of 560 state units, it is not necessary that this Constituent Assembly should also accept the separate existence of these units. In these days it is almost a common principle that various small units cannot fight in the battle of life. Look at industrialisation and cottage industry. Cottage industry is every day being eliminated. We are trying to protect it and give it support because it is to the greater advantage of the worker than the mill industry. Similarly, if it were to be greater advantage of the common man to have the 560 units, I for one would have supported them. But many of the units are so small that they themselves have considered it essential to join together and form bigger units. This is a move in the right direction and if it is developed to the full extent to which it should be developed, it is possible to allow them to exist even today. But if individuality prevails and if the move for having a union of States where they can give common privileges and common advantages to which a citizen is entitled is not put forward, I am afraid that the existence of the States will be jeopardised. I endorse the appeal of the previous speaker that this Assembly and those who are in charge of negotiation should look to it that the right of the common man in the States which is as precious to us as the citizens of British India is safeguarded. (*Hear, hear.*) They must be protected with as much care and as much solicitude as we are taking in the other units, the provinces. There should be a minimum standard of democracy, and minimum rights of citizenship which should not be denied to any one in the Continent of India. No matter whether it is a big State or a small State, they must all strive to uplift and if we cannot uplift, we will be failing in the charge which has been entrusted to us. Independence is not worth anything if we allow a large part of the units to remain in the same degraded condition in which they existed before the departure of the British. I therefore endorse the appeal and hope that something will come out of it.

Mr. Jainarain Vyas (Jodhpur State): *[Mr. President, at present the whole question of States is not before the House but we have only to consider as to what authority the Princes should be given in respect of central subjects. Therefore I shall confine myself to this only and I would like the House also not to go beyond the scope of the subject.

It is true that the Princes or the States are going to have the powers and authorities which they do not have in the current set-up. But the words (of the resolution) show that power would continue with those who had it: not more than this, unless some other arrangements are made by law. In spite of this, as our Federal subjects are numerous and of various types it is apprehended that the powers granted to the Princes in respect of these subjects might be abused in some States. But now that we all have joined the Union, we may hope or rather we should appeal to the Rulers to fall in line with the rest of India. The Provinces too should be requested to make proper use of the powers granted to them. Under the

] *English translation of Hindustani Speech ends.

*[English translation of Hindustani speech begins.

[Mr. Jainarain Vyas]

circumstances, we need not oppose such clauses or sections. Mr. Tyagi has just said many things with reference to the general question concerning states. I am a State subject and represent the States people. I do admit that the representatives of the States people do not hold the same status as the ministerial representatives hold. They speak on behalf of the Government of the States. We have not attained this status. Really this is a painful position for us. But this certainly does not mean that we have given up all hopes of securing our real status. It is impossible for us to remain long in this position. I hope our Union will exercise its influence over the Princes, their ministers and the governments to see that the representatives of the people have equal share in the internal administration of the States. And if for certain technical reasons or legal complications this cannot be done, I hope we shall try to settle the matter by negotiation. However, if our negotiations with the Princes fail to secure an amicable settlement, after 15th of August the Rulers and the States people will stand in opposition to each other. The people have strength enough to settle their own affairs. We are grateful for the sympathy shown to us. But at the same time I wish to say that our attitude would not seriously affect the federal Subjects. It might affect the Union which would consider its own interests. Such is our hope. With these words, I support the original resolution.]*

Mr. S. V. Krishnamurthy Rao (Mysore State): Mr President, Sir, I had myself brought an amendment that in these matters the representatives of the people in the States, may have a voice but I withdrew that amendment because an amendment by Sir N. Gopalswamy Ayyangar was accepted by the Ministers of the States. In this I see the dawn of a new era in the States. I hope the ministers have accepted this amendment with all the implications behind it. We the peoples' representative from the States, are in a very delicate position. On the one hand we do not want to take any attitude which will jeopardise the Union of India. Unity is the prime need of the hour. On the other hand, we have to safeguard the interests of the people of the States. With this view, we have accepted the amendment of Sir N. Gopalswamy Ayyangar. By the acceptance of the amendment, Sir, we believe that even in the States, minimum standards of democratic Governments will be established ere long, because the acceptance of this amendment in the Union Federation means the acceptance of the adult suffrage for the election of the representatives to the Federal Assembly and also the acceptance of the Citizenship Rights and the Fundamental Rights. I am sure the acceptance of these fundamental principles will have its own repercussions on the administration in the States. With this hope in view that ere long the Ministers who are charged with the heavy responsibility, will do their duty not only to their Rulers but also to the Union Federation and the people of the States, and will see that responsible Government will be established in the territories of the states, with this hope, I support the Resolution as amended.

Diwan Bahadur Sir A. Ramaswami Mudaliar (Mysore State): Mr. President, I have only a few words to address this august Assembly on this very important subject. Some of the States' Representatives—I use the word 'Representatives with some hesitation,—the official Ministers of the States as they have been described,—have given notice of an amendment which tries to incorporate Section 125 of the Government of India Act. That Act suggested that the executive power of the Federation will be carried out by the States and the Rulers of the States through their own Officers and that the Federation should be content to have what may be called the right of inspection to see that that authority was properly exercised. There are a great many States where even now, whatever is India, the required on behalf of the Federation or the Government of India, the

*English translation of Hindustani speech ends.

work is carried out essentially by the State Governments and the executive authority of the States. During the years when the Government of India Act was under consideration at various Sessions of the Round Table Conference it was pointed out that while the States which acceded to the Federation would have no objection to legislation being passed on the ceded subjects by the Federal Legislature, the power of executive authority should still rest in the Officers of the States. This is to say that the Federation shall have legislative authority alone, but that for the administration of those subjects which States had ceded, the administrative authority, the executive responsibility may still vest in the States. This was the position taken up as far back as 1930. Things have marched very far in some of the States during the intervening period and there are indications that in many States things will march further still in the direction of a closer association of the people of the States in the administration of the States. There is no doubt whatsoever that the trend of events, the march of public opinion, the awakening in the States themselves and the very fact that the States may accede to the Union and send their representatives to the Union Legislature, all these facts will tend to quicken the progress and the process of the greater association of the people of the State in the administration of the State. (*Cheers*). I do not want to refer to any individual State, but I had in mind States which very shortly will give such an amount of power to the subjects of the States that there will be very little feeling in the matter in those States, at any rate. Even in 1930-31 those who represented the States in the Round Table Conference took the view that while the legislative power may be readily conceded to the Federal Parliament, the executive power must vest in the States to be exercised by the officers of the State. I venture to think—it is not a proposition that I am putting forward on behalf of any bureaucratic or undemocratic administrator of a State, but it is a proposition which may very well be put forward on behalf of the subjects themselves—that the executive authority in those States must vest in the authorities or the officers of the State. While that executive authority is to be imposed by a Federation through its own officers, who is it that will lose the exercise of that authority, except the very subjects who through their responsible representatives will be in charge now to a certain extent, and hereafter, to a much greater extent, for the affairs of the State? If, therefore, the Federation intervenes with its own executive set-up in the administration of a State, I venture to think it is not the Ruler who is going to lose much or anything at all; it is those representatives, those popular representatives as they are called, those who not be in charge of administration by closer association of the people in the administration, it is they who will forego the right of exercising their authorities in those States. It may be said that in provinces to a certain extent federal jurisdiction is exercised by federal executive authority. But I believe the Union Constitution Committee and those who have taken part in these proceedings have realised that there is a fundamental distinction between Provinces and States. I do not know whether Provinces are altogether too happy or will be happy over the decisions that have been so far taken with reference to the powers of the Federation in the Provinces. The list of subjects, Provincial and the Concurrent List have still to be examined by this House. What the fate of that examination will be I do not venture to say. But after all, Sir, I have not always been associated with States—my association has been of very recent times—and for years—30 years of my public life have been spent in what till the 15th of August may be described as British Indian Provinces. I venture to express the view that there is a very strong urge in the Provinces that as far as possible, what has been the subject of our agitation for decades, namely, provincial autonomy, should be a very real thing indeed. Provinces rare not likely to easily yield to the suggestion that a strong Central Government means a Central Government with a vast number of subjects to administer. My own view of a strong Central Government is not that. For what purpose should a Government be strong in the

[Diwan Bahadur Sir A. Ramaswami Mudaliar]

Centre? I venture to think that if that position is clearly and analytically examined, you will come to the view that for certain subjects and with reference to certain powers, the Central Government, the Federal Government—should have ample plenary and exhaustive powers, but that does not mean that, taking a subject like even patents or copyrights, a strong Central Government is created by vesting the rights over patents or copyrights in that Centre. It may be for other reasons, that it may be desirable. It may be done by co-operation, by co-ordination, by the idea of the agency that is established at the Centre which will have, if not the power, at least to a certain extent, the advisory capacity to bring about that co-ordination, but let us not, because we think in terms of a strong Central Government, forget the fact that strength does not lie in expansiveness, a wide variety of subjects coming under the scope of the Central Government. In fact, my own view is that the more subjects you bring under the Federation, the weaker you make it. So I would press very strongly when the time comes—if I may be permitted for a moment to say on behalf of the Provinces, forgetting my new *avathar*—I would press very strongly in favour of provincial administration having the widest possible power in consonance with the strength of the Central Government. There are occasions, of course, when an emergency arises when I would be willing to have the Federal Government over-run the whole of the sphere of the Federation. When an emergency is declared or proved to exist, then all these restrictions which we had even under the Government of India Act may well disappear and the Central Government may have all these powers; but normally, in day to day administration, in the absence of such an emergency, I venture very strongly, very respectfully and with great humbleness to urge that, Provinces should have as much and as wide powers as possible. If that is the case, Mr. President, a fortiori, the States should have even wider power and except for those subjects that they accede there ought not to be any interference in the States and so far as this power of administration, is concerned, I venture to state that States may be left to administer their own subjects. I understand that there may be some difficulties in some areas, some States, to confer the power on them to administer these subjects. I understand that the amendment of my Honourable friend Sir N. Gopaldaswamy Ayyangar wants to preserve that position and to take care of that situation. It may be so. It is from the point of view that we have not pressed the amendment which goes the whole way before this House at present. But barring such exceptions, the general rule shall be and must be that the States which can administer properly, which have an administrator, whether popularly elected or unpopularly based, who carried on the administration on correct administrative principles, those States cannot and should not have their administrative sphere encroached upon by the Federal Government. I think some of the States at least can show a record of administration which is—in the presence of such a large number of provincial representatives and provincial ministers, I dare not say what otherwise I would have liked to say—which is at least not less efficient than the administration in the provinces. With that record, I venture to think that it will be accepted by everybody in this House that as far as possible, in as many States as possible where there is no question of the administrative machinery not rising to the occasion, that administration shall be that of the State itself. I therefore want to make the position perfectly clear that in accepting the amendment of Sir N. Gopaldaswamy Ayyangar we are not giving up the essential principle that it shall be the rule that States shall have their own executive authority and that in special cases exceptions may be made.

Sir Alladi Krishnaswami Ayyar: Sir, I had no idea of speaking on this Resolution, especially after an agreement had been reached between the Mover of the Resolution and certain representatives of the States. In dealing with this subject, it is unnecessary for me to go into the question

as to the relative sphere of the Federation or of the Provinces in the Federal structure. I may have a good deal to say in favour of what Sir Ramaswamy Mudaliar has stated, namely, that the strength of the Centre does not depend upon the number of subjects assigned to it but upon the nation-building and nation-preserving subjects being in the hands of the Centre and the Centre being necessarily equipped with the machinery for enforcing its power throughout the area. But that is entirely irrelevant in the consideration of the question now before the House. The essential principle underlying the previous clause is that the executive power must be co-extensive with the legislative power. If the Federation has the power to pass certain laws it must have the necessary power to enforce those laws throughout the Federation. That is the common-sense, accepted constitutional principle to which no exception can be taken, either by State protagonists or provincial protagonists.

The second question is, how is this executive power to be exercised? It may be exercised through the instrumentality or agency directly appointed by the Federation, or it may, for the time being, employ a State or provincial agency. But the ultimate power and responsibility must rest with the Federation which must be satisfied that an efficient administration is carried on. If an efficient administration is carried on in State A, or State B or State C, very well. The Federation will not interfere. But the Federation is the sole judge and the only judge of the efficiency of the administration throughout the Union, and every State agency and every Provincial Agency and every other agency must be the agency of the Federation to that extent. The object of this amendment is very simple. If the State machinery is functioning properly, then you need not interfere; let the *status quo* continue. But the ultimate power will rest with the Federation, that is the principle to which we are committed. But that does not mean that the Federation or the Federal executive will go on experimenting. Why should it? For example, if the postal service or some other service is efficiently and properly conducted by the State agency, then the Federation will not have any need or business to interfere. If on the other hand, the State agency does not carry on the administration properly, the final authority must rest with the Federation. That is the principle of this amendment and I do not think that any State can take exception to it. It is really a midway solution between two extreme views. One view is that here and now the Federation must start off with a special agency for the purpose of carrying on this work. That is one extreme view. The other view is that the existing state of things must continue, especially when they are satisfactory. The view taken in this clause is that if and when the agency is found to be ineffective by the Federal authority, it will be up to the Federal authority—and they are the sole judges of the situation—to interfere. Let there be no misunderstanding on this point. The principle of Section 125 of the Government of India Act is expressly departed from in this Constitution. It is not a question of parleying between the States and the Federal authority. It is a question of the responsibility of the Federation. It is but a matter of prudence. It is a matter of giving stability to the administration. When the administration of a particular subject is efficient through the State agency, that agency may continue to be employed. But there is no denying the fact that so far as the principle of this clause and the earlier clause is concerned, the ultimate responsibility for the proper execution of the laws which the Federation is passing is with the Federation and Federation alone and the principle that the executive power is co-extensive, in general, with the legislative power is not to be departed from. It is on that ground, Sir, that I support the amendment moved by Sir N. Gopalswami Ayyangar with the modification, and on no other ground.

Sri K. Santhanam: Sir, I am glad that Sir Alladi has explained the fundamental principle of the federal system so clearly and emphatically. I shall not try to cover the same ground. But there is one point mentioned by Sir Ramaswami Mudaliar which also requires our attention.

[Sri K. Santhanam]

He suggested that as the States are getting democratised it may not be so objectionable to leave in their hands the executive authority on federal subjects. Sir, I do not think this is correct. To the extent the States get more and more democratised, the distinction between the Provincial and Federal subjects must become clearer and clearer. That is my view. When a Ruler or his Dewan defies the Federation it may be easy to deal with him because the Federal authority will get the support of the people. But if the Federal subjects are under democratic States then the people themselves may get a vested interest and they may defy the Federal authority. Therefore in all federal schemes, as far as possible, the powers of the Federation and the powers of the units are kept distinct. The executive authority of the Federation is emphasised in all Federal subjects and the autonomous units have the executive authority only in their own subjects. This distinction is carried to such an extent in the United States of America that even in the matter of courts the Federal laws are enforced by the Federal Judiciary and the State Laws are enforced by the State Judiciary. In course of time, the Indian Federation also will have to follow the same principle. I agree with Sir Ramaswamy Mudaliar that the strength of the Federation does not depend upon the number of subjects it administers. The Indian Federation may have only a handful of subjects—four or five. But so long as it has absolute and undivided authority over those subjects, it is bound to be strong. I am sorry Sir Ramaswamy Mudaliar brought in these issues, particularly the issue as to what constitutes the strength of the Federation. What should be the scope of the Federal subjects and what the scope of the Provincial subjects is an entirely different issue on which many of us will go a long way to agree with him. But this particular clause has nothing to do with it. Assuming that we define the Federal subjects, to what extent should Federal authority extend over these subjects? That is the issue of this clause. Sir Alladi has, of course, stated and explained the general principle. I say that to leave the Federal authority in the hands of the States will be even more dangerous when they become democratised. There may be conflicts between all-India patriotism and unit patriotism, and local conflicts can be dangerous. The Provincial authority may set in motion disintegrating forces which we should seek to avoid even from the very beginning. Therefore, let us make it quite clear that it shall be open to the Federation to take the executive authority in all Federal subjects whenever it chooses to do so. For the present, it may be left in the hands of the State, but the power to resume it, whenever the Federation may think fit, should be with the Federation. The argument that more and more the authority in the States will be with the people, has no relevance whatsoever. In fact, it operates against leaving the authority in the hands of the States. Therefore, let us have the Federal authority intact for the Federation. I suggest that, when the final draft comes, there should be no doubt left as to the power of the Federal authorities to resume their executive functions in Federal subjects as they have been defined in the list.

Shri Gopikrishna Vijayvargiya (Gwalior State): *[Mr. President, Sir, I come from an Indian State. The motive in my mind is that our country should have a strong Centre. Unfortunately our country consists of many parts. In some Indian States and in districts and provinces too, in a wave of local patriotism people wish to possess more 'autonomy'. This will make our country weak and our Centre will not remain strong.

I wish to tell you that we all, the States also, shall have to surrender (rights) so as to invest the Centre with the maximum power, to make it and the country strong. Under the present circumstances, the scope of executive functions in States should not be enlarged. As suggested by Sir Mudaliar the mere number of Federal subjects, by themselves are not enough to create a strong Centre. This is correct but some subjects have

*[English translation of Hindustani Speech begins.

to be assigned to the Centre and the ultimate authority about them should not be left to the discretion of the States.

The Central affairs of the States and provinces should be entrusted to the Centre. The minimum possible executive power should be with the States and provinces. It is not proper to keep the maximum power with them. In small countries like Switzerland and others, the executive authority is left with the units, but in India we cannot do so, as that would not be free from risks. Therefore excessive power should not be handed over to the States. The federal authority in the States should as far as possible be exercised through a federal machinery. But as suggested by Sir Gopaldaswami Ayyangar, in the beginning it is not necessary to add a provision to this clause. We would not object to it. But I think it proper to create a strong Centre in the Country and the States should not grudge it. If we want to make the Centre strong, we shall have to hand over at least some subjects to the Centre. Without it our country cannot progress. Hence it is in the hands of the States and the provinces that if they intend having a strong Centre, they should confer upon the Centre the maximum power. We must make our Centre strong and along with this the powers of direction and inspection should vest in the Federation. The States should not seek to possess as much power as possible. Therefore, at present I do not oppose it. As it is, the amendment of Sir Gopaldaswami Ayyangar should be accepted but this should be our aim, that the Centre be made as strong as possible.]*

Mr. R. K. Sidhwa: After Sir Gopaldaswami Ayyangar's speech it was very good of Sir Alladi to have made the position very clear as to what the object of this resolution is. He has in unmistakable terms stated that the final authority shall vest in the Federation: Sir, we congratulate the States' representatives who have been good enough to participate in this Constituent Assembly and I also congratulate those of the States who have given a lead in this matter and made it clear for others to enter it. I also desire to tell them that while one part of the country is becoming democratic, the other part of nearly ten crores of people cannot remain under autocratic rule. It has been a principle with us and we have declared that when India becomes free we shall see to it that our States' brethren also become free. Therefore in this august Assembly, when we have all met together—and I am very glad that it is so—the Rulers, their representatives and the peoples of the States,—that we should tell them that was our object and desire. I am very glad that some of the Rulers do feel that they cannot expect one part to rule autocratically and the other to rule democratically. I do not want to go into the details of various States but I know of some States where there are no local bodies, no municipalities, and where there are Legislative Assemblies there is a majority of nominated members. Days of nomination are gone. There should be all elected representatives both in the municipalities and the legislatures. The nomination period has gone, and if you want to make it democratic, abolish all these nominations. I would suggest to the Rulers that they must have elected Legislative Assembly members with powers to function as it will be in the provincial legislatures. Please also see that elected members, local bodies and municipalities are also established where they do not exist. I know of a State where a printing press is not allowed to be established. I do not want to mention the name of that State. It is a fairly big State. I do not want to record a discordant note on this. Our spirit is equally good but we want to tell the Rulers today that the time has come when we have to implement the pledge given to the States people. We have been telling them “when the time comes to obtain our freedom we shall see to it that you also shall get it,” and I therefore take this opportunity of telling the people of the States that we shall strain every nerve and see that the people of the States are also ruled exactly in the manner we rule in India.

Mr. M. S. Aney (Deccan States): Mr. President, Sir, the amendment under discussion is a compromise arrived at between the Ministers of

] * English translation of Hindustani Speech ends.

[Mr. M. S. Aney]

some of the important States who are fortunately present here and who have joined the Constituent Assembly to help us and the spokesmen of non-official members of the Constituent Assembly representing British India. Therefore, the proper persons to explain the implications of this compromise are those who are parties to that compromise. We have yet to hear what Sir Gopalaswami Ayyangar has to say. But one of the important members of the ministerial party, Sir Ramaswami Mudaliar, has made a speech and tried to explain the point of view which he had in mind in accepting the compromise which is embodied in this amendment. I only want to make a general observation and not any specific suggestion. The point of view is perfectly clear to my mind that as a general rule the executive authority of a State shall be continued to be exercised by the ruler in respect of federal subjects. There is a warning however to the States in the clause that a certain standard of administration is demanded of them. I believe at present, at least, the Assembly is in this mood. It does not want the Federal authority to exercise its powers to bring about a change in the administration of the States. It expects that the force or great events and the circumstances which we have to fact, will have the desired effect upon the psychology of those who have to administer the States. The signs of progress are already there. It has begun, and we hope it will continue uninterrupted for some time. We have come to a compromise and let us for the time being rest our faith in that hope. We can tell them that if the time comes the Federal authority will not be wanting in exercising its powers in cases where it may become necessary in course of time. I think the wording is sufficiently clear. Those who have got the interest of the country at heart will easily understand the importance of mutual responsibility and obligations that the Federal authority and the States have to bear in mind. We want to make a strong India, by encouraging the States to take part in the Union and by bringing about concord between the Union and the States. Our attempt should be to bring about this desirable result *viz.*, a strong India. That strength lies in the willing co-operation between the acceding States and the Federal authority. Therefore the policy of the Federal authority will be to maintain the essential unity. The proper thing for the State to do is to enlist the sympathy of their people by associating them with the State administration and that too as quickly as possible.

With these few words I support the amendment.

Sir B. L. Mitter: Sir, it is somewhat surprising that an innocent and agreed amendment should have evoked so much eloquence and a certain amount of heat also. What are the implications of this amendment? There are two implications : one is that the amended clause postulates the supremacy of the Federation. The last words are : "until otherwise provided by the appropriate Federal authority in cases where it is considered necessary." This shows that the ultimate authority is the Federal authority. The first part which says "The executive authority of the Ruler of a Federated State shall continue to be exercisable in that State with respect to Federal subjects" merely continues the *status quo*.

The constitution which we are framing in this Assembly is not an unreal thing. We have got to take the facts in the country as they are into consideration and in the light of those facts prepare an appropriate constitution, one of the facts being that in some of the major States some of the Central subjects are administered by the State authorities. It has not caused my embarrassment to anybody. It has not occasioned any inefficiency. Well, if that be so, that State of affairs will continue. If you find that there has been any abuse or inefficiency, there is power in the Federal legislature to make adequate provisions. This is a simple clause embodying two principles, first is supremacy of the Federal authority and second the continuance of the *status quo*.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, we have had a most interesting debate, if I may say so on an issue which is certainly an important one, but an issue on which I thought those who took somewhat differing views had already come to an agreed settlement. I do not wish to add to the eloquence that has been spent upon this issue in the last one hour and more. I wish only to say, Sir, that the basic principle of, this clause is that the executive authority of the Federation is co-extensive with its legislative authority, that, normally, it is the Federation that is responsible for the proper administration of Federal subjects. But we have taken the existing facts into consideration where a large number of Indian States are actually administering what will be Federal subjects in the new Constitution. We are providing that the existing state of things should continue, but that continuance is necessarily subject to the overriding control of the Federation itself, whenever it chooses to impose that control. We cannot get away from that position. As Sir B. L. Mitter pointed out, the supreme authority in regard to the executive administration of the Federal subjects is vested in the Federation. I should reverse the position that Sir Ramaswami Mudaliar contended for. He seemed to think that the general principle should be that the executive authority in relation to Federal subjects should vest in the States, but that, as an exceptional measure, the Federation should take over the administration into its hands whenever that becomes necessary. What I wish to point out is that the general principle should be that it is the Federation that is responsible for the executive administration of Federal subjects, but that it will not, unless it considers it necessary, interfere with the State administration of Federal subjects where it is in existence today and where it is efficient according to proper standards.

Now, it was said by the mover of one amendment that the taking over of executive administration in respect of the States should be done by Federal law and not by any kind of Federal authority as indicated in the Clause. I would only mention to him one range of subjects, *viz.*, External Affairs. A very large portion of the field of External Affairs is covered not so much by legislation as by executive action. In such cases it would be absolutely unnecessary for us to look to a Federal law for the purpose, of the executive administration of External Affairs being carried out in the proper way within the limits of Indian States.

So far as this particular matter is concerned, Sir, I consider that in regard to the executive administration of Federal subjects there is no fundamental distinction, as was pointed out by Sir Ramaswami Mudaliar, between the Provinces and the States. The only distinction is that the States are actually administering some Federal subjects while the Provinces are not doing so. But, so far as the right to administer them is concerned, I do not think there is any distinction between the Provinces and the States. Now what really distinguishes the Provinces and the States is only that different kinds of internal administration exist in the two areas. I do not wish to go into this wider field which some of the speakers have covered but I do wish to endorse and emphasise one point which was, I think, made by Mr. Santhanam and that is this : The need for the taking over of the executive administration of Federal subjects by the Federation will not be less, but perhaps will be greater when democratic institutions become more common in the States than they are today. After all we have got to consider that the principle of a Federal system is to divide the administration or the exercise of sovereign powers between the Centre and the Units. And I do not see why any hesitation should be felt with regard to accepting this position, because after all the federation is as much a part of the constitution which the people and the rulers of the States have to reckon with as the State constitution will be. In the federal legislature the States will be adequately represented, and when for example a federal law is passed providing for direct

[The Honourable Sir N. Gopaldaswami Ayyangar]

administration of federal subjects by the federation, that law will be one in the passing of which the representatives of the States have had a voice, and therefore I could see no real principle involved in contending that you must reverse the general principle in the States from what it has to be in the provinces. I do not wish to say more, Sir, on a subject on which there is agreement as to what we actually should do. I think the House is generally in favour of accepting the amendment that I have moved. I wish to say nothing more.

Mr. President: I will now put the amendments to the vote. The first is an addition of four or five words to the clause which, Sir Gopaldaswami himself proposed, that at the end of Clause 9 the following be added:

“In cases where it is considered necessary.”

I take it that the House accepts that.

The motion was adopted.

Mr. President: There are other amendments which have been moved. The amendment of Mr. Chandrasekharaiah that for Clause 9 the following be substituted:

“The executive authority of the ruler of a federated State shall continue to be exercisable in the State with respect to federal subjects subject to inspection of and the directions from the head of the federal executive.”

The motion was negated.

Mr. President: Then the other amendment by Mr. Himmatsingh Maheswari is that for Clause 9 the following be substituted:

“The executive authority of Ruler of a Federated State shall, notwithstanding anything in this Constitution, continue to be exercisable in that State with respect to matters with respect to which the Federal Legislature has powers to make laws for that State, except in so far as the executive authority of the Federation becomes exercisable in the State to the exclusion of the executive authority of the Ruler by virtue of a Federal law.”

The motion was negated.

Mr. President: Then I will put the original proposition, as amended by Sir Gopaldaswami to vote.

Clause 9, as amended, was adopted.

Mr. President: Honourable Members will remember that Mr. Sri Prakasa moved a resolution in the earlier part of the day which was referred to a committee of three members of the House, for redrafting and submission before the House. That is now ready. If Honourable Members like to pass it today.....

Many Honourable Members: Yes.

Shri Sri Prakasa: Sir I move that:

“Notwithstanding anything contained in the Rules of the Constituent Assembly in regard to its composition, methods of election, and termination of membership all elections which have been, or may be, duly held in pursuance of, His Majesty’s Government’s statement of June 3, 1947, shall be deemed to be valid, and the Assembly so constituted shall be deemed to be and always to have been validly constituted, and all proceedings hitherto had, shall be deemed to be valid.”

Sir I move.

Mr. H. V. Kamath (C.P. & Berar: General): Sir may I suggest that Clause 68 of the Rules of Procedure of the Constituent Assembly makes provision for removing any difficulties that may arise? It empowers the President.....

Mr. President: The proposition has been placed before the House to remove the difficulties that have been noticed. Does anyone want to say anything about this?

(No member rose).

Then I will put the proposition to the vote.

The motion was adopted.

Mr. President: The House is adjourned till Monday at 10 O'clock.

The Assembly then adjourned till Ten of the Clock, on Monday the 28th July, 1947.

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CONSTITUENT ASSEMBLY OF INDIA

Monday, the 28th July 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock. Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The following Members presented their Credentials and signed their names in the Register:

1. Pandit Chaturbhuj Pathak (Central India States Group).
2. Major Maharaj Kumar Pushpendra Singhji (Central India States Group).
3. Sir Jwala Prasad Srivastava (United Provinces: General).

ELECTION OF MEMBERS TO THE STEERING COMMITTEE

Mr. President: Members will recollect that there were two Members to be elected to the Steering Committee. I have pleasure in declaring Mr. Ramchandra Manohar Nalavade and Mr. Suresh Chandra Majumdar duly elected as Members of the Steering Committee, they being the only names whose nominations were received for the two vacancies.

REPORT OF THE UNION CONSTITUTION COMMITTEE

Mr President: We shall now proceed to the consideration of the clauses of the report of the Union Constitution. The held-over clause is Clause 8.

Mr. H. V. Kamath (C.P. and Berar: General): Before we proceed to the day's business, I have a little request to make. May I do so? Will you be so good as to direct that our National Flag be presented to every Member of this august Assembly, who will treasure and cherish it as a worthy memento of the historic occasion on which it was adopted unanimously and with acclamation by this House, the occasion on which a great new Free State was born?

Mr. President: That is a matter which will require a little consideration and after consulting the Steering Committee, I will make an announcement later.

Mr. Tajamul Husain (Bihar: Muslim): May I know Sir, if this session is going to end on the 1st of August? The information is necessary because we have to book our seats previously.

Mr. President: I have been considering the matter this morning. We have been going on slowly with the consideration of the clauses. At the rate at which we have been going, I do not know whether we shall be able to finish the consideration of all the clauses before the 31st. I am anxious myself that this Session should end by the 31st so that the Members might go and return again on the 15th of August, when they have to return here and we may have another short session after that for considering the report of the Union Powers Committee and the Advisory Committee and certain other matters. So far as I am at present advised, I think we shall end this Session on the 31st but I am hoping that the Members will bear that in mind and will cut down the discussions as far as possible consistently with efficiency of the discussion and complete the consideration of this Report by the 31st. We have still four days for that purpose.

Mr. Tajamul Husain: May I know one thing? Do we understand that this Session will end on the 31st whether the Union Committee Report is finished or not, as we have to book our berths beforehand? It will be better to definitely fix a date whether the work is finished or not.

Mr. President: As I have already stated, as at present advised, 31st is going to be the last day of the session.

We held over discussion of two Clauses 7 and 8. Shall we take them up now?

The Honourable Sir N. Gopaldaswami Ayyangar (Madras: General): We can now take up Clause 8-A that was moved by Sir Alladi Krishnaswami Ayyar, which was held over for discussion.

Mr. President: I think we have passed Clause 8. We shall take up Clause 8-A which was moved by Sir Alladi Krishnaswami Ayyar. I do not know if members have got that before them. I shall read it out:

“That after Clause 8 the following new clause be inserted:

- ‘8-A. (1) The Government of the Federation, may by agreement with any acceding Indian State but subject to the provisions of the Constitution in regard to the relationship between the Indian Federation and an acceding Indian State, undertake any legislative executive or judicial functions in that State.
- (2) Any such agreement entered into with an Indian State not acceding to the Federation shall be subject to and governed by any Act relating to the exercise of foreign jurisdiction by the Parliament of the Federation.
- (3) If any such agreement covers any of the matters included in an agreement between a Province and a State under Clause 8 of the Provincial Constitution, the latter shall stand rescinded and revoked.
- (4) On an agreement as per the provisions of sub-clause (1) being concluded, the Federation may, subject to the terms of the agreement, exercise the legislative, executive or judicial functions specified therein through appropriate authorities.’”

If any member wishes to say anything about this clause, he may do so now.

I will just see if there are any amendments to clause 8-A.

Mr. B. M. Gupte (Bombay: General): A verbal amendment Sir:

“That in item No. 5 of Supplementary List I, dated 24-7-47, in sub-clause (3) of the proposed clause 8-A, after the words ‘the latter’ the words ‘to the extent it is covered by the agreement with the Federation’ be inserted.”

Sir Alladi Krishnaswami Ayyar (Madras: General): I accept the amendment.

Mr. President: Does any one else wish to say anything about it?
(None rose to speak.)

I will now put the amendment to the amendment to vote. It has been accepted by Sir Alladi.

“That in item No. 5 of Supplementary List I, dated 24-7-47, in sub-clause (3) of the proposed clause 8-A, after the words ‘the latter’ the words ‘to the extent it is covered by the agreement with the Federation’ be inserted.”

The amendment was adopted.

Mr. President: I now put the clause as amended.

Clause 8-A, as amended, was adopted.

Mr. President: We now go to Clause 10.

CLAUSE 10

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): This is a very simple clause, Sir:

“10. There shall be a council of ministers with the Prime Minister at the head, to aid and advise the President in the exercise of his functions.”

I beg to move this.

Mr. President: There are a number of amendments of which I have got notice. Mr. Pocker Sahib Bahadur.

Haji Abdul Sathar Haji Ishaq Sait (Madras: Muslim): He has left and he has authorised me and one or two other members to move his amendments.

Mr. President: Mr. Ahmed Ibrahim. Sahib Bahadur.

Haji Abdul Sathar Haji Ishaq Sait: Both of them have left. I do not know whether you can permit me to move it.

Mr. President: Any other member can move it. You desire to move it?

Haji Abdul Sathar Haji Ishaq Sait: I move:

“That for Clause 10 the following be substituted:

‘10. There shall be a Council of Ministers elected by the National Assembly by a system of proportional representation by single transferable vote and the council of ministers shall be responsible to the National Assembly.’”

I do not think, Sir, any elaborate speech is required on this. The amendment is very simple and clear and I hope this will be accepted by the House. I move.

(Amendment Nos. 213 to 217 were not moved.)

Shri H. V. Pataskar (Bombay: General): I have given notice of this amendment in order to make it clear that the principle of collective responsibility will be applicable to the council of ministers to be appointed under this clause. As Sir N. Gopalaswami Ayyangar has given notice of another similar amendment in the supplementary list, I do not propose to move this amendment (No. 218).

Pandit Thakur Das Bhargava (East Punjab: General): * [Mr. President, Sir, the amendment which I want to move is this:

“That the following be added at the end of Clause 10 :

“The Prime Minister shall select the other Ministers and the whole ministry shall be responsible to the legislature and act on the principle of joint responsibility in the discharge of the duties of the Ministry’.”

I need not remind members that it has been laid down in the objectives Resolution that a democratic form of Government shall be established in the Indian Union. The question now is whether the democratic government should be of the Ministerial type or of the Presidential type as is the case in the U.S.A. So far as the provincial constitutions are concerned we have accepted the principle that responsible democratic government should be established except as regards a minor point about the powers of the government. The principle to be followed in the Union Government should be that the Prime Minister should be the pivot of the whole administration. He should have full powers, and the President would be merely a constitutional head; and he should be given no individual powers or discretion. Whatever the President will do should be on the advice of his ministers. This is a good principle and for this, the British model is regarded as an example by the whole world. This is a model of executive powers which leads to the good and welfare of the people. After great deliberation and mature consideration the Union Powers Committee did not adopt the Presidential constitution of the U.S.A. For this reason, this amendment is based on the British model, though the House is already committed to it. Even then, it should be clearly stated in the Union Constitution that the voice of the Prime Minister would be the final voice and the President will merely echo it. On no occasion shall the voice of the Premier be flouted. Secondly, the Prime Minister should have the right to choose his cabinet colleagues, and the principle of collective responsibility should be adhered to.

I need not emphasise this any more; I would like to say in the end that these three basic amendments, which are based on democratic principle, may be accepted by the House.]*

Mr. H. V. Kamath: Sir, my amendment is covered by the amendment of Pandit Thakur Das Bhargava. So I do not propose to move my amendment.

Kazi Syed Karimuddin (C.P. & Berar: Muslim): Mr. President. Sir, my amendment is:

“That the following be added at the end of Clause 10:

“That the Executive of the Union shall be non-parliamentary, in the Sense that it shall not be removable before the terms of the Legislature and a member of the Cabinet or the Cabinets may be removed at any time on impeachment before a judicial tribunal on the ground of corruption or treason.

The Prime Minister shall be elected by the whole House by single transferable vote. Other Ministers in the Cabinet shall be elected by single non-transferable vote’.”

Sir, there was a discussion at the time of the passing of the recommendations of the Provincial Committee regarding this issue but that decision is not binding when we are considering the Union Constitution

[] English translation of Hindustani Speech.

My submission is that the parliamentary system which is functioning in India under the 1935 Act has miserably failed as far as the Local Self-Government, Local Boards or Municipalities are concerned. All over India you must have noticed that there have been deadlocks and as the worthy leader of the Muslim League said, it does not suit the genius of the people. As far as the Provincial Assemblies are concerned, there was success to some extent because the Congress was fighting the British Imperialism and all conflicting elements were reconciled on that issue. The Muslim League had an ideal of Pakistan and the majority of Muslim members were elected on the Muslim League ticket but with the disappearance of British Imperialism, with the disappearance of the programme of liberating the Indian people, and with the attainment of Pakistan there will be a plethora of parties and groups. There might be communists, socialists, Muslim Leaguers and many others. To expect such a large majority as we had in the past will be an impossibility. There will be many groups and to expect that there will be a very solid and absolute stability for the Government will be a myth. We have seen in the past that in the working of the Provincial Constitution in the Provinces the Opposition was neglected, ignored and sometimes punished. We have also seen that the parliamentary system which is existing at present created favouritism and nepotism in regard to those people who were supporting the Ministry. The Ministers were serving the members of the party more than the people. A Minister was not a humble servant of the Nation but he was a humble servant of those who were supporting him in the Cabinet and therefore I say that this scheme has not worked well in the past. At a time when India is attaining the cherished goal of independence, what do we find around us—arson, killing and looting. Why, because there is weak executive manned by Ministers who depend for their existence on the support of those people who are interested in communal tension. Everybody is not Pandit Jawaharlal Nehru. Pandit Jawaharlal Nehru when he went to Bihar, announced that people would be bombed if they continued the rioting but there was not a single minister, either Muslim or Hindu in the whole of India who took this attitude. Diamonds are rare, stones are numerous. What we want to-day is a stable Government. What we want today is a patriotic Government. What we want to-day is a strong Government; an impartial and unbending executive, that does not bow before popular whims. To-day there are weak and vacillating executives in all Provinces who are amenable to influence of the members of the Party and it is impossible for them to displease if they want to continue in the seats that they occupy. Now it is said that the parliamentary system of Government is democratic. America is a democratic country and the Constitution that is prevailing there is also democratic. We find that there is a non-parliamentary executive and the whole administration of the country is divided into 3 parts, one is the Judiciary, the other is the Executive and the third is the Legislature. It is impossible, for the Executive to defy the policies laid down by the Legislature and there is the Judiciary to check the excesses of the Executive. Under the circumstances when there is communal tension everywhere, and when there are disruptive forces in this country, there is no other go except to have an Executive which is non-removable by the vote of the legislature. The other day when an amendment was moved at the time of the consideration of the Provincial Constitution, Dr. Pattabhi wanted to explain from a higher plane, although he was speaking under impulse, that the non-parliamentary executive was not suited to the conditions of India. Instead of that he argued about the separate electorates in India. He argued about the Communal Award which was beside the point. There is no communal question in America and in spite of that, this non-parliamentary executive has been adopted there. This is a country of different religions. This is a country of different ideologies. This is a country with different cultures. At a critical moment in the history of India when we do not want internal

[Kazi Syed Karimuddin]

strife, when we want a formidable Government to be a bulwork against all aggression, it is necessary that in the interim period at least there should be a non-removable executive and non-parliamentary executive. The salvation of Indian people lies in this. There will be neither any favouritism nor nepotism and I plead with the House to accept my amendment.

Mr. D. H. Chandrasekharaiya (Mysore State): Mr. President, Sir, my amendment is to the effect that "provision should be made to give adequate representation to the States in the Council of Ministers". Beyond suggesting that the point raised in this amendment be kindly kept in view at the time when the Ministry is actually formed, I do not propose to press it.

Mr. President: Mr. Gokulbhai Bhatt.

Shri Gokulbhai D. Bhatt (Eastern Rajputana States Group) *[Sir, Clause 10 lays down that there will be a Council of Ministers and a Prime Minister. But it does not state how the Ministers will be selected or approved. Will the Cabinet Ministers be members of the Parliament? What clauses lay down that they will be members of the Parliament? What should be their salary? Can any changes be made in it? There is no mention of this anywhere. I want to emphasise that it would be better to make all this clear here, as we have done in the draft constitution for the provinces. But our constitutional experts and people more conversant with law than myself say that this is a matter regarding the Union, the Centre, and that it is no use dilating on it because when the final draft will be prepared, the matter will be considered and everything will be clear. I think that it is very necessary to mention as to how the Cabinet will be formed. But we have been assured that all this will be in accordance with what has been laid down in the provincial constitution. With this hope and also in view of the opinion and advice that this amendment should not be moved, I do not want to place it before the House.]*

The Honourable Sir N. Gopalaswami Ayyangar: Sir, as the clause now stands in the draft, it does not say anything about the manner in which the Council of Ministers is to be chosen and the responsibility of that Council to the Legislature. A number of amendments have been tabled on this aspect of the matter and in order to cover the essentials in respect of these matters, I have given notice of this amendment, that at the end of Clause 10 the following be added:

"The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister. The Council shall be collectively responsible to the House of the People."

Very few words are required from me to explain the content of this amendment. The Prime Minister is to be invited by the President to form a ministry and naturally by convention the President will invite the leader of the party which by itself or together with the support of other groups in the House is able to command a fairly stable majority. The other ministers will be chosen by the President on the advice of the Prime Minister. Provision is made for collective responsibility to

*[] English translation of Hindustani Speech.

the Lower House or the House of the People. Generally, the responsibility is only to that House, not to the Parliament as a whole. I notice that in one of the amendments it has been suggested that there should be both joint and several responsibility. I do not think in the case of a Government we need copy the practice which perhaps is common in the framing of ordinary private contracts between a Board of Directors possibly and other people. It is sufficient I think that we provide for the collective responsibility of the Council to the House of the People. Sir, I move.

Mr. President: These are the amendments of which I have notice. The clause as also the amendments are now open to discussion.

Mr. Tajamul Hussain: Mr. President, Sir, Clause 10 says that there shall be a Council of Ministers with the Prime Minister as the Head to aid and advise the President in the exercise of his functions. Sir, there is no mention in this Clause as to how the Council of Ministers is to be created. Therefore I find, Sir, that an amendment has been moved to the effect that each Minister shall be elected by the Assembly by the principle of proportional representation by single transferable vote and the Council of Ministers shall be responsible to the Assembly. Now, Sir, we can safely divide this amendment into two parts; the first part is that the Ministers are to be elected by the Assembly; the second part is that the Cabinet of Ministers are to be responsible to the Assembly. As regards the second part, I entirely agree. If the Council of Ministers have no majority behind them in the Assembly they will not remain in office or if there is a vote of 'no confidence' against them, even then they will get out. Therefore this part of the amendment I can quite appreciate. But as regards the first part, namely, that the Ministers shall be elected by the Assembly, I am afraid, Sir, I have not been able to appreciate. If the Council of Ministers are to be elected by the members of the Assembly by proportional representation by means of the single transferable vote, then, Sir, what may happen? There may be a small party and if there is single transferable vote by proportional representation, that small party may succeed in electing a Minister. Now, Sir, that party may not have the same political view as the majority party in the Assembly. Therefore in a Cabinet there may be Ministers with two divergent views and opinions. Now, Sir, if that happens there will be no team work in the Ministry and this cannot be called a stable Ministry. After all we have seen that the English system in this connection has been tried for centuries in England and it has worked well. What happens in England? The leader is summoned by the Head of the State, *i.e.* the King and is appointed Chief Minister or Prime Minister. This Chief Minister or Prime Minister has to submit the names of the other Ministers and in consultation with the Prime Minister the Head of the State or the King and appoints all the Ministers. Then, in that case the ministry is stable; for when the Prime Minister has got the majority in the House, he will carry on, and if he has not, he will not. But to have two different kinds of ministers in the same Cabinet, I am afraid, I am not able to appreciate.

Now, Sir, another amendment is to the effect that the Union Executive shall be non-Parliamentary and should be irremovable, and that a member of the Cabinet may be removed at any time on impeachment before a judicial tribunal on the ground of corruption, etc., and that the Prime Minister shall be elected by the whole House by single transferable vote, while the other Ministers shall be elected by single non-transferable vote.

[Mr. Tajamul Hussain]

Now, this amendment too can be safely divided into four parts. The first part is that the Cabinet should be non-parliamentary—should be irremovable. That is a thing which I cannot appreciate—the non-parliamentary complexion of the cabinet. It appears to me rather anti-democratic. If the cabinet does not carry the confidence of the House it must be removed. It cannot remain even for one minute, after it has lost the confidence of the House.

The second part is that the Ministers may be removed by impeachment before a judicial tribunal. I am afraid I am not able to appreciate that point also. If a Minister does not have the confidence of the House, and if there is something against him, he can be removed by bringing up the matter before the Legislature. Why drag him before a judicial tribunal? I do not know how this is going to work in a democratic system, such as the one we are hoping to have for our country.

And the third part is that the Prime Minister should be elected by the whole House by single transferable vote, but the other members of the cabinet are to be elected by single non-transferable vote. I am not able to understand what advantage the Honourable Mover expects under this arrangement. If the whole House elects a person, the man who has the larger majority will be elected. Suppose there is a House of 150 and one party—I will not say the Congress or the League, because there will be no old Congress or old League in Hindustan parties will be on different lines—that one party, say, the Socialists number 100 and the opposition number 50.

Kazi Syed Karimuddin: Sir, how does the Honourable Member know that there will be no League or Congress party?

Mr. Tajamul Hussain: I am glad I have been asked that question. There should not be any such parties, Sir. The sole object of the Congress was to achieve complete independence, without the interference of a foreign power and it has succeeded. The Congress has achieved its object. The League's object was the partition of the country and have Pakistan and they have got that. Both the parties have achieved their respective objects and they have finished their work. What the Congress wanted, the Congress has achieved and what the League wanted, the League has achieved; now there is no difference at all between the two, we are all in India and are Indians but our rights must be protected.

Mr. President: The Honourable Member will please confine himself to the discussion of the point. The future of the Congress and of the League is not before the House for discussion.

Mr. Tajamul Hussain: But the Honourable Mover had asked me to explain why I said there would be no League nor Congress Party as of old creeds and I thought I had your permission to explain; but now that I do not have it, I will not say anything more about that. I will only say that there will be no parties on the lines we have known them, because both the Congress and the League have achieved their objects. Both parties will have new creeds in future.

I was saying this. Suppose in a House of 150, one party has 100 members. That party will elect the leader who will be the Prime Minister. Suppose there are two candidates and the successful candidate gets 60 votes and the rest 40 oppose him. He still becomes Prime Minister. But what will happen if the opposition of 40 Members combine with the rest 50 in the House? Then the House will be divided as 90 against 60. The Leader cannot be chosen by the Party which has the largest majority in the House. It is just possible, in that case that the man who ultimately becomes the Prime Minister will be a man of the opposition. That is undemocratic and is against that system of democracy which I admire—the English system of democracy. I think that as far as possible, in order to suit our Indian ways, we should adopt as much of the English constitution as we can.

I oppose the amendment.

Lastly, there is the amendment moved by Sir N. Gopaldaswami Ayyangar—which is also the same as that of Pandit Bhargava—providing for the selection of the ministers and the appointment of the Prime Minister. The Prime Minister, it says, should be appointed by the President who will appoint the other Ministers on the advice of the Prime Minister and the Cabinet shall be responsible to the whole House. That is the system which is prevalent in the House of Commons and I support this amendment. As I said, it has worked very well in England and there is no reason why it should not be equally successful in our country. I support the amendment of Pandit Bhargava also.

Mr. H. V. Kamath: Mr. President, Sir, this clause seeks to lay down the basis of our national federal executive. Two amendments have been moved to this clause, amendment No. 212 and amendment No. 221 which, in effect, seek to weaken this national executive. My friend Mr. Kazi and my friend Mr. Hussain praised respectively the American model and the British model. Here Sir, we are not concerned with which model or which type we are going to embody in our constitution, whether it is the British, American, Russian, Turkish or the French or any other for the matter of that. Here, Sir, we are concerned with the principles of a democratic, efficient and dynamic government. After all what is needed today is an efficient and dynamic government which will clear the mess that has been made in this country which will lift this country of ours out of the rut into which it has fallen. The most elementary as well as the most fundamental principle, to my mind, of a democratic, efficient and dynamic government is that while every shade of political opinion and every school of thought should be adequately represented in every legislature,—because in a legislature two heads are better than one, twenty heads are better than two and two hundred heads are better than twenty—, in the case of the executive, specially when we are planning a dynamic executive, the reverse is the case. Here, Sir, in an executive it should be that twenty heads are better than two hundred, two heads are better than twenty and in an emergency even one head is better than two. In an emergency where prompt action and quick decision is needed, dynamism is required one head is better than two heads. But these amendments seeks to lay down a basis for the executive which if accepted would weaken the executive and would practically render it passive, unstable and static and render it unable to cope with the tasks that lie ahead of us. After all a cabinet or an executive is not a *Shivaji ka Barat* or an assorted museum piece or a mere *Khitchri*, but we want to make the executive a really dynamic executive. Here on the floor of the House my friend Mr. Kazi eulogised Pandit Nehru for what he had done in Bihar. I wish, Sir, that many of us were in a similar position to praise and eulogise the

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leaders of the Muslim League when similar and worse things happened in Bengal and some other parts of India. It is well known that when these outrages were committed in East Bengal and many other parts of India, when men were massacred, women were humiliated and children were burnt in fire and oil no leader of the Muslim League raised his little finger nor did even one Muslim League leader go into those parts and did what Pandit Nehru did in Bihar. Is this the way in which we are going to build up a strong united India? Is this the spirit that is going to animate us in future? Only yesterday I read a statement from the head of the Muslim League where he mentioned Pakistan and Muslim India. I expected that at least after the division of India into Pakistan and India or Bharatvarsha on a communal basis the hatchet had been buried fathoms deep. But the same spirit is abroad and that spirit has not been stilled. People thought of Pakistan and the rest of India.....

Mr. President: The Honourable Member should confine himself to the subject under debate.

Mr. H. V. Kamath: I was trying to make out that today what is needed is a dynamic spirit of unity, of action, of sacrifice and of faith. Let us not forget the grand, beautiful vision painted by our poet, Viswakavi Rabindranath in words of matchless beauty. That vision should animate us and guide us in our future labours 'so that we can all build up a great India worthy of our past and worthy of the sacrifices which our martyrs have undergone. Permit me, Sir, to quote those words which picture a vision of matchless beauty:

"Where the mind is without fear and the head is held high,
Where knowledge is free,
Where the world has not been broken up into fragments by narrow domestic walls,
Where words come out from the depth of truth,
Where tireless striving stretches its arms towards perfection,
Where the clear stream of reason has not lost its way into the dreary desert sand of dead habit,
Where the mind is led forward by Thee into ever widening thought and action,
Into that heaven of freedom, my Father, let my country awake."

Jai Hind.

Mr. President: I understand that Pandit Jawaharlal Nehru would like to accept some of the amendments. If so it might cut short the discussion to some extent. I should like him to make a statement before the discussion proceeds further.

The Honourable Pandit Jawaharlal Nehru: Sir, I venture to intervene in order to make clear which of the amendments I am prepared to accept and which not. Four amendments have been moved. I may say at the outset that I am prepared to accept Sir Gopaldaswami Ayyangar's amendment and not the others. Pandit Bhargava's amendment is more or less the same; it is only a question of wording. The others raise entirely different issues; for instance, the issue of ministers

being, elected by proportional representation. I can think of nothing more conducive to creating a feeble ministry and a feeble government than this business of electing them by proportional representation and I would therefore like the House to reject this amendment.

The other one raises a completely different issue, as to what the nature of the constitution should be. For instance, Mr. Karimuddin's amendment says that "that executive of the Union shall be non-parliamentary, in the sense that it shall not be removable before the term of the legislature," etc. That raises a very fundamental issue of what form you are going to give to your constitution, the ministerial parliamentary or the American type. So far we have been proceeding with the building up of the constitution in the ministerial sense and I do submit that we cannot go back upon it and it will upset the whole scheme and structure of the constitution. Therefore I regret I cannot accept this amendment of Mr. Karimuddin or of Mr. Pocker Sahib.

As to the other point raised it is perfectly true that the original draft that I placed before the House was not at all clear on various matters. It was not clear because there was no intention of drafting it here. These are certain indications for future drafting and some things were obviously taken for granted. It was taken for granted that the Prime Minister would be sent for by the President because he happens to represent the largest party or group in the House; further that the Prime Minister would select his ministers and further that they would be responsible to the House collectively. All that was taken for granted, but perhaps it is better to put that down clearly and the amendment moved by Sir Gopalaswami Ayyangar puts that down very clearly. Therefore I accept that amendment and I hope the House also will accept it and reject the others.

The Honourable Mr. Hussain Imam (Bihar : Muslim) : Sir, I had no intention of intervening in this debate because the subject matter of debate as to whether the executive should be parliamentary or non-parliamentary is one which though of great academic interest is not practical politics due to opinion in India being so much in favour of the British model that it is useless for any one to try and sing the praises of the American system and get it adopted. Constitutions are made—although there is an element of finality about them—only for a time; and I hope to live and see the British model dethroned, just as British power is being dethroned, and the better model adopted. But I have been forced to come here because of the speech of Mr. Kamath. Mr. Qazi spoke in praise of the activities of Pandit Nehru in Bihar. I was an eye-witness and saw his torn shirt and the amount of labour that he put in. When an opposite party man admires the other it is not an occasion to be utilised for maligning that party. The endeavour should not be to accentuate differences but to bring about greater unity.

Singularly ill-timed was the attempt of Mr. Kamath to state certain facts which were terminological in exactitudes. It is wrong to say that the League High Command never condemned the atrocities perpetrated on non-Muslims.

Mr. President: I am afraid we are straying into irrelevant discussion.

The Honourable Mr. Hussain Imam: I am not going to discuss this matter. I am simply mentioning that what he mentioned were not

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the facts. The fact that Pandit Jawaharlal Nehru went to Bihar was due to the reason that the Congress High Command was in control there, and the Congress High Command was in a position to intervene. But in Punjab the League was not the party controlling the Ministry: it was under section 93; in the N.W.F.P. the Congress was in power.

Mr. President: I would remind the Honourable Member that we are not considering the conduct of any Ministry or of Pandit Jawaharlal Nehru or of anybody else. We are discussing a simple clause of the Constitution. I would request him to confine himself to that.

The Honourable Mr. Hussain Imam: I hope you will not allow such digression to be made by others as well.

Sir, I was saying that the American system has got great advantages which are not appreciated at the moment. A few days ago I learnt that Harold has written a book condemning the American system of having an irremovable executive. He has praised the British system which we are adopting. What are the facts of the British system? The fact that the executive is removable in Britain does not differ materially in the day to day administration from the irremovable character of the American system. The power of not voting supplies, which is the essential part of the Ministry's working, is vested in the Legislature so that in the British system as well as in the American system the Legislature is absolute, though in the American Constitution there is the Presidential Veto. But there again they have provided so many checks and balances that the Presidential Veto can be overthrown by a two third majority of the House of Representatives and the Senate. So you find that the control of the purse by the Legislature is absolute practically in the Parliamentary system and in the non-parliamentary executive system of America.

Now, so far as legislature is concerned, the same thing applies. The Legislature is supreme with certain safeguards. Now, the very fact that a man is appointed who is not a member and the other man is appointed who is a member does not make any great difference in the day to day administration.

Some people have rightly opined that in times of crisis it is better to have one central control rather than a multitude of small minds working together and bringing about a kind of chaos. Well, if a system can work better in times of crisis, I do not understand why it should fail when there is no crisis. Crisis is an extraordinary state of affairs, a really complicated and difficult state of affairs. If a system can work at such a time, it stands to reason that it will work and work smoothly when the times are normal. I, therefore, am of opinion that the non-parliamentary system by means of which the President who gets not less than 51 per cent of the votes of the entire Nation is a better custodian of the Nation's interests than the Prime Minister who, after all, represents only one constituency and the majority of his own party members. The illustration which Mr. Tajamul Hussain has given was a little amiss. He said that the Prime Minister can be elected by the Opposition and the Government party combined together. He gave an illustration that, if there are 100 men in one party and 50 in another, then at the time of electing the leader, 60 vote for one and 40 for another. The man who was rejected by his own party, and might have gone over to the other party, secures 50 votes from the second party and 40 from the first and gets elected in spite of the fact that the majority of his own party was

not with him. That apprehension is perhaps, based on inexperience. In political parties the differences which exist inside are never ventilated outside. A man who will betray his own party and go over to the opposition will not get a single vote of his own party. In these days of democracy, such things are not possible. Rare instances of this nature may perhaps exist in one corner or other, but on broad outlines, you cannot have this kind of fissiparous tendency. Will the Opposition support a Quisling from the Government? How can that position be allowed? He is not a partyman. That is a contingency which will not arise. But the possibility that a Prime Minister might represent only a minority of the House is worth considering. The system of party working is such that if you belong to one party and secure the votes you are likely and almost sure to get all the votes in the instance which Mr. Tajamul Hussain gave, what will happen is that the man who secures 60 votes out of 150 will ultimately be the Prime Minister. Now you ask the President to act not on his own judgment, but on the judgment of this man who secured a minority of the votes of the House. He gets 60 out of the 150 votes, of 40 per cent only.

I therefore regard that the system whereby discretion is left to the President to nominate his own Ministers is more democratic and based on better and sounder principles than the system of copying the British model. The British system was found unequal to the task when was worked in France where the tendencies are to have small groups and parties. They found there ever and anon that the British system was unsuitable. U.S.A. has a different system giving the President perfect latitude to form a Government suited to the occasion. For instance, during the war President Roosevelt nominated two Members to his cabinet from the party in Opposition, and they were given very important portfolios. So you have the same system of coalition Government in America without any of the defects which a coalition presupposes. A coalition is composed of divergent elements, each pulling in different ways. I personally think that the American system is not a quarter as bad as has been stated. It is said that the executive is not removable. But the fact is that the executive is more, easily removable in the American system than in the British system. Many Members will remember the howl which was raised when Lord Templeton (Ex Sir Samuel Hoare) was turned out of the British Cabinet in the days of the Spanish crisis.

But in America everyday you find one Secretary of State being turned out and another being appointed. General Marshall has just come in without any furore being made. There is no one to question the right of the President to select an executive head for the time being. I do not wish, Sir, to detain the House by making a long speech. I wish only to make my position clear. This is my personal opinion, not that of my party, but I thought that it would be better if I explained that the American system is not as bad as it has been painted by its traducers.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim) : Mr. President, Sir, Clause 10 as amplified by Sir N. Gopalaswami Ayyangar introduces a type of executive which is British and which is commonly known as parliamentary. The amendment moved by Kazi Syed Karimuddin Saheb seeks to amend this clause by introducing a mixed type of executive, the Swiss type. Now, let us examine whether the type of executive contemplated by the amendment of Kazi Saheb is undemocratic, is impracticable and does not meet the present circumstances in the country.

[Mahboob Ali Baig Sahib Bahadur]

Under these three heads it is necessary for this House to deal with this subject. Now, Sir, as you know, the British parliamentary system is not a statutory one. It is a historic growth covering several centuries of struggle between the people and the king, to snatch as much power as possible for the representatives of the people to administer the State. It is no doubt true that members of the Parliament are elected; and after the members are elected, the leader of the majority party is called by the Head of the State, *viz.*, the King, to form the Government, *i.e.*, he chooses his own ministers. Up to the stage of the return of the members to Parliament, it is democratic. From that stage, it ceases to be democratic, for the leader of the majority party may choose anyone he pleases. The ministers no doubt belong to the party which has been favoured by the electorate, but particular ministers, are not chosen by the members of Parliament. Then, Sir, the Government is formed, and it is in the saddle so long as it carries the confidence of the Parliament. But take the case of a certain section of the Parliament not being satisfied with the executive but unable to throw out the Government. It may be that that small section are the people in whom the majority of the electorates have confidence. The anomaly is that the electorate, the real sovereign, is not in a position to throw out the Cabinet. You will therefore see, Sir, that the parliamentary executive ceases to be really democratic. In the first place, parliament does not choose the ministers; in the second place the electorate cannot turn them out. So, really, Sir, from that stage the parliamentary democracy obtaining in England which is sought to be introduced here is not democratic. Let us examine the position taken by Kazi Saheb. After the elections take place, the members of Parliament will elect their own ministers. So, Sir, it is more democratic than the British parliamentary type. There are two processes. One is that members of the Parliament are elected by the people, and the second is that the members of Parliament, the real representatives of the people, elect their own ministers. Let us see whether the system which is sought to be introduced by this amendment is practicable in the circumstances obtaining in the country. I once before said that the democratic system of election of members of Parliament and the election of the Cabinet must be one which will reflect all the sections of the country.' It is no use being blind to the realities of the situation. It is no doubt true that people should not think in terms of sections, communities, and special interests. But every day we find that even the parties like the League and the Congress, both inside and outside this House, have always been saying there must be protection of minorities—religious minorities, sectional minorities and the oppressed minorities and minorities belonging to different tracts of the country. These facts. Let us not be blind to these facts. Now if the Leader of the party is called upon by the, Head of the State, what he does naturally—and we expect him to do it—is that he would form a Cabinet of men consisting of persons representing some interests or some communities. He is going to do that. It may be by convention or good sense, but that is going to happen. But if that does not happen and he cannot be forced to do it, then, Sir, there will be a lot of discontent, distrust and all that sort of thing. So if we provide in the Constitution itself a democratic system of forming a Cabinet by electing ministers and you introduce a system of election which is called proportional representation by the single transferable vote for non-transferable vote as the cue may I be, then it will be satisfactory. it will be democratic and it will reflect all the sections of the people. Besides that, Sir, as I submitted, it is not possible for the people to turn out a reactionary Cabinet. The party in power may still consist of a majority of persons who are reactionary and whom the electorate may have no confidence. But in any case the Cabinet will continue and is expected to continue for the full term of four or five years.

In this amendment you have the advantage of the democratic method of electing persons to your Cabinet and having elected them, you ask them to continue, while the person who is elected under the British type always stands in fear of being turned out. So, Sir, if you make this executive not removable for the period, he will be in a better position to work, develop schemes and see to their completion. So, Sir as I said. this Swiss type has got the advantage of being democratic at certain stages. It is possible for all sections of the country to be represented, it will work better and can complete its schemes and in the present circumstances of the country, is the most suitable and there is nothing wrong in introducing this system. Further, let us remember these systems—the Swiss and the American types—are the result of the experience gained by the other countries where democracy has worked, and it is the considered opinion of the Constitutionists that the British system is not democratic. After all, who holds the power even in that democracy, in that Parliament? Virtually it is the Prime Minister or his executive; and on account of what is called the discipline in the Party what is considered to be good by that party, Cabinet or the Premier must be followed by all the Members or else disciplinary action will be taken against them. I therefore think, Sir, that the Swiss system that is contemplated by the amendment of Kazi Syed Karimuddin has much to commend it.

Mr. President: I think we have had enough discussion on this clause and I would like to put the amendment and the clause to vote now.

Mr. K. M. Munshi (Bombay: General): I move closure.

Mr. President: There is a closure moved by Mr. Munshi. I take it that the House accepts the closure.

The question is:

“That for Clause 10 the following be substituted :

‘There shall be a Council of ministers elected by the National Assembly by a system of proportional representation by single transferable vote and the council of ministers shall be responsible to the National Assembly’.”

The amendment was negatived.

Mr. President: I will put the amendment of Kazi Syed Karimuddin to vote:

“That the following be added at the end of Clause 10:

‘That the Executive of the Union shall be non-parliamentary in the sense that it shall not be removable before the term of the Legislature and a member of the Cabinet or the Cabinets may be removed at any time on impeachment before a judicial tribunal on the ground of corruption or treason.

The Prime Minister shall be elected by the whole House by single transferable vote. Other Ministers in the Cabinet shall be elected by single non-transferable vote’.”

The amendment was negatived.

Mr. President: I will now put Sir Gopaldaswami Ayyangar's amendment to vote:

"That at the end of Clause 10, the following be added :

'The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister. The Council shall be collectively responsible to the House of the People.'

This has been accepted by the Mover.

The amendment was adopted.

Mr. President: There is another amendment by Mr. Thakurdas Bhargava. I think that is covered by this amendment and it is not necessary to take the vote of the House on it.

I will now put the original clause as amended by Sir Gopaldaswami Ayyangar's amendment.

Clause 10, as amended was adopted.

CLAUSE 11

Mr. President: Clause 11. Sir Gopaldaswami Ayyangar.

The Honourable Sir Gopaldaswami Ayyangar : I beg to move Clause 11.

"11. The President shall appoint a person being one qualified to be appointed a judge of the Supreme Court to be Advocate General for the Federation, to give advice to the Federal Government upon legal matters that may be referred to him."

Shri Gokulbai D. Bhatt: *[Sir, I withdraw my amendment in favour of the amendment to be moved by Sir Alladi Krishnaswami Ayyar.]*

Sir Alladi Krishnaswami Ayyar: Mr. President. I beg to move the following amendments to clause 11.

(1) That in clause 11 after the word 'referred', the words 'or assigned'; be inserted.

(2) That at the end of clause 11 the following be added:

'by the President or are assigned to him under this Act or by any Federal Law, to exercise the powers and discharge the duties vested in him under this Act or under any Federal Law and in the performance of his duties he shall have right of audience in all courts in the Union of India. The Advocate-General shall hold office during the pleasure of the President and shall receive such remuneration as the President may determine'."

This is merely a formal amendment, because there are three sets of duties. There are duties which are assigned to him by the President. There are other duties which are referred to him. There are statutory duties under various Acts. It is only to see that the provision is complete that this amendment is moved. I presume there will be no opposition to this.

Mr. President: The clause and the amendments are now open for discussion.

(No member rose to speak)

*[]*English translation of Hindustani Speech.

Mr. President: I shall put them to vote unless Sir Gopaldaswami Ayyangar wants to say anything.

The Honourable Sir N. Gopaldaswami Ayyangar: I accept the amendments.

Mr. President : I shall put to vote the amendments first:

“(1) That in clause, 11 after the word ‘referred’ the words ‘or assigned’ be inserted.

(2) That at the end of clause 11, the following be added:

‘by the President or are assigned to him under Act or by any Federal Law, to exercise the powers and discharge the duties vested in him under this Act or under any Federal law and in the performance of his duties he shall have right of audience in all courts in the Union of India. The Advocate-General shall hold office during the pleasure of the President and shall receive such remuneration as the President may determine’.”

The amendments were adopted.

Mr. President: The clause, as amended, is put to vote.

Clause 11, as amended, was adopted.

CLAUSE 12

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, I beg to move Clause 12 which runs in the following terms:

“12. All executive action of the Federal Government shall be expressed to be taken in the name of the President’.”

Very little is required by way of explanation.

(Messrs. M. Ananthasayanam Ayyangar and Kazi Syed Karimuddin did not move their amendments.)

Mr. President: I do not think there is any other amendment to this clause. If any member has given notice of any amendment to this which I have not noticed, he may move.

(No member rose to speak.)

Mr. President : As there is no other amendment, I shall put the clause to vote.

Clause 12 was adopted.

CLAUSE 13

Mr. President: Clause 13.

Mr. R. K. Sidhwa: (C. P. & Berar: General): There is a new clause 12-A, Sir. The additional clauses treat stands in my name reads thus:

“That after Clause 12, the following new clause be added :

12-A. The Federation shall make laws for—

- (1) the Socialist system of economy nationalisation of high industries, administration on co-operative basis of trading enterprises;
- (2) equalisation of capital by private owners;

[Shri R. K. Sidhwa]

- (3) prevention of exploitation;
- (4) abolition of unemployment, and guaranteeing the right of work to every citizen;
- (5) recreation, annual vacations, leave with wages for maternity period, child welfare, rest homes, clubs and comfortable dwelling houses for all classes of workers;
- (6) right to maintenance in old age, family provision in case of sickness or loss of capacity to work, free medical aid.....”

Mr. President: I think these would come under Part III. When we take it, you may move this. So far as the fundamental rights are concerned, they have already been accepted by the Constituent Assembly and they will again come up at the final discussion. This is only with regard to broad constitutional principles. They will be taken up I think at the final discussion.

Now, Sir Gopaldaswami Ayyangar, Clause 13.

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, I beg to move Clause 13.

“13. The legislative power of the Federation shall be vested in the Parliament of the Federation which shall consist of the President and the National Assembly, comprising two Houses, the Council of States and the House of the People.”

With regard to this, there is notice of an amendment that the words “the National Assembly comprising” be deleted. If that is done, the clause will read as follows:

“The legislative power of the Federation shall be vested in the Parliament of the Federation which shall consist of the President and two Houses, the Council of States and the House of the People.”

This is merely to avoid having too many designations for what will be the legislative of the Federation in the future. The Parliament of the Federation is to consist of the President and two Chambers. These words, “the National Assembly”, have been put in there for the purpose of referring only to the Houses to the exclusion of the President. It seems, Sir, that it is unnecessary to have this expression “National Assembly” coming in between the Parliament and the two Houses. It is therefore considered desirable that we omit all reference to “National Assembly” and make the clause read as I have indicated. I think the notice of amendment has been given by Mr. K. Santhanam and I wish to say at the outset that I shall be prepared to accept it.

Mr. R. K. Sidhwa: Sir, my amendment as stated in the paper reads thus:

“That in Clause 13 after the words ‘in the Parliament of the Federation’ the words ‘to be known as Congress’ be inserted.”

My object is, Sir, that the freedom that we have attained is under the aegis of the Indian National Congress and I desire the name ‘Congress’ to be perpetuated in our future Constitution. I understand, Sir, it is the desire of several honourable members that the various words that have to come in the Constitution should be left over for consideration. Under these circumstances, I do not propose to move, it now but I do desire that the word ‘Congress’ must find a place in our Constitution so as to perpetuate this memorable name under which we have fought for 65 years in the History of our country.

Mr. Mohd. Tahir (Bihar: Muslim): *[Sir, in the amendment which I have suggested much thought has not been given to the language. Since we have to discuss on principles, my amendment would read like this:

“That in Clause 13, for the words ‘comprising two Houses, the Council of States and’, the word ‘namely’ be substituted.”

My aim in suggesting this amendment is that in the original resolution where two assemblies have been mentioned and it has been said that there ought to be two Houses, I want to keep one House only.

Sir, we have the picture of one new India before us now, with the crown of freedom in her hands. When we are to forge a new Constitution for her and before I place my humble views regarding that before the House, I want to repeat the couplet:

“Sare Jahan se achcha Hindustan Hamara
Ham bulbulen hain uski woh gulstan Hamara

After this, I shall say only this much about the amendment, that when we are making a Constitution for India, it is our duty that we should make such a model constitution that all in the country may feel that this Constitution has been made for them and it is theirs. It must not be that, on looking to that Constitution, the common man may say that though the Englishman has left India, his ghost is yet stalking the country. But this constitution clearly betrays that his ghost is haunting us. I think that if you look at this Constitution and at this clause, which is before us now, you will feel that though no doubt the Englishmen are quitting India, his ghost is walking here. Before framing a constitution for a newly born nation or for a country which has attained freedom. the most essential thing, to mind, is to change its past traditions and old constitutions, which were hitherto in vogue, in such a way as to transform the whole mentality of the people of that country. Sir, you know how during the past so many years of their rule in India, Britishers have changed and enslaved the mentality of the people. Therefore, when we frame a new Constitution, it becomes our duty to make it in such a way as to transform our mentality from that of slavishness to freedom. The old mentality reminiscent of British slavery must be uprooted. I beg to state that in all the countries various forces are at play—in some countries Socialism works well, in others Communism works well, yet in some others fascism is to be found and in some Capitalism and Imperialism flourish. Unfortunately, though Capitalism and Imperialism, the Britishers have brought India to her present distress and miserable plight Sir, I would like to point out that before framing the Constitution of the country, we should scan the history of India during the short period of 1919 to the present day. Sir, from 1919 to 1935 many Constitutions were framed but all of them the product of British Imperialism. In 1919, local self-government was conceded to India; councils were created, even a council was formed for the centre. It was self-government only in name. But, Sir, if you think over it a little you will find that Imperialism and Capitalism were at its back and they were in full play then. Hence the local bodies could not function freely. This was because imperialism was associated with them. The masses used to send their elected representatives

*[English translation of Hindustani Speech begins.

[Mr. Mohd. Tahir]

to the local bodies, but the presence of nominated members there used to counteract the influence of the elected ones. And this system still continues. Similar was the case in the Councils; the influence of the elected representatives was weakened by the nominated members; and any programme for the betterment of the country put forth by the elected representatives used to be opposed by the nominated members. That was the state of affairs under the Act of 1919.

Thanks to God Almighty, when Imperialism and Capitalism were at work in India, a party under the leadership of Mahatma Gandhi came forward to voice the feelings of the poor Indians, and that voice was raised so vociferously that today we find India on the threshold of freedom. Is it then befitting for us today to frame a constitution for India, which smells strongly of Capitalism and Imperialism, nay it fosters them? After some struggle and haggling the 1935 Act was enacted. When, after the Act of 1935, the British Government found that very great political consciousness had been developed in India, and she was pressing her demands more insistently, it changed the Act of 1935. Legislative Assemblies were established in the provinces, where only the elected representatives of the people were to manage the affairs of the Government. But of what good could those provincial assemblies be, when the Upper Houses and the Council of State were tacked on to them? It was a creation of the Imperialistic mind. Thus the democratic atmosphere of the provincial Assembly was negatived, because the Britisher knew that for keeping his Capitalistic outlook safe in India no better plan could be devised. Hence, I would like to point out that nominations, Upper Houses, and similar other tools were the creation of Imperialism. Therefore, when we are framing the Constitution of free India we should keep these things in mind. The Constitution, which we now frame, should be such that we may be sure that it would be acceptable to the people, and they would willingly work it. I would like to ask a few simple questions of the Honourable Mover of this clause. Is he of the opinion that without having two Houses, the Progress of India or of any other country would be hampered, or no good laws can be enacted? May I ask him whether an assembly, better and more responsible than the present one, has ever before assembled in India I would say that never before did an assembly, more responsible than this, sit in India. Do we not see that one House is carrying on all this work, and is framing the Constitution? After some weeks this very Assembly would function, as the Federal Parliament, where laws would be enacted. If the principle that two Houses are essential is accepted, then this Constituent Assembly should be dissolved and reshaped to contain two Houses. If the Honourable Mover cannot divide the Constituent Assembly into two Houses, and he cannot have two Houses of the ensuing Federal Parliament, then it becomes quite clear that he himself does not believe in the principle that two Houses of legislature are essential. But he is making this proposal because of a certain force or pressure upon him—the forces of capitalism. I would like to tell him that the Council of State nominations, and Upper House were the creations of Imperialism. Does it mean that poor India is still to labour in the same old way, which though more expensive, added nothing to the efficiency of work? It should not be that even after the Britishers have quitted the country and our Government is established they may have the check to say that their work is still being continued in India. Their work will continue to be accomplished through the devices of the Upper House, nominations, Council of State, etc. With these words, I sit down. If my words have aggrieved anyone, I ask his pardon.]*

] *English translation of Hindustani Speech ends.

Mr. President: Sir B. L. Mitter.

Mr. S. V. Krishnamurthy Rao (Mysore State) : I rise on a point of Order. Under Rule 32, Clause (1), an amendment must be relevant to the motion to which it is proposed. In the motion that is proposed now there is no word "Lower House" and the amendment seeks to define what the Lower House means. So this amendment is out of order.

Sir V. T. Krishnamachari (Jaipur State): I was just going to say the amendment is not going to be moved.

Mr. President: So the point of order does not arise.

(Shri Mohanlal Saxena did not move his amendment.)

Shri K. Santhanam (Madras: General): Sir, I move:

"That in clause 13, the words 'the National Assembly, comprising' be deleted."

Already, Sir, N. Gopaldaswamy Ayyangar has explained why these words should be deleted. I fully sympathise with the Union Powers Committee in their desire to appropriate all the good words. The expression 'National Assembly' is certainly a very attractive expression, but we must also have the word 'Parliament'. They have devised an ingenious formula for appropriating both these expressions. The word 'National Assembly' is to mean the two Houses taken together and the word 'Parliament' is to mean the two Houses plus the President. However ingenious it may be in practice it will be most inconvenient and when it comes to translating it into Hindustani, matters will be worse. It will be bad enough to find a suitable translation for 'Parliament' and if we are to find one for 'National Assembly' also, it will be almost a hopeless task. Therefore I move this amendment.

Mr. President: There is no other amendment. Now, the clause and the amendments that have been moved are open to discussion.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. President, Sir, in this motion we have been asked to vote for two Houses, the Lower House and the Upper House. I wish to point out that our experience in the last so many years has been that the Upper House acts as a clog in the wheel of progress. I do not think it is very wise to continue the same thing again in our new constitution. I think that everywhere in the world the experience about Upper Houses has been the same. In no country an Upper House has helped progress. It has always acted as a sort of hindrance to quick progress. Therefore, if we are not careful at present, we shall not be able to make as rapid progress as we need. India is probably the biggest nation in the world. We will have to catch up with Russia and America if we want to occupy our proper position in the international field. In the next five or ten years we will have to cover the progress which in the normal course would take fifty years. I do not think two chambers will help us in the realisation of our new programme with the required rapidity. Therefore I think that the Mover will kindly review this matter and see that in our new constitution we do not have two Chambers.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I beg to support the clause as it stands and therefore oppose the motion to omit the Second Chamber. We are going to obtain supreme sovereign powers. We have to deal with foreign and domestic matters of extreme importance. In these circumstances it will be wise for us to have two Houses. A popular House is known for its vitality and vigour and that House will have the exclusive power in regard to money. But a Second Chamber introduces an element of sobriety and second thought. In these circumstances it would be wise for us, especially in view of many foreign subjects which are looming large in our minds, to have a Second Chamber would be a disadvantage is, I think, not correct. I submit. Sir, that a second Chamber would not only be an advantage but an absolute necessity.

Then again, we have to consider the entry of the States into the Federation, and if we have this in mind, a Second Chamber would be an absolute necessity. Without a Second Chamber it would be difficult to fit in the representatives of the States in the scheme of things.

With these few words Sir, I would oppose the amendment to do away with the Council of States, that is, the Second Chamber.

Mr. President: No one else wants to speak probably. Then, the Mover can reply, if he desires to.

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, I do not think any elaborate justification is necessary for this clause which states that there will be two chambers in the Federal Legislature. The need for a Second Chamber has been felt practically all over the world wherever there are federations of any importance. After all, the question for us to consider is whether it performs any useful function. The most that we expect the Second Chamber to do is perhaps to hold dignified debates on important issues and to delay legislations which might be the outcome of passions of the moment until the passions have subsided and calm consideration could be bestowed on the measures which will be before the Legislature; and we shall take care to provide in the Constitution that whenever on any important matter, particularly matters relating to finance, there is conflict between the House of the People and the Council of States, it is the view of the House of the People that shall prevail. Therefore, what we really achieve by the existence of this Second Chamber is only an instrument by which we delay action which might be hastily conceived, and we also give an opportunity, perhaps, to seasoned people who may not be in the thickest of the political fray, but who might be willing to participate in the debate with an amount of learning and importance which we do not ordinarily associate with a House of the People. That is all that is proposed in regard to this Second Chamber. I think, on the whole, the balance of consideration is in favour of having such a chamber and taking care to see that it does not prove a clog either to legislation or administration.

Nothing more is really needed from me to commend the clause as it is to the House, with the small amendment which was moved here.

Mr. President: I shall first put the amendment of Mr. Mohammad Tahir :

“That in Clause 13, for the words ‘comprising two Houses, the Council of States and’, the word ‘namely’ be substituted.”

The amendment was negatived.

Mr. President: Then I put Mr. Santhanam’s amendment:

“That in clause 13, the words ‘the National Assembly, comprising’ be deleted.”

The amendment was adopted.

Mr. President: I shall now put the whole clause as amended.

Clause 13, as amended, was adopted.

CLAUSE 14

Mr. President: We shall now pass on to Clause No. 14.

The Honourable Sir N. Gopaldaswami Ayyangar: With your permission, Sir, and with the permission of the House, I propose simply to formally move this Clause 14, and to request you to hold over the moving of the amendments and the discussion of this clause to a subsequent day. The clause relates to the composition of the two Houses of the Legislature. A very large number of amendments have been sent in and they raise certain points of importance both to the Provinces and to the Indian States. A good deal of discussion—lobby discussions—has been going on with reference to the merits of these amendments and it seems quite possible that as a result of those discussions, we may be able to put before the House something which will be acceptable to all sides of the House. I only pray, Sir, that you will approve of the Procedure I am suggesting, and if you do so, I shall simply read out the clause, Clause 14.

Mr. President: I think the House has no objection to accepting the suggestion, that the discussion on this clause be held over for the present and that the clause be moved formally today.

Honourable Members: Yes.

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, I beg to move Clause 14.

“14. (1) (a) The Council of States shall consist of—

- (i) not more than 10 members nominated by the President in consultation with Universities and scientific bodies;
- (ii) representatives of the Units on the scale of 1 representative for every whole million of the population of the Unit up to 5 millions *plus* 1 representative for every additional 2 millions of the population, subject to a total maximum of 20.

Explanation.—A Unit means a Province or Indian State which returns in its own individual right members to the Federal Parliament. In Indian States which are grouped together for the purpose of returning representatives to the Council of States a Unit means the group so formed.

- (b) The representatives of each Unit in the Council of States shall be elected by the members of the Lower House of the Legislature of such Unit.
- (c) The House of the People shall consist of representatives of the people of the territories of the Federation in the proportion of not less than 1 representative for every million of the population and not more than 1 representative for every 7,50,000 of the population.
- (d) The ratio between the number of members to be elected at any time for each constituency and the population of that constituency, as ascertained at the last preceding census shall, as far as practicable, be the same throughout the territories of the Federation.

[The Honourable Sir N. Gopaldaswami Ayyangar]

(2) The said representatives shall be chosen in accordance with the provisions in that behalf contained in Schedule:

Provided that the elections to the House of the People shall be on the basis of adult suffrage.

(3) Upon the completion of each decennial census, the representation of the several Provinces and Indian States or groups of Indian States in the two Houses shall be readjusted by such authority, in such manner, and from such time as the Federal Parliament may by Act determine.

(4) The Council of States shall be a permanent body not subject to dissolution, but, as near as may be, one-third of the members thereof shall retire in every second year in accordance with the provisions in that behalf contained in Schedule.

(5) The House of the People, unless sooner dissolved, shall continue for four years from the date appointed for its first meeting and no longer; and the expiration of the said period of four years shall operate as a dissolution of the House:

Provided that the said period may, during an emergency, be extended by the President for a period not exceeding one year at a time and not exceeding in any case beyond the period of six months from the expiry of the period of the emergency."

Mr. President: We shall take up the discussion of this clause at a later stage. We shall proceed to Clause 15.

CLAUSE 15

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, I beg to move:

"There should be the usual provisions for the summoning prorogation and dissolution of Parliament, for regulating the relations between the two Houses, the mode of voting, privileges of members, disqualification for membership, Parliamentary procedure; including procedure in financial matters. In particular, money bills must originate in the Lower House. The Upper House should have power to suggest amendments in money Bills; the Lower House would consider them and thereafter, whether they accept the amendments or not, the Bill as amended (where the amendments are accepted) or in its original form (where the amendments are not accepted) shall be presented to the President for assent and, upon his assent shall become law. If there is any difference of opinion as to whether a Bill is a money Bill or not, the decision of the Speaker of the House of the People should be final. Except in the case of money Bills both the Houses should have equal powers of legislation and, deadlocks should be resolved by joint meetings of the two Houses. The President should have the power of returning Bills which have been passed by the National Assembly for re-consideration within a period of six months."

Sir, these are matters for which provision is made in all constitutions and they will follow the usual type in our own constitution. This clause only gives authority for the draftsmen to put the necessary provisions in.

(Amendment Nos. 300 and 301 in List II and amendment No. 17 in Supplementary List No. 1 were not moved.)

Shri K. Santhanam: Sir, I move:

"That in Clause 15 for the last sentence the following be substituted:

'Bills other than money bills, presented to the President for assent may be returned by him to the Federal Legislature for re-consideration, but no such return shall be made later than six weeks after the passing of the Bills by the Assembly.'

This is intended to make two changes. Now according to the clause as it stands, Bills are to be returned within a period of six months, and as the clause stands, the words "re-consideration within a period of six months" are subject to an ambiguity—whether a Bill should be returned within six months or whether the National Assembly should meet and consider it within six Months. Besides, the period of six months is

considered' to be, by many of my friends, too long, a period and therefore this amendment of a period of six weeks has been prescribed for return of Bills by the President.

Then all Bills are liable to be returned under the new clause as it stands. This is obviously inconvenient for, money Bills. There should be no power in the President to return money Bills because they are matters of urgency and when the House passes them, it should be taken as final.

Even the Upper House is not considered competent to change money Bills. So when revisionary powers, are taken away from the Upper House there is no reason why power should be vested in the President. Sir, I move:

Mr. President: There is no other amendment. So the original clause and amendment are open to discussion.

Sri M. Ananthasayanam Ayyangar (Madras: General): I support this amendment. I would be glad if in respect of money Bills some provision is made for lessening the period within which it will be open to the President to return them for re-consideration. I have known that in many matters when Bills were passed by the Central Legislative Assembly we had to regret that some provisions crept in which were absolutely contrary to your intentions, and even in respect of a money matter it so happened that in the Budget we voted down an amount which we did not like to vote down and it went to the Upper House and subsequently in another form it had to come back on the intervention of the Governor-General. Even in a money Bill mistakes occur and we want to correct them. As it is, there is no provision for the Assembly to review its own money Bill except by an amending Statute. I do not see why such a provision should not be made even with regard to money Bills. It is true that power ought not to be vested in the President to clog the progress of a money Bill in case of emergency. I wish the draftsmen who will put in details at a later stage will consider the desirability of giving a power to return a money Bill not later than ten days for any technical flaw which may have to be corrected; otherwise for any matter of substance it need not be open to the President to return it, when such matters must be left entirely to the decision of the Lower Assembly, and the President ought not to take the place of or be a substitute for the Lower Assembly or the Upper Chamber in such matters.

As regards the need to return these Bills, I have said that there are many cases where what one House has done in haste has been corrected by another, and even when both the Houses have bestowed their attention there are many matters which may have to be sent for reconsideration. The present provision in the Government of India Act is for the Governor-General to reserve certain Bills for consideration by His Majesty and the same Bill may be returned with suggestions as to which modifications have to be effected.

I would like to make some more suggestions with regard to some other matters which should be included in Clause 15. The amount of care or limitation with which the other clauses have been drafted, this clause has not been drafted. A number of other items are absent. For instance there is no provision made with reference to Budget estimates. Under the existing Act the Budget is presented first to the Legislative Assembly and then to the Council of State. It is open to the Assembly and the Council of State to revise or alter or reduce it;

[Shri M. Ananthasayanam Ayyangar]

but if the Assembly refuses to vote a Demand, it cannot be restored by the Council of State. It is a matter of investing the Council of State with this power or taking away the power which the Legislative Assembly has. It is not merely a matter of form. I am sorry it is not included in the list of items for which provision has to be made along with other matters to be considered later.

I would also suggest that provision may be made for the summoning or dismissal of Ministers. There is no provision for it now. We have now made provision, by means of an amendment, summoning a Prime Minister who may later on choose other Ministers who will have to be accepted by the President. But, so far as dismissal is concerned, no provision has been made. If the Ministers lose the confidence of the House, it must be open to the President to call upon them to vacate their offices. Some such provision is necessary.

There are one or two matters more for which provision must be made in Clause 15. For instance, take Sections 103, etc., of the Government of India Act, providing for common legislation for two or more units. Now, there are States and Provinces federating with the Union. There may be certain subjects common to two States or Units. These subjects may be absolutely provincial subjects; all the same, for the sake of convenience, those two Units may require the Centre to pass legislation. With their consent, on the delegated authority, the Central Legislature may pass legislation. There is no provision here for that.

If we accept the three Lists, one of those Lists contains matter which is exclusively within the jurisdiction of the provinces. Special provision has to be made whereby in regard to certain subjects which are in the provincial List exclusively, if two or three Units are interested in a kind of common legislation there must be an authority which can attend to it and that authority is the Central Legislature which can pass legislation common to the concerned Units. Some such provision must be made in the Constitution and it must be included in Clause 15. The draftsmen of the Constitution may kindly take note of this.

An Honourable Member: Sir, I wish to point out an omission here, due probably to oversight. While considering Clause 15, in the latter part of it the words "National Assembly" were found. According to it, the President should have the power of returning Bills passed by the Assembly. Just now, while considering Clause 13, by an amendment of Mr. Santhanam, the words "National Assembly" have been omitted and 'Federal Parliament' inserted. I think the words 'Both Houses of Parliament' should be there.

The Honourable Sir N. Gopalaswami Ayyangar: Sir I accept the amendment moved by Mr. Santhanam.

With reference to the remarks of the last speaker I may point out that in Mr. Santhanam's amendment he has substituted the words 'Federal Legislature' for the words "National Assembly" already. Therefore the objection raised by the last speaker does not hold good.

There were a number of points mentioned by Mr. Ananthasayanam Ayyangar, the last point being that there should be provision for Federal Legislation in cases where two Units apply for such legislation on matters which might be common to both of them, and for other Units of the Federation to apply that legislation to themselves if they wish to do so. That is an important point, Sir. I could give him an assurance that, when the text of the Constitution comes to be drafted, provision will be made for that sort of thing, along with other matters which have not been specifically referred to in this draft of the principles of the Union Constitution.

I may mention, however, that provision for such matters will not fall under the routine items that are provided for in Clause 15. But I can assure him that the point mentioned will be kept in mind when the text is drafted. I have nothing more to say.

Mr. President: I will put the amendment to vote. The question is:

“That in Clause 15 for the last sentence the following be substituted :

‘Bills other than money Bills presented to the President for assent may be returned by him to the Federal Legislature for re-consideration, but no such return shall be made later than six weeks after the passing of the bills by the Assembly.’”

The motion was adopted.

Mr. President: I now put Clause 15, as amended, to vote.

Clause 15, as amended, was adopted.

CLAUSE 16

The Honourable Sir N. Gopalaswami Ayyangar: The next Clause is 16. It relates to language.

Sri M. Ananthasayanam Ayyangar: May I request the Honourable Mover not to move this Clause now? This may stand over.

The Honourable Sir N. Gopalaswami Ayyangar: I have no objection to it. But I wish to point out that this particular matter is not likely to come up for discussion during this session. If it is the wish of the House that I should not move this Clause, I shall not move it.

Mr. President: A suggestion has been made that this Clause 16 be not moved at this stage. I will put it to the House.

The question is:

“That the consideration of Clause 16 be postponed.”

The motion was adopted.

Chapter III

CLAUSE 17

The Honourable Sir N. Gopalaswami Ayyangar: Clause 17 relates to the power of the President to promulgate ordinances during recess of Parliament.

“17. (1) If at any time when the Federal Parliament is not in session the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require.

[The Honourable Sir N. Gopaldaswami Ayyangar]

(2) An ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Parliament assented to by the President, but every such ordinance—

(a) shall be laid before the Federal Parliament and shall cease to operate at the expiration of six weeks from the re-assembly of the Federal approving it are passed by both Houses, upon the passing of the second of those resolutions; and

(b) may be withdrawn at any time by the President.

(3) If and so far as an ordinance under this section makes any provision which the Federal Parliament would not under this constitution be competent to enact it shall be void.”

This clause provides for the issue of ordinances by the President. There can be no objection to the vesting of power of this very limited description for making ordinances in the President. The ordinances can be made only during periods when the legislature is not in session in the case of matters which cannot wait till the next session of the legislature, an ordinance made has got to be placed before the Parliament so soon as possible and shall cease to operate at the expiration of six weeks from the re-assembly of the Federal Parliament. Power is also given to the President to withdraw ordinances at any time during the interim period if he thinks that it is unnecessary to keep them in force. A power of this description of taking administrative action which has to be taken at once and which cannot wait till the Parliament is in session has been found to be necessary. Sir, I move.

Mr. President: Mr. Shibban Lal Saksena.

Prof. Shibban Lal Saksena: Sir, before I move this amendment, I want to know one thing. I had given notice of an amendment modelled on the Irish Constitution and in that I had given five clauses. One of them was that cow slaughter should be prohibited in Bharatvarsh by law. I cannot find that amendment in the printed list supplied to us.

Mr. President : Mr. Shibban Lal Saksena's amendment of which he gave notice relates to that part of the Constitution which you have already passed, *viz*, fundamental rights. They will come up again in their final form for discussion at the final stage. So that does not arise at this stage.

Prof. Shibban Lal Saksena: Thank you, Sir.

Sir, I desire that the whole of this chapter should be deleted. This chapter deals with the ordinance-making powers of the President. I think on account of the last so many years of foreign rule and rule by ordinances, we have become so much accustomed to ordinances that in the Constitution of free India, we have provided for this ordinance-making power without any compunction.

Shri C. Subrahmanayam (Madras : General) : Is the Honourable Member moving this as an amendment?

Prof. Shibban Lal Saksena : I am moving the amendment. Let me read out the amendment.

Mr. President : This is not an amendment. This is a negative of the original proposition. When all the other amendments have been moved you can speak. This is not an amendment so far as I can see.

(Mr. Nalavade did not move his amendment Nos. 324 and 325.)

Mr. H. V. Kamath: I am told, Sir, that separate provision will be made for the emergency powers of the President, and so at this stage I do not propose to move this amendment (No. 326).

Shri H. V. Pataskar: Sir, the amendment that stands in my name is as follows:

“That at the end of sub-clause (1) of Clause 17, the following proviso be added:

‘Provided that a session of the Federal Parliament shall be held within six months of the promulgation of such an ordinance.’”

So far as Clause 17 is concerned, it confers certain emergency powers of issuing ordinances upon the President. It is further provided in sub-clause (2) that an ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Parliament. And sub-clause (2)(a) says that every such ordinance shall be laid before the Federal Parliament and shall cease to operate at the expiration of six weeks from the re-assembly of the Federal Parliament. The Honourable the Mover has explained that this should be done as early as possible. It was with the idea that the Federal Parliament should be called within six months of the promulgation of such an ordinance, that I tabled this amendment. Parliament will be in session some time during the year. Ordinances are obnoxious to democracy and at least to allay public suspicions it is necessary that there should be a provision that within six months of the promulgation of an ordinance a session of the Federal Parliament shall be held, I would therefore like to suggest that when the final draft is made, there should be a definite provision like this in the interests of all concerned, and hoping that this would be done, I do not propose to move this amendment at this stage.

Mr. President: Mr. Kamath.

Mr. H. V. Kamath: In view of what I stated about amendment No. 326. I am not moving this amendment (No. 328).

(Messrs. Jadubans Sahai and Biswanath Das did not move their amendment Nos. 329 and 330.)

Mr. H. V. Kamath: In view of the statement made by Mr. Pataskar, this does not arise (amendment No. 331.)

(Mr. Sidhwa did not move his amendment No. 332.)

Mr. President: There is no other amendment to this clause of which I have received notice. Therefore the clause is now open for discussion.

Prof. Shibban Lal Saksena: Mr. President, Sir, this clause gives the President over-riding powers over the entire National Assembly. We have been accustomed to ordinance rule long enough and I wish that now when we are framing the Constitution of free India, we do not provide for this power again. Sir, even during the Great War, the President of the United States of America and the Premier of England did not have the power. When we start our free Constitution we should try and follow the same canons of democracy which have been followed in these great countries. This sort of Power, once given, is bound to be abused. When this power is given, it is often used even for small things. In fact even during this one year since our Ministries

[Prof. Shibban Lal Saksena]

have come to power, we got so many ordinances. I therefore think that if this sort of power is given, it will be the very negation of democracy. I think that we must not take this legacy of autocracy from the past slavery of our country into the free India which we are constructing today and we must therefore see that this thing is not given any place in our new Constitution. After all, if there is a grave emergency, our National Parliament will be ever ready to meet the situation. In Britain and in America they have been able to carry on their work without any such powers even during the last great war when their very existence was at stake. In fact, Mr. Churchill used to take the House of Commons into confidence publicly even in the darkest periods during the Great War. This raised the morale of the people tremendously and rallied their wholehearted support in a manner which no other method could have secured. Rule by ordinance has always been hateful to the people. I do not think that our Premiers and our great leaders are so much desirous of having this clause. I strongly feel that this is a step which negatives the entire Constitution. Besides, it is not proper to give such over-riding powers to a man who is not elected by adult suffrage as this will negative the democratic character of the entire Constitution. I, therefore, suggest that we should make no provision for this clause in our new Constitution.

Sri M. Ananthasayanam Ayyangar: Sir, the previous speaker evidently has taken this Section from the Government of India Act and misread it for some other clause coming later. There are two provisions there in the Government of India Act of 1935, which empower the Governor-General to promulgate ordinances. Firstly during the recess or interval between two sessions of the Legislature he does so on the advice of the Ministers and the Ministers take the responsibility for the same. He can do so also in his individual judgment. That means he can in certain circumstances over-ride the decision of the Ministers but he has however to consult them. The other occasion in which he can promulgate an ordinance in the discharge of his responsibilities specially imposed on him for the maintenance of law and order is in a grave emergency. The life of such an ordinance is only six months, and it can not be renewed except with the previous consent of His Majesty. My Honourable friend evidently is mistaking the later provision for the previous one. The previous one is during the recess, when a session of the Assembly is not there and it is not possible to convene a meeting of the Assembly to have an Act and in the place of an Act an ordinance is promulgated. My Honourable friend thinks that the President does it in his discretion. It is not stated in the draft that the President can promulgate an ordinance in his discretion. Then it means that the President promulgates an ordinance on the advice of his ministers. In further means this: that the ministers are responsible for this ordinance and the President is only something like a rubber-stamp giving effect, under his signature, to what the minister wants. The minister is responsible to the legislature. The question of the President not being elected by adult suffrage does not come in, because the ministers who take the responsibility for promulgating the ordinance, can be turned out of office. These objections would not hold good because, we are not giving any autocratic power to the President and the President of his own motion has absolutely no right to promulgate these ordinances. In the Statement of Objects and Reasons *i.e.*, in the small note appended to this clause in the Provincial Constitution itself, an instance is given that Lord Reading had promulgated an ordinance relating to Customs. It was absolutely necessary then. Many such occasions will arise and we cannot stultify ourselves by denying

this power to the Government. It is said that there can be no objection if in six months' time session of the Assembly could be convened. Soon after an Assembly session, the ministers are not likely to invoke the special power because if they had already a proposal in view they would have got an Act passed in the Session of the Assembly. If the emergency arises after the conclusion of the Assembly, they would invoke this power and six months thereafter, another session of the Assembly will normally come in. There need be no statutory provision that within six months after the ordinance comes into being or is promulgated, there must necessarily be a session of the Assembly. There will be many cases where for very small matters, which do not involve any principle, an ordinance has to be promulgated. Such matters need not necessitate invoking a session of the Assembly. Therefore, I submit there is no substance in the amendments proposed nor in the opposition to the clause as a whole by Mr. Shibban Lal Saksena.

Mr. H. V. Kamath: Mr. President, I submit, Sir, that there is a slight ambiguity in this Clause 17, which I would request Sir, Gopalaswami to clear in the course of his reply. In this clause we are treating the President and the Federal Parliament as two distinct entities, whereas in Clause 13 we have defined the Federal Parliament as the President *plus* the two Houses, that is, the Council of States and the House of the People. Personally I feel now, Sir, that the deletion of the words "National Assembly comprising" in Clause 13 was unfortunate because if we had retained them we could have defined the Houses jointly as a National Assembly and the Parliament would have been the President *plus* the National Assembly. Otherwise confusion is bound to arise throughout this Constitution as between the Federal Parliament, the President and the two Houses taken together.

Mr. Naziruddin' Ahmad: Mr. President, Sir, I wish to say a few words regarding the comment made by the Honourable Member who opposed the inclusion of Chapter III. In his speech he has expressed a sentiment which will be the common sentiment in this House. It is that we are going to have a free India; but with the other sentiment in connection with that amendment, I am not in sympathy. The Honourable Member seems to think that in a Free India there should be no such laws, but we are going to have democratic independence and democracy means rule of law. The Honourable Member suffered from the nightmare of the misuse of the Ordinances, of which we have had enough experience during the last war. I think that nightmare should go. The power will now be exercised by our elected men and our chosen representatives and they would no doubt act on the advice of responsible ministers. It is therefore reasonable to suppose that they would not abuse their powers. In these circumstances, I should suppose that they should have the power. But the question is really the proper application of the power or its misapplication. I think the existence of the power is a necessity so as to enable the Government to run on smoothly. What would happen when the legislatures are not in session and when there is a grave emergency? As to the kinds of emergency, there are an unlimited variety which may arise. A war or a mutiny or anything of that kind may arise. Food shortage and other things may arise. Then the legislature may not be in session. So, the President should have this power which may be employed usefully for the good of the community. In these circumstances, I should submit that the existence of the power is a great necessity and I have no reason to suppose that they would be misapplied: rather they would be applied for our benefit.

The Honourable Sir N. Gopaldaswami Ayyangar: I am very grateful to my Honourable friend Mr. Ananthasayanam Ayyangar for having disposed of so effectively both the amendments moved and the opposition that was offered to the passing of this clause. I have little to add to what he has said on these two aspects.

I would like to refer only to the point that was mentioned by Mr. Kamath, the use of the words "Federal Parliament" here. That is a matter which requires examination. An ordinance is issued by the President and if he lays it before the two Houses of the legislature, there are two contingencies of which you have got to take notice. If the ordinance relates to a matter which deserves to be provided for by permanent legislation, it has got to be approved by the Parliament as a whole including the President, because it will be legislation. But if it is a case of an ordinance which is only of temporary duration, or it is a case where the Houses of the legislature pass only a resolution disapproving of it and it ceases to have effect, then, perhaps it is not correct to use the word "Parliament". But all these aspects of the wording of this sub-clause (a) of Clause (2) of this paragraph, will be taken into full account when the text of the draft of the constitution comes to be settled.

Mr. President: I would now put Clause 17 to vote.

Clause 17 was adopted.

CLAUSE 18

Mr. President: We shall now take up the next clause.

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, we pass on to Chapter IV, Federal Judicature. The clause which I have got to move relates to a very important part of the constitution. We have got two or three amendments and I hope you will agree that after I move this particular clause further proceedings in connection with the clause may be held over till tomorrow.

Mr. President: I was just going to suggest that you may formally move the clause, the amendments may also be formally moved, and we may discuss the clause and amendments tomorrow. If you can move the clause today, the amendments also could be moved.

The Honourable Sir N. Gopaldaswami Ayyangar: As a matter of fact, it may be that an agreed amendment will dispose of all other amendments.

Mr. President: You will move the clause first.

The Honourable Sir N. Gopalaswami Ayyangar: I beg to move Clause 18:

“18. There shall be a Supreme Court with the constitution powers and jurisdiction recommended by the *ad hoc* Committee on the Union Judiciary except that a judge of the Supreme Court shall be appointed by the President after consulting the Chief Justice and such other Judges of the Supreme Court as also such Judges of the High Courts as may be necessary for the purpose.”

I move.

Mr. President: I have got notice of two or three amendments. They could be formally moved today. That may save some time tomorrow.

(Messrs. Jaspat Roy Kapoor, B. Pocker Sahib Bahadur, K. T. M. Ahmed Ibrahim Sahib Bahadur, Rai Bahadur Syamanandan Sahaya and H.V. Pataskar did not move their amendments, Nos. 333 to 336.)

Shri K. Santhanam: I move:

“That for Clause 18, the following be substituted:

‘18. There shall be a Supreme Court with the constitution, powers and jurisdiction recommended by the *ad hoc* Committee on the Union Judiciary except in the following particulars:

- (a) The additional jurisdiction to be vested in the Supreme Court according to para 10 shall be by Federal Law.
- (b) The appointment of the Chief Justice and the other Judges of the Supreme Court shall be by the President after consulting a joint standing committee of both Houses of the Federal Parliament consisting of six members from the House of the People and five members from the Council of States.
- (c) The salary and pensions of the Judges of the Federal Supreme Court should be fixed by Federal Law and they should not be altered in the case of any Judge to his disadvantage.’”

Sir, I have today given notice of a revised version to be substituted in the place of clause (b) and I shall request your permission to move it tomorrow.

Shrimati G. Durgabai (Madras: General): Mr. President, Sir, I beg to move the following amendment:

“That after Clause 18, the following new clause be inserted:

‘18-A. New High Courts may be established in any newly created province on an address being presented by the Legislature of that province to the Governor and on the same being approved by the President.’”

Sir, I will ask your permission for a debate on this, later.

Mr. President: It is an independent clause. We shall take it up separately.

It is just one o'clock. We shall adjourn now till 10 o'clock tomorrow.

Sir Alladi Krishnaswami Ayyar: I had given notice of an amendment this morning. May I read it now, Sir?

Mr. President: We have adjourned now. We shall take it up tomorrow.

The House then adjourned till Ten of the Clock, on Tuesday, the 29th July 1947.

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CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 29th July 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

REPORT OF THE UNION CONSTITUTION COMMITTEE

CLAUSE 18

Mr. President: We were dealing with Clause 18 yesterday. Some amendments were moved and some other amendments were not moved. There is one amendment by Mr. Ananthasayanam Ayyangar. Will you take that up now?

Mr. H. V. Kamath (C. P. Berar: General): Sir, before we take up the day's business, may I say, that after the adoption of the National Flag, the question of our National Anthem—our *Rashtragita*—also has got to be determined. We were pleased, Sir, to appoint, in the exercise of your inherent powers, a Committee in connection with the Flag. May I request you, Sir, to similarly appoint a Committee *ad hoc* to go into this question of our *Rashtragita* so that it may be decided early?

Mr. President: I have had that matter under my consideration but I have not been able to fix that up yet. National Anthem might take a little more time than the Flag did and we should not be in a hurry about it. Therefore I am not in hurry myself. We will take up amendment No. 15 in Supplementary List II. There is an addition to the clause.

Shri M. Ananthasayanam Ayyangar (Madras: General): Shrimati Durgabai has already moved it.

Mr. President: There is an amendment by Sir Alladi. Will you take that up?

Sir Alladi Krishnaswami Ayyar (Madras: General): Sir, I beg to move the following amendment;

“That for clause 18 of Chapter IV, the following be substituted:

‘18. Supreme Court.—There shall be a Supreme Court with the constitution, powers and jurisdiction recommended by the *ad hoc* Committee on the Union Judiciary, subject to the following modifications and conditions:

- (1) (a) A judge of the Supreme Court shall be appointed by the President after consulting the Chief Justice and such other judges of the Supreme Court as also such Judges of the High Courts as may be necessary for the purpose.
- (b) For the second sentence of paragraph 15 of the Committee's report the following shall be substituted:

“Their salary may be provided for by statute.”

- (c) Provision for the removal of Judges of the Supreme Court be made on the following lines:

“A judge of the Supreme Court of India shall not be removed from his office except by the President on an address from both the Houses of Parliament of the Union in the same session for such removal on the ground of proved misbehaviour, or incapacity. Further provision may be made by Federal law for the procedure to be adopted in this behalf.”’”

[Sir Alladi Krishnaswami Ayyar]

I may mention, Sir, that there are certain other amendments by Mr. Santhanam. Some of his amendments overlap but I would like to explain my position with regard to these amendments. If any of his amendment is more comprehensive than my amendment, then I would be glad to withdraw. One thing I want to make quite clear. The object is not to make a comprehensive provision in regard to the Supreme Court. The normal procedure that is adopted in every constitution is to give the main heads of power of the Supreme Court and leave it for Judicature Act to be passed by the Assembly to implement the powers that are conferred under the Constitution. From the very nature of things, you cannot have all the provisions inserted in the Constitution. You may indicate what exactly is the head of jurisdiction in regard to the original jurisdiction. You may indicate what exactly is the basis of the appellate jurisdiction. The reason why more detailed provisions were found a place in the Constitution Act of 1935 is quite obvious because the Constitution then wanted to give only certain restricted powers to the Federal Court. Secondly, the Legislature of India itself was not clothed with plenary powers. Therefore Parliament provided more exhaustively for all those powers to be exercised by the Federal Court than are ordinarily found in a Supreme Court Constitution in other Federations. Therefore under those circumstances, the Committee, as referred to in the existing Government of India Act, has indicated what exactly are the lines of jurisdiction, what exactly are the powers to be exercised both on the original side as a matter of original jurisdiction—and as a matter of appellate jurisdiction and that Committee's report is fairly comprehensive; for example, whether supplementary jurisdiction can be invested in the Supreme Court or not is another point that has been raised. That is again referred to in the Committee's Report. Therefore there is nothing to prevent any supplementary jurisdiction being conferred upon the Supreme Court by the future Union Legislature. That will be competent. The main heads of jurisdiction will be indicated in the Constitution Act. Secondly, supplementary jurisdiction is referred to in the report itself. Then the matters in which it can be taken up by the States are also referred to in the Report. Under those circumstances, I venture to think that this provision is adequate. Then with regard to the removal of judges under the Constitution of 1935, the power was vested in His Majesty in Council and His Majesty would have the advantage of a Judicial body. Therefore that was the basis of the Act of 1935. In cases of misconduct or misbehaviour, His Majesty in Council was clothed with the jurisdiction to initiate any proceedings against a Judge of the Federal Court or against a Judge of the High Courts in India. Under the present Constitution the suggestion that is made in certain quarters that the President of the Union with the advice of some Council or some Panel of Judges should have the power of removal is not, I venture to submit, a proposition which will meet with the acceptance of the House. That will bring the highest judicial dignitary in the land, the Chief Justice or the Chief Justices of the High Courts into the position of a member of the Indian Civil Service. Imagine the President appointing a special Commission of a few judges to enquire into the conduct the Chief Justice of India or the Chief Justice of the Provincial High Court. I should think that is not a position which will commend itself to the House. This particular provision which I have put in namely, that "he shall not be removed from his office except by the President on an address from both the Houses of Parliament of the Union in the same session for such removal on the ground of proved misbehaviour or incapacity", is in line with the provision in the various Acts of the British Commonwealth. In Australia, in Canada, in South Africa, there is a similar provision and similarly from the date of the Act of Settlement In England it is only by resolution of

both the Houses that a judge, could be removed from his office. It does not mean that that power will normally be invoked. The best testimony to such power is that it has never been exercised. It is a wholesome provision intended to be a salutary check on misbehaviour, not intended to be used frequently, and I have no doubt that the future legislatures of India which are invested with this power will act with that wisdom and that sobriety which have characterised the great Houses of Parliament in other jurisdiction. Therefore this provision with regard to proved misbehaviour, they may appoint a Committee of the House; it may be a case of secret session. But ultimately the Resolution will have to be passed by both Houses. And then, he may be removed for misconduct. That is not a happy way of expressing the tenure of a judge. That is why it has been put in the negative—"he shall not be removed etc." Then, further provision may be made by Federal law for the procedure to be adopted in this behalf, *i.e.* you cannot put in all the detailed provisions by which the machinery can be set in motion in this Act. As a matter of fact, even a provision like, "Further provision may be made by Federal law for the procedure to be adopted in this behalf" does not occur in other constitutions, but there is a tendency to over-elaborate the provisions on our side and that is the only justification for my putting in that clause. Having regard to the very detailed provisions in the present Government of India Act which are intended to be adapted in the present constitution, so far as they are consistent with the man tenet of our constitution, namely, that we are providing for a Free India, there is no difficulty in adapting those provisions to the judicial machinery that we are going to erect. Therefore we have got those provision. One of our friends has put forward the provision that a judge's salary cannot be reduced during his tenure of office. That provision occurs in the Government of India Act. Therefore, we need not have a detailed provision. Let us concentrate ourselves on the fundamentals (a) in regard to jurisdiction (b) in regard to removal from office. Other matters may be left to Federal law and also to the present Government of India Act which is intended to be adapted into the provisions of this constitution. That is the reason why I have Put the word "salary". That may include emoluments, leave allowances and so on and so forth, but all that need not find a place in the constitution. On these grounds I would ask the House to accept this amendment, but if any convincing reasons are placed why another amendment is to be adopted, I am not wedded to my amendment, I shall be glad to yield to any other amendment that may be proposed.

Shri K. Santhanam (Madras: General): Sir, I move:

"That for Clause 18, the following be substituted:

'18. Supreme Court.—There shall be a Supreme Court with the constitution, powers and jurisdiction recommended by the *ad hoc* Committee on the Union Judiciary except in the following particulars:

- (a) judge of the Supreme Court shall be appointed by the President after consulting the Chief Justice and such other judges of the Supreme Court as also such judges of the High Courts as may be necessary for the purpose;
- (b) the additional jurisdiction to be vested in the Supreme Court as per para 10 shall be by Federal law;
- (c) the salaries of the Chief Justice and other judges of the Supreme Court shall be fixed by Statute and the salary of no judge shall be diminished during his tenure of office;
- (d) provision for the removal of judges of the Supreme Court shall be made on the following lines:

A judge of the Supreme Court of India shall not be removed from his office except by the President on an address from both the Houses of Parliament of the Union in the same session for such removal on the ground of proved misbehaviour or incapacity'."

[Shri K. Santhanam]

Sir, I beg to point out that my amendment embodies all the clauses moved by Sir Alladi Krishnaswami Ayyar and in addition two further clauses. One is with reference to the jurisdiction. The jurisdiction of the Supreme Court is certainly the most important consideration in coming to a decision about the provisions of the Court. I may divide this jurisdiction into two broad categories, namely, the Federal jurisdiction and the non-Federal jurisdiction. Federal jurisdiction falls into four classes. The first class is original and exclusive jurisdiction which refers to inter-Unit disputes or disputes between Units and the Federation. The second class of jurisdiction which is perhaps novel to the Supreme Court in any constitution and which is not vested today in the Federal Court is that the Supreme Court may have both appellate and in some cases original jurisdiction with reference to fundamental rights. That is a new category which is being introduced by our constitution which says that in the case of fundamental rights, ordinarily, it will have appellate jurisdiction but that in any area where there is no provision or proper court to take consideration of fundamental rights, then the Supreme Court may have even original jurisdiction in the matter of such rights. The third category is the appellate jurisdiction with reference to the interpretation of the Federal Constitution and the fourth category is appellate jurisdiction with reference to Federal laws. All these categories of Federal jurisdiction are common both to Provinces and States and this will be possessed by the Supreme Court. But besides this Federal jurisdiction, the Supreme Court will have two categories of non-Federal jurisdiction and this will be confined to Provinces. One is that there will be an appellate jurisdiction with reference to the interpretation of Provincial constitution. Secondly, there will be an appellate jurisdiction with reference to the interpretation of provincial laws. It is a pity that the Committee of the Union judiciary found that they could not invest the Supreme Court with the same jurisdiction with reference to the States. I am not here to say that this should be done by coercion or any kind of imposition, but I would appeal to the States that it is to their own advantage that they should invest the Supreme Court with jurisdiction regarding their State constitutions and State laws in the same way as the Provinces have done. With reference to their own State Constitution, there may be disputes between the people and the rulers and the judgment of the State High Court may not be considered binding on the people. They may think that the State Court is not sufficiently impartial to interpret the State Constitution and they may say that only the Supreme Court can give a judgment which both the rulers and the subjects will consider impartial.

Secondly, even in the case of ordinary State laws, many of the States' Laws are mere adaptations of the laws of the Provinces. Some of the States have not got the elaborate machinery, have not got the necessary legal departments to frame the laws precisely. They simply adopt the Provincial laws. That being the case, supposing the State Court interprets a State law in one manner and the same law is interpreted by the Supreme Court in a different manner, there will be great confusion. After much expense and great trouble, the Supreme Court which belongs to both the Provinces and the States is being established, and I think it will be extremely unwise if the States take their stand on a mere question of prestige and fail to take full advantage of the Supreme Court.

In Clause 10, it is said:

"It will also, of course, be open to any Indian State Unit to confer by special agreement additional Jurisdiction upon the Supreme Court in respect of such matters as may be specified therein."

While I wish that every Indian State should come into the jurisdiction of the Supreme Court on the same level as the Provinces, I dislike the idea of an Indian State Unit conferring by special agreement additional jurisdiction upon the Supreme Court in respect of certain matters. The vesting of such jurisdiction should be done only by the Federal Legislature. It is only the Federal Legislature which should have the power to amend or alter or in any way modify the jurisdiction of the Supreme Court.

With reference to salary, I quite agree with Sir Alladi that it should not be diminished during the tenure of office. But why not precisely state the clause about the salary here?

I have adopted the same clause for the removal of judges except that I have omitted the clause about further provision which is superfluous.

I think my amendment is more comprehensive and I hope Sir Alladi will accept it.

Sir Alladi Krishnaswami Ayyar: In view of what has been said by Mr. Santhanam. I would like to invite the attention of the House to certain passages in the Report. Paragraph 7 of the Report. says:

“If the Union Legislature is competent to legislate on a certain matter.....”

Mr. President: It would be better if we had all the other amendments for discussion. If you are going to make a speech. It would be better to do so after the amendments have all come before us.

Sir Alladi Krishnaswami Ayyar: I have only a few observations to make arising from what Mr. Santhanam said just now. I am not going to make a speech. I only want to explain my position with reference to certain passages in the Report itself.

Mr. President: It may not be quite in order to allow another speech.

Sir Alladi Krishnaswami Ayyar: I am speaking only about what Mr. Santhanam spoke, I am not going to speak about my own amendment; but as a member of this House I am entitled to speak on the amendment of another member. I shall reserve my speech to a later stage.

Mr. President: I shall have to consider it at that stage.

Yesterday, the Mover of the clause did not make any speech and we agreed that the speeches should be reserved for today. The movers of the amendments also did not make any speeches. Now, this is the time when the mover of the clause and the movers of the amendments may speak and thereafter they will all be open for discussion.

Sir Gopaldaswami Ayyangar, would you like to speak now?

The Honourable Sir N. Gopaldaswami Ayyangar (Madras: General): Sir, I think the Movers of the amendments and the other speakers may make their speeches. If I have anything to say, I will do so at the end.

Shri M. Ananthasayanam Ayyangar: Sir, you will find that Clause 18 refers to the Report of the *ad-hoc* Committee on Supreme Court dealing with the functions of the court, the appointment of the judges, their removal etc. This Report consists of more than 15 to 16 paras every one of which is contested. We have given amendments to the

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suggestions and recommendations of these paragraphs. So all the amendments to this clause, Clause 18, and the *ad hoc* Committee's Report may be moved formally and then a discussion on various points can be had and then they may be put to vote in the order, of preference.

Mr. President: So far as I can see here, there is no other amendment to Clause 18 of which I have notice. There is only one, your own amendment to the Appendix. You may move it now.

Shri M. Ananthasayanam Ayyangar: Clause 18 is incomplete without the appendix; they go together. I am not moving amendment No. 16. I move No. 17. I do not move No. 18 and No. 19 which stands in the name of Shrimati Durgabai and myself will be moved by Shrimati Durgabai.

My amendment is as follows:

“That in Para 9 of the Appendix, state:

- (a) that the appellate jurisdiction of the Privy Council in any legal matter is hereby abolished and vested in the Supreme Court;
- (b) that pending appeals in the Privy Council shall be disposed of by the Supreme Court.”

Sir Alladi Krishnaswami Ayyar: There is another clause in the Report dealing with transitional provisions—Clause 3 which refers to cases pending before the Federal Court. My friend's amendment is to delete that provision. I suggest to him the amendment may be brought under Part XI, Clause 3 which runs in these terms:

“Until the Supreme Court is duly constituted under this Constitution, the Federal Court shall be deemed to be the Supreme Court and shall exercise all the functions of the Supreme Court:

Provided that all cases pending before the Federal Court and the Judicial Committee of the Privy Council at the date of commencement of this Constitution may be disposed of as if this Constitution had not come into operation.”

My friend's amendment says that it shall not be there. I myself have given notice of an amendment in regard to this clause. Supposing some decision is come to by the House in regard to the amendment moved by my friend and later on I try to move my amendment in regard to the third proviso it would be out of order. The House would have already arrived some conclusion. Therefore I suggest that any amendment in regard to Part XI, Clause 3 may be taken up along with this the interest of clarity, because there is a special provision that is made in regard to pending causes in Part XI paragraph. Therefore I suggest that if my friend wants to move any amendment in regard to pending causes, it may be moved, separately or, at any rate I have given notice of an amendment in regard to paragraph 3 this morning. That might be taken up along with his.

Shrimati G. Durgabai (Madras: General): Sir, I beg to move amendment No. 19 in Supplementary List II:

“That in para. 14 of Appendix, the following be added:

‘Every judge shall be a citizen of the Union of India.’”

Paragraph 14 lays down the tenure of office and conditions of service of judges. Mr. President, I want that every judge shall be citizen of the Union of India. I have moved clause (a) only: I am not pressing clause (b)

Shri M. Ananthasayanam Ayyangar: Sir, I am not moving my amendment No. 20 on Supplementary List No. II. I will move No. 21:

“That the following be added to the Appendix:

“1 (a) A judge may resign his office by communicating to the President.

(b) A judge may be removed from office on the ground of misbehaviour or of infirmity of mind or body by an address presented in this behalf by both the Houses of the Legislature to the President, provided that a committee consisting of not less than 7 High Court Chief Justices chosen by the President, investigates and reports that the judge on any such ground be removed.

(c) A judge shall cease to hold office on his being adjudged an insolvent’.”

So far as this is concerned my friend Sir Alladi Krishnaswami Ayyar has already spoken. If you would permit me I will speak immediately or I will reserve my right to speak.

Mr. President: There is another amendment in the third list in your name.

Shri M. Ananthasayanam Ayyangar: I will move that also:

“That the following be added to the Appendix of the Report:

‘1. (a) A judge of the Supreme Court may resign his office, by tendering his resignation to the President.

(b) A Judge of the Supreme Court may be removed from office by the President on the ground of misbehaviour or of infirmity of mind or body, if on reference being made to it (Supreme Court) by the President, a special tribunal appointed by him for the purpose, from amongst judges or ex-judges of the High Courts or the Supreme Court report that the judge ought on any such grounds to be removed’.”

Mr. President: All the amendments have been moved and they are now open to discussion.

Shri M. Ananthasayanam Ayyangar: Sir, there is a jumble of amendments, to clause 18 and also the various paragraphs in the Appendix. All of them can be put under five heads: (1) Some of them relate to the authority which is to appoint a Supreme Court judge,(2) the authority that has got the right to remove one or other of them,(3) qualifications for being appointed a Supreme Court Judge,(4) by whom the salary or emoluments have to be fixed, and(5) the jurisdiction that has to be conferred on the Federal Court. These are the five items with respect to which amendments have been tabled.

Now with respect to appointment, I find that there is almost unanimous opinion regarding the power to appoint judges being vested in the President—the President not in his discretion but the President in consultation with his ministers. In addition he can consult the Chief Justice of the Federal Court or the judges of any of the high courts. It may be that he wants to appoint a judge from one of the high courts, in which case he can consult the Chief Justice or the puisne judges of the High Court other than the one whom he wants to appoint. It may not be necessary to consult the judges of all the high courts in the provinces and also in the States. Therefore discretion ought to be given to him to consult such of those judges as may have had the opportunity to know the judge whom he wants to appoint for the Supreme Court. There is almost unanimity of opinion in this matter and there is not much controversy over that.

[Shri M. Ananthasayanam Ayyangar]

As regards the right to remove a Supreme Court Judge there is deep difference of opinion on this matter. One school of thought is headed by Sir Alladi Krishnaswami Ayyar, who has tabled an amendment that by an address presented by both Houses of the Legislature to the President, any judge or the Chief Justice of the Supreme Court may be removed from office. The amendment that I have tabled is that it is open to the President to appoint a tribunal consisting of not less than 7 High Court Chief Justices to investigate into this matter and come to a conclusion that the judge or judges ought to be removed for stated misbehaviour or misconduct or similar reason. The President may then remove him. I have also tabled another amendment that a judge may be removed from office by the President on a report presented to him by a panel of judges appointed for the purpose. The objection of Sir Alladi Krishnaswami Ayyar is based on the reason that the highest authority so far as judicial work is concerned in the Union will be at the mercy of the executive head of the Union. It is true that the President will act on the report presented to him by a panel of judges, but in that manner the President's authority is limited. But Sir Alladi thinks that this power ought not to be vested in the President at all, because it will make the Supreme Court judge sub-ordinate to the President. Therefore he has suggested a remedy, that only when the legislature moves the President in this matter by a unanimous resolution, the judge ought to be removed. I have suggested a middle course and have tabled an amendment that any judge of the Supreme Court may be removed from office on an address presented to the President by both Houses of the Legislature but before the address is presented the President must have appointed a committee of seven judges of high courts to investigate into this matter. If they report that the judge in question has committed any breaches for which he is liable to be removed, on that report both the Houses of legislature may present an address to the President or withhold it. Therefore this is a combination of both remedies. The legislature will have control over the removal of a judge and the Power will not be exclusively given to a President or a Panel of Judges. As both houses of the legislature are constituted their number is nearly 600. You will remember that with respect to the removal of the President an amendment was tabled and accepted that when the lower chamber or either of the Chambers initiates a resolution for the removal of the President by way of impeachment, a committee has to be appointed by the other house and on the committee's report a resolution must be framed. It is in the fitness of things that a small body should go into the matter of the misbehaviour of a Federal Judge and recommend that he be removed. The entire body of the legislature consisting of 600 and odd members may find it difficult to investigate into the matter, themselves. Therefore it is reasonable to suggest that both the Houses must be moved in the matter after a committee of judges has reported that it is a fit case for interference. I am not alone in making this suggestion. The Sapru Committee Report-SIT N. Gopaldaswami Ayyangar was a member of the Committee—has suggested that the President, in accordance with the report of the to be appointed for this purpose, may be empowered to remove any judge of the Supreme Court. If Sir Alladi Krishnaswami Ayyar takes objection to this item in the Sapru Committee Report on the ground that it becomes an absolute power in the hands of the President to accept or reject, I could see no objection to his accepting my amendment in this respect which is a combination of both the judicial and executive authority.

The next item in my amendment relates to the qualifications of judges. It is nothing but a reproduction of the qualifications found prescribed in the Government of India Act. To this, Mrs. Durga Bai has tabled an amendment saying that the Judge should be a citizen of India. It is not necessary to say anything on the subject after with the Mover

has said. It is incumbent on us to see that, as was laid down in the clause relating to the qualifications of the President, a Judge of the Supreme Court, who is the watchdog of democracy, is also a citizen of India. He must be a citizen of a Unit. The third qualification also is reasonable and may be accepted.

The fourth item relates to salary. It ought not to be left to the discretion of the President as to what the salary should be. I have also tabled an amendment on this point, but as Mr. Santhanam has a similar amendment, I am not pressing mine. The salary ought not to be varied by the Legislature as long as a person who has occupied the post continued there. In other cases, the salary may be varied.

The last amendment relates to jurisdiction of the Supreme Court. I am sorry to have to say that the approach Mr. Santhanam made to this question of jurisdiction is not quite correct. It ought to be that the Supreme Court has supreme jurisdiction in all matters, but an exception may be made in favour of the States in respect of non-Federal Laws. In respect of any law of the Constitution, it is the Supreme Court that must lay down the law and it must be binding even on States. With regard to British India, the Supreme Court is the highest court in the land with, original jurisdiction in regard to inter-State matters and with appellate jurisdiction over all provincial High Courts. Our Supreme Court is to supersede and replace the Privy Council which has been exercising a kind of appellate jurisdiction over all matters both civil and criminal. This jurisdiction of Privy Council may be transferred to the Supreme Court with some restriction regarding appellate jurisdiction in regard to criminal cases in States.

One other point I want to mention in this connection. It was said that the States cannot confer jurisdiction on the Supreme Court by agreement. The Government of India Act of 1935 contemplates the accession of certain States on conditions and terms. If, by the terms of the agreement, the States confer jurisdiction on the Supreme Court while joining the Union, the terms and conditions of their agreement will be taken judicial notice of and will be enforceable. Therefore it is not wrong and it would not be improper, nor would it be beyond our jurisdiction; to lay down similar provisions to say that as regards any State acceding to the Federation on terms and conditions, such terms and conditions shall become part and parcel of the jurisdiction of the Supreme Court Act. The Supreme Court, may, without any further Act in this matter, extend the jurisdiction conferred upon it by agreement. There is nothing novel in it. It is already in the 1935 Act and it may be accepted.

Then, as regards the existing appeals to the Privy Council, it is true that in the Transitional Provisions, there is provision later in this draft. But the provision there is that all pending appeals must be disposed of by the Privy Council itself. It means that even, after we attain independence and the new Constitution comes into force, the Privy Council should have jurisdiction over the pending appeals. Sir Alladi Krishnaswami Ayyar suggests that this matter may be left over to the stage of consideration of the Transitional Provisions. I agree to that suggestion. I suggest that all these five points in the amendments may be put to vote together instead of taking each amendment separately regarding appointment, removal, qualifications, fixation of salary and vesting of jurisdiction in the, Supreme Court.

Mr. President: I should like to have the leave of the House for absence for a short time as I have to go to the Aerodrome to receive Mr. Jagjivan Ram who is returning today. (*Cheers.*) I would request Sir V. T. Krishnamachari to take the Chair during my absence. (The President then vacated the Chair, which was taken by the Vice-President, Sir V. T. Krishnamachari, *amidst cheers*).

Shriyut Rohini Kumar Chaudhury. (Assam: General) : Mr. Vice-President, Sir. I would request Honourable Members of the House to take care of their ear-drums when I speak through the microphone. I am a loud-speaker myself and when I speak through the microphone, the sound might become perilous for their ears. With this apology I want to address the House.

I think, Sir, the matter under discussion has been very much complicated by now and I shall endeavour to place before this House what simple minded persons like me have understood from the debate. I take it, Sir, that after we have established the Supreme Court, the Privy Council will disappear, that the jurisdiction which is now being exercised by the Privy Council will be exercised by the Supreme Court but that the same amount of delay with which the Privy Council used to exercise their jurisdiction in civil, criminal and other matters will not attend the administration of justice Supreme Court. It has been said, Sir, that it is easy to go into a Court but it is very difficult to get out of it. That has practically been our experience whenever any case had gone to the Privy Council. In the absence of anything said or done to prevent such delays, I take it that justice will be as delayed as it was in the days of the Privy Council. Sir, instead of asking constitutional or unconstitutional lawyers to advise the House on it, I suggest that some persons in this House who had exercised the powers of a judge of a High Court may devise means by which delays in the administration of justice may be avoided, because it is well known that justice delayed is justice denied.

Sir, the next thing that we understand is that these judges will be appointed by the President in consultation with a panel of judges. The panel of judges will therefore have the first voice in the matter of the selection of the judges of the Supreme Court. It means that inferior judges are going to appoint the Supreme Court judges. The judges of High Courts will give the first suggestion as to whom they want as their Chief Justice of the Supreme Court. That suggestion will come from the judges of the High Court who are certainly inferior to the judges of the Supreme Court, but I think there is nothing wrong in that because when even a Sub-Inspector can investigate into cases against their superior officers, when even ordinary electorates can elect the President, there can be no difficulty about High Court Judges appointing or suggesting the names of the judges of the Supreme Court. As a matter of fact, I cannot suggest any better alternative myself. Therefore I think that will be the right course.

Then, Sir, I believe that the Supreme Court as I understand it—I am only giving my impression from the discussion—will also on occasion, exercise the functions that are now exercised by the Federal Court in constitutional matters. Not only that, they will also advise the Government in certain legal matters. This is a serious proposition so far as I am concerned. I do not understand how, if 'the Supreme Court really advises the Government in certain legal matters, in any future litigation between the Government and the party affected, the judges will be able to exercise their discretion and give their judgment impartially. That is

a point over which I would like to have some elucidation. With these few words, I support the amendment that has been moved.

Sir Alladi Krishnaswami Ayyar: Sir, I want to answer certain points made by Mr. Ananthasayanam Ayyangar and Mr. Santhanam.

In the first place with regard to the vesting of any special or additional jurisdiction in the Supreme Court, it is provided for in the report which is submitted for the acceptance of the House. Clause 7 of the Report runs in these terms:

“If the, Union Legislature is competent to legislate on a certain matter, it is obviously competent to confer judicial power in respect of that matter on a tribunal of its own choice; and if it chooses the Supreme Court for the purpose, the Court will have the jurisdiction so conferred.”

Therefore there is nothing to prevent additional jurisdiction being conferred if you adopt that report. When the constitution is finally framed and settled we will have to provide for the vesting of additional jurisdiction.

Then my friend Mr. Santhanam, made a comment on the fact that paragraph 10 of the Report says that it will also of course be open to any Indian State Unit to confer by special agreement, additional jurisdiction upon Supreme Court. In this paragraph the Committee was dealing with a particular kind of jurisdiction which has to be exercised in respect of Indian States, cases involving the interpretation of a law of the Union and cases involving the interpretation of a law of a Unit other than the State concerned, and the States were not prepared to go further than that. Apart from the court being with a jurisdiction to deal with the constitutional validity of law, it is provided that it will also be open to an Indian State to confer additional jurisdiction by special agreement. That does not derogate from the plenary powers of the legislature. At any rate that is not the intention or the object of the Committee. Two things are necessary. So far as the States are concerned, they must agree to supplemental jurisdiction other than the jurisdiction indicated in paragraph 9. There is of course the other necessary pre-requisite, *viz.*, that the Federal Legislature must be willing to clothe the Supreme Court with the jurisdiction. If that is the intention, there is absolutely no necessity for the amendment. The object is not and cannot be to give independent power to a State, without reference to the legislature, to invest any additional jurisdiction. Therefore, when the constitution is framed, such jurisdiction as may be conferred by the Union Legislature with the consent of the States in matters in which the States are interested, will have to be specially provided for. This is my submission to you, Sir, with regard to the necessity for additional jurisdiction. That is exactly the object of the two clauses of the report.

Now the second point is about the Parliament being invested with the power of removal of judges. Here I would ask you, Sir, to follow the practice in all the Dominion Constitutions. Whereas on the one hand there is an anxiety to increase the importance of the judiciary, I cannot understand the judiciary also being treated on a level with Government servants or by a kind of special tribunal being invested with the power of removal. That is why in the Dominion Constitution the words “proved misbehaviour” are used. While the ultimate power may rest with the two Houses, the clause provides that the charges must be proved. How

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exactly to prove the charges will be provided for in the Federal Law. We need not be more meticulous or more elaborate than people who have tried a similar case in other jurisdictions. I challenged my friend to say whether there is any detailed provision for the removal of judges more than that in any other Constitution in the world. The general principle is laid down in the Constitution and later on the Federal Law will provide for adequate machinery and that is the import of the clause. I would, therefore, ask the House to accept the general principle namely, that the President in consultation with the Supreme Legislature of this country shall have the right. That does not mean that the Supreme Legislature will abuse that power. There is sufficient safeguard in the reference "Proved misbehaviour" and we might make elaborate; and adequate provision for the way in which the guilt can be brought home to the particular judge in any federal law that may be passed, but that is a different matter.

But I do not think that in a Constitution it is necessary to provide detailed machinery as to the impeachment, the charges to be framed against a particular judge. To make a detailed provision for all these would be a novel procedure to be adopted in any Constitution. You will not find it in any Constitution, not even in the German Constitution, which is particularly detailed, not in the Dominion Constitutions and not even the Act of Settlement and the later Acts of British Parliament which refer to the removal of judges. Therefore, I think that the very great regard which you pay for judges must be a reason why you should not provide a machinery consisting of five or four judges to sit in judgment over a Chief Justice of the Supreme Court. Are you really serious about enhancing the dignity of the Chief Justice of India? You are. I have no doubt about it. Then there must be some power of removal vested somewhere and therefore you have vested that power in the Supreme Parliament, but not in an unfettered way. It must be through known, normal, ordinary, traditional methods. It is not in discretion of either House to remove a judge, but the ultimate sovereign power will be vested, in the two Houses of Parliament. That is the import of my amendment, Sir.

Then as to the other points raised—and I would ask you to remember, that you are borrowing, so far as it may be, the provisions of the Government of India Act—the salary cannot be reduced during the term of office as provided for in the Government of India Act of 1935 and I have no doubt that the gentleman to whom you are going to refer the drafts of the constitution will take care to see that this provision finds a place in the new Constitution, and I would ask the Members not to undertake the enactment of a regular Judiciary Act in this Constitution. I am not very particular about my amendment. I leave to the House to accept or reject the matter, but I do hope that unnecessary provisions will not be introduced.

Shrimati G. Durgabai: I moved this amendment, Sir, that every judge shall be a citizen of the Union of India. Of course, I realize, Mr. President that I need hardly say anything on this matter, because I expect that this House will fully realize the importance of this matter and agree with me. My amendment, if accepted, will have this effect that it will remove the alien or the foreigner from the field of selection for the appointment of judges. Of course, I would like to add only one or two words, that only a citizen and a citizen alone who will pledge his loyalty to this Dominion of India will be competent to hold this office and however eminent a man may be and however perfect his legal knowledge may be a foreigner or

an alien can never be competent to hold this post. That will be the effect of my amendment. Mr. President, Sir, we have already provided for this qualification in the case of the Federation and also in the case of the Governor of the Province. If we have provided in these two cases, it is all the more necessary that we should do it in the case of the Supreme Court judges or the judges of the High Court, because the Supreme Court is considered to be the watchdog in a democracy which will guarantee the fundamental rights and other privileges of the citizens of India. That is all I want to say to the House before I commend my amendment for the acceptance of the House.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I really thought that so important an issue as the constitution and functioning of the Supreme Court of the would be Federation would occupy more time than it has this morning, but I think the main issues have been put before the House in the amendments that have been moved. I agree generally in the propositions which Sir Alladi placed before the House. One general proposition is that in settling the principles of the new Constitution on the basis of which the text of that Constitution is to be drafted we need not go into too much detail either as regards jurisdiction or as regards procedure. What we need to put into these principles is only the main considerations in drafting the text which will come up before the Constituent Assembly later on. Sir, so far as the Constitution of this Court is concerned, the proposals made in the report of the *ad hoc* Committee have, I am glad to find, received general acceptance in this House. There is one point in the Report of the Committee to which I should like to draw attention. It has said that it has dealt with various matters, but that only some of them need go into the Constitution and others would more appropriately go into the Judiciary Act, which the Federal Parliament may pass after it comes into existence. If we remember that fact we perhaps would realize that it is unnecessary to go into too much detail at the present moment.

I will only deal with one or two of the points that have been raised, I will take the last point first Shrimati Durgabai has suggested that every judge of the Supreme Court shall be a citizen of the Union of India. Nobody will take exception to that statement as a general proposition. But we have to take perhaps the composition of the court as it may be at the inception of the constitution, and the question whether it should go into the constitution in the form that has been proposed in the amendment or in some different form. I suggest it might be left to the draftsmen.

The second point, Sir, that was referred to in the course of the debate is the one relating to the appointment of the Judges of the Supreme Court. The *ad hoc* Committee made certain proposals. The Union Constitution Committee modified them and we have before us proposals for a further slight modification of even the recommendations of the Union Constitution Committee. Now, so far as I can see, Sir Alladi Krishnaswami Ayyar and Mr. Santhanam agree more or less as to the lines on which these appointments should be made. The appointments have to be made by the President of the Federation. Before making these appointments, he has got to take into consultation people who might be considered to be familiar with the qualifications and work of individuals whose claims deserve to be considered in this connection. Sir Alladi Krishnaswami Ayyar has proposed that a Judge of the Supreme Court shall be appointed by the President after consulting the Chief Justice and such other Judges of the Supreme Court as also Judges of the High Courts as may be necessary for the purpose. That is practically also what Mr. Santhanam has suggested in his amendment. One criticism

[Sir Alladi Krishnaswami Ayyangar]

that was offered against this provision was that it does not provide for the appointment of the Chief Justice himself. I trust I have correctly apprehended Mr. Ananthasayanam Ayyangar's criticism on this point. I think, Sir, that, even as the clause stands, a Judge of the Supreme Court might be held to include the Chief Justice of the Supreme Court also. The clause does not say, a puisne Judge of the Supreme Court. As regards the people to be consulted, the people to be consulted are the Chief Justice and such other Judges. An appointment has ordinarily to be settled before a retiring Chief Justice vacates his office. It is not unreasonable, perhaps it would even be very desirable, that the outgoing Chief Justice should be consulted as also his colleagues and other Judges before the appointment of the New Chief Justice is settled. Therefore, Sir, the clause as put by Sir Alladi Krishnaswami Ayyar, to my mind, covers also the procedure for the appointment of the Chief Justice.

Sir, the other important point relates to the removal of the Judges of the Supreme Court. As regards this, there are two alternatives which seem to deserve consideration. But before referring to these two alternatives I wish only to point out that the contingency of removing a Judge of the Supreme Court from his office is perhaps one of the rarest that we can contemplate. I cannot recall any instance, in Great Britain, for instance, where, on an address of both Houses of Parliament, a Judge has been actually removed. I speak subject to correction. Even in constitutions like those of the Dominions where a similar provision exists, I am not personally aware of any instance where that provision has been used. So whatever procedure you prescribe for the removal of Judges for proved misconduct or misbehaviour, that procedure is likely to be used only in the rarest of contingencies and very probably will not be used within my life time or even the life time of those who are much younger in this House than I am. That being so, I wish that the House will consider on their merits the two alternatives that have been proposed.

One is the procedure suggested by Sir Alladi Krishnaswami Ayyar which runs in the following terms:

"A Judge of the Supreme Court of India shall not be removed from his office except by the President on an address from both the Houses of Parliament of the Union in the same session for such removal on the ground of proved misbehaviour or incapacity. Further provision may be made by Federal Law for the procedure to be adopted in this behalf."

Sir Alladi Krishnaswami Ayyar has explained the implications of this particular draft. One aspect of it which appeals to me very much is the way in which it has been put in this negative form. It takes account of the fact that a Judge is not a functionary whose removal we should contemplate with equanimity. What he says is that a Judge shall *not* be removed except according to certain procedure and to that extent I think it is an improvement on the other suggestions which have been made from time to time.

The other alternative which has been placed before the House is that of Mr. Ananthasayanam. Ayyangar. His draft is:

"A Judge of the Supreme Court may be removed from office by the President on the ground of misbehaviour or of infirmity of mind or body, if, on reference

being made to the Supreme Court by the President, a special tribunal appointed by him for the purpose, from amongst judges or *ex-judges* of the High Courts or the Supreme Court, report that the judge ought on any such grounds to be removed.”

This is a very slightly modified version of the recommendation which was made by the Sapru Committee in this regard.

Between the two amendments, there are certain considerations which we should take into account before we decide which of them we will favour. Among these considerations is the one, that it seems odd that, for the purpose of deciding the question as to whether a Judge should be removed from his office, we should invite the two Houses of the legislature, one of them containing something like 500 or 600 members and the other perhaps consisting of about half that number, to pass an address, that is to say, a resolution, giving their verdict as to whether a Judge has misbehaved and, if so, whether he should be removed from his office. It does seem to me, Sir, that that is a procedure before accepting which we shall have to think furiously. I say so for this reason that we have, even in the case of ordinary public servants, travelled far away from the principle of either getting them appointed by popular vote or of getting them removed by popular vote. If you are going to introduce in the case of Judges of the highest Court in the land the principle which you are not prepared to accept even in the case of ordinary public servants, that procedure, Sir, seems to me to stand in need of very heavy justification, if I may put it in those words. The other procedure that has been suggested is that the question of whether a Judge has misbehaved and therefore whether he should be removed should be decided or adjudicated upon by the President on the report of a Tribunal which he will specially appoint for the purpose from amongst the Judges, and *ex-Judges* of either the Supreme Court or the High Courts. That again, Sir, is placing a Judge who is accused of misbehaviour in the dock before a Tribunal some of the members of which might have held positions subordinate to him in the judicial hierarchy of the country. So there is that to be said against that procedure also. But personally I am not prepared to say that either the one or the other is necessarily to be preferred because, whether you adopt the one or the other, it is my expectation that we shall probably never have an occasion for using this procedure for dealing with any individual judge of the Supreme Court. I should leave it to the House to decide between these two alternatives and whatever alternative it chooses, will be put into the text of the Draft Constitution.

As regards the question of additional jurisdiction, the jurisdiction which relates to States which might be conferred on the Supreme Court, the point is sound that while the Indian State has got to cede, or agree to, this jurisdiction by means of an agreement, the actual conferment of this jurisdiction on the Supreme Court has to be by Federal Law. That being so, Sir, what I would suggest for your consideration is that so far as the questions relating to the citizenship of the Judge and to the conferment of additional jurisdiction on him are concerned, the amendments that have been tabled for those purposes might, if the Movers agree, be withdrawn on the assurance that the points mentioned in the course of this Debate would be borne in mind when the text of the Constitution is drafted. You may, Sir, if you agree, put to the House only the clause relating to the appointment of Judges of the Supreme Court and the alternative clauses which have been suggested for providing for the removal of Judges of the Supreme Court. With a decision on those points and the further decision that we generally accept the report of the *ad hoc* Committee, we shall have sufficient authoritative material on which the text could be drafted.

Mr. Vice-President: I propose to place before the House first the amendments regarding the removal clause. The first amendment is Sir Alladi Krishnaswami Ayyar's which appears in Supplementary List III, Para. 7-C.

"A judge of the Supreme Court of India shall not be removed from his office except by the President on an address from both the Houses of Parliament of the Union in the same session for such removal on the ground of personal misbehaviour or incapacity. Further provision may be made by Federal Law for the procedure to be adopted in this behalf."

I place that amendment before the House.

The amendment was adopted.

Mr. Vice-President: There is a further amendment by Mr. Ananthasayanam Ayyangar 21(b). I take it that that amendment is not pressed.

I now put to the House Mr. Ananthasayanam Ayyangar's amendment 21(a) in Supplementary List II which reads as follows:

"1(a) A judge may resign his office by communicating to the President."

The amendment was negated.

Mr. Vice-President: I now put Mr. Ananthasayanam Ayyangar's amendment 21-1(c) which is as follows:

"A judge shall cease to hold office on his being adjudged an insolvent."

The amendment was negated.

Mr. Vice-President: I now place before this House Mr. Ananthasayanam Ayyangar's amendment 19(a) which reads as follows:

"Every Judge shall be a citizen of the Union of India."

Shrimati G. Durgabai: Sir, I moved that amendment but in view of the assurance of Sir N. Gopaldaswamy Ayyangar, I do not wish to press my amendment. But it will find its place in the draft.

Mr. Vice-President: Amendment No. 19(a) is sought to be withdrawn. Does the House permit the withdrawal?

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President: I now place before the House Mr. Santhanam's amendment 8(c) in Supplementary List III:

"(c) the salaries of the Chief Justice and other judges of the Supreme Court shall be fixed by Statute and the salary of no judge shall be diminished during his tenure of office;"

The amendment was negated.

Mr. Vice-President: I now place before the House amendment No. 17 in List II:

"That in para. 9 of the Appendix state:

'(a) that the appellate jurisdiction of the Privy Council in any legal matter is hereby abolished and vested in the Supreme Court;

(b) that pending appeals in the Privy Council shall be disposed of by the Supreme Court'."

Sri M. Ananthasayanam Ayyangar: Sir, I suggested that I will move it later.

Mr. Vice-President: All right, the amendment will stand over.

Now, Mr. Santhanam's amendment No. 8(b).

Shri K. Santhanam : I do not press the amendment, Sir.

Mr. Vice-President: Does the House permit the amendment to be withdrawn?

Honourable Members: Yes.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President: I now put the clause, as amended, to vote.

The Honourable Sir N. Gopalaswami Ayyangar: May I point out that the amendment proposed regarding the appointment of the judges has not yet been put.

Mr. Vice-President: There are no amendments. I think all the proposals are the same. They conform to the paragraph in the memorandum, and there is no substantial difference.

I now put Clause 18, as amended, to vote.

Clause 18, as amended, was adopted.

Shrimati G. Durgabai: Mr. Vice-President, yesterday I moved an amendment that Clause 18A be added to Clause 18. It appears in the Supplementary List as amendment No. 15. It reads:

"18A. New High Courts may be established in any newly created province on an address being presented by the legislature of that Province to the Governor and on the same being approved by the President."

Mr. Vice-President: Does any member wish to speak on this proposed Clause 18A?

Shrimati G. Durgabai: I wish to say a few words in support of my amendment. Sir, in the draft I found no such provision made, as is contained in my amendment. So I thought it would be necessary, because by virtue of the power we have given to the Federal Legislature we find that some new Units will be springing up hereafter, and not only that, it will become more necessary, because already there are two newly carved out units, West Bengal and East Punjab. Therefore some kind of procedure must be laid down for the establishment of High Courts in these newly created units. That is why I have suggested the addition of this Clause 18A.

Sir Alladi Krishnaswami Ayyar: I do not see any necessity for such a provision, because if there is to be a province then the judiciary, legislature are all complementary and that will be part of the provincial constitution and the organisation of the province. Therefore there is no need for saying that there must be a High Court. You cannot conceive of a Province normally without a separate judicature and separate legislature. There need not be any special resolution of the legislature. It may well be part of the provincial constitution that there shall be a High Court in each province. Therefore, subject to any drafting and other changes that might be made in principle what Shrimati Durgabai says might be accepted, but there is no necessity for making this provision. We have had common High Courts working, but in the new dispensation there may be no necessity for that. I am told with regard to Assam and Orissa there may be necessity. Ultimately when the constitution is settled this will be subject to the provision that may be made in the provinces. Subject to that understanding, I have no objection to this clause being passed.

Sri M. Ananthasayanam Ayyangar: Such a provision is necessary in the Constitution. So far as the appointment of High Court Judges is concerned, in the provincial constitution that we have passed, there is a provision that the judges should be appointed by the President in consultation with the Chief Justice of India, the Chief Justice of the province and other Chief Justices also. Now, when even the question of the appointment of the judges is within the power of the Federation and the Union President, no authority is specified for establishing a High Court in a newly established Province. I ask, who is the authority to establish a High Court. That is not provided for at all. Is it to be left entirely to the Province without the concurrence of the Centre? Under the present Constitution, the Government of India Act recognises a number of High Courts established in some provinces, but as regards new ones it says that they may be established by His majesty—read Section 219, of the Government of India Act. Therefore, we must decide here and now what the authority is going to be which will in future establish new High Courts. Shall we say, as was said by Sir Alladi, that the entire matter will be left to the Provinces? Then the establishment of a High Court in a province will be entirely within the jurisdiction of that legislature whereas the appointment of the judges, as if that is more important than the establishment of the High Court, is to be regulated by the President of the Union. This seems to be inverting the procedure. Under these circumstances, I respectfully submit that my Honourable friend Mrs. Durgabai has rightly pointed out that power ought to be vested with the President to approve or reject any address presented by the Provincial Legislature, in the matter of establishing a new High Court.

Shrimati G. Durgabai: Mr. Vice-President, Sir, with your permission I would like to add a few more words to this amendment:

“That new High Courts may be established in the already existing provinces of Orissa and Assam and also in the newly created provinces.”

The rest remain as they are.

I commend this amendment for the acceptance of the House.

Dr. P. S. Deshmukh (C.P. & Berar : General): Sir with due respect I also beg to differ from the view expressed by Sir Alladi on this matter. As the previous speaker has pointed out, we should lay down the procedure for the establishment of new High Courts in the Provinces. As we all know, the process of establishing High Courts is a fairly long-drawn out one and it cannot be left to the Provinces to decide to have High Courts on their own initiative and on their own decisions. There ought to be some authority and the right authority would be the Federal Parliament and the President to decide whether particular unit is large enough or is competent enough, or whether there is sufficient necessity for an independent High Court. The establishing of a High Court is not an ordinary matter, and the lack of adequate provision or procedure in the Constitution would be a very great deficiency, indeed. I am very glad, Sir, that the lady Member has pointed out this deficiency and I hope the amendment proposed will be accepted.

Shri Raj Krushna Bose (Orissa : General): Sir, with due respect to the Mover of the amendment I think, this is a question which has not been taken up or considered by the Steering Committee and as the amendment affects the powers of the provinces in regard to the establishment of High Courts and as it is proposed that these powers are to be restricted by the Centre, one does not know what the effect of the amendment will be so far as the powers of the provinces are concerned in this matter. The

names of certain provinces were mentioned, Orissa being one of them. I know, Sir, a few years ago a committee was appointed in that province for the creation of a High Court and that committee submitted a report. It has not yet been considered by the Legislature and no decision has been arrived at. I think the amendment is of such an important nature that it should go to the Steering Committee and proper thought bestowed on it, before the House takes it up for final consideration. I would, therefore, request the Mover to agree that the matter may be referred to the Steering Committee so that we may have their views before we finally decide about it.

Mr. M. S. Aney (Deccan States) : Sir, this amendment refers to the establishment of provincial High Courts and so should not come under this Chapter which relates to Federal Judicature.

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, I entirely agree with the point mentioned by Mr. Aney. I do not think that the clause proposed will come appropriately within the orbit of this Chapter which is entitled 'Federal Judicature'. What is proposed is the establishment of High Courts in newly created provinces. I take it, Sir, that, when you see the text of the new Constitution, you will probably find a provision which will say either that there shall be a High Court in every province just as there shall be a Supreme Court for the Federation: or if it wishes to make a distinction between Provinces which can afford to have a High Court and Provinces which cannot, then perhaps it will name the Provinces where High Courts exist and will take power for the establishment of new High Courts separately in the Provinces where they do not exist. What I wish to point out is that a matter of this description will not be lost sight of in framing the final text of the provincial portion of the Constitution. So far as this Chapter is concerned, I think this amendment is altogether out of order.

Shri M. Ananthasayanam Ayyangar: Sir, I am a member of the Steering Committee and I know that many amendments which have been moved here have not been before that Committee. I know the scope of the Steering Committee. It has not considered clause by clause this Draft Constitution or the Provincial Constitution. There are other consultative committees; there is the Provincial Constitution Committee, there is the Union Constitution Committee and so on. It is not the business of the Steering Committee to consider this amendment and I see no point in the objection that this should first go before the Steering Committee. If it actually comes up there, we will say it is none of our business.

As regards the point of order raised by Sir N. Gopaldaswami Ayyangar, that the amendment does not come under this particular Chapter, I would say the new Clause 18 (a) of the Lady Member wants the President to establish a High Court on an address being presented by the Legislature. If this is to be relegated entirely to the Provincial Constitution and if we do not make a provision here that the President in Council with the aid of his Ministers should be the final authority, then there will be a lacuna. There will be provision only on one side in the provincial constitution, there will not be a corresponding provision in the federal side of the Constitution Act. Whether it fits in as 18 (a) or whether it comes in the earlier or later portion of the Bill does not matter; but provision has to be made in this Constitution and similar provision has also to be made in a detailed manner in the provincial constitution.

Mr. Vice-President: I understand Sir N. Gopaldaswami Ayyangar's assurance to mean that provision will be made for this in whatever parts of the Constitution such provision may be found necessary, by the draftsmen. Does the Mover press the amendment in view of that assurance?

Shrimati G. Durgabai: On that assurance, I withdraw my amendment. The amendment was, by leave of the Assembly, withdrawn.

CLAUSE 19

Mr. Vice-President: Now, we go to Clause 19.

The Honourable Sir N. Gopaldaswami Ayyangar: Clause 19 is in the following terms:

"There shall be an Auditor-General of the Federation who shall be appointed by the President and shall only be removed from office in like manner and on the like grounds as a judge of the Supreme Court."

The principle underlying this clause is that, if the Auditor-General is to carry out his functions efficiently, he has to be an officer who feels that he is independent of the favour of the executive government whose accounts he has to audit, and that is why his status and position are placed on the same footing as those of the judges of the Supreme Court. This, I think Sir, is a very necessary clause in the Constitution.

Mr. Vice-President: There is only one amendment to Clause 19 by Shri Mohanlal Saksena (item No. 18 of Supplementary List No. 1).

(The amendment was not moved.)

Mr. Vice-President: Does any member wish to speak on the original Clause 19?

The question is:

"That Clause 19 be adopted."

Clause 19 was adopted.

CLAUSE 20

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, I move that Clause 20 be adopted. The clause is as follows:

"The duties and powers of the Auditor-General shall follow the line of the corresponding provisions in the Act of 1935."

(Amendment No. 337 of List No. 2 was not moved.)

Clause 20 was adopted.

CLAUSE 21

The Honourable Sir N. Gopaldaswami Ayyangar: I move that Clause 21 be adopted. It is in the following terms:

"There shall be a Public Service Commission for the Federation whose composition and functions shall follow the lines of the corresponding provisions in the Act of 1935, except that the appointment of the Chairman and the members of the Commission shall be made by the President on the advice of his ministers."

Mr. Vice-President: There is an amendment in the name of Mr. H. V. Pataskar.

Mr. H. V. Pataskar (Bombay : General) : Sir, I move:

"That in Clause 21, for the words 'his ministers' the words 'his Council of Ministers' be substituted."

I understand that there is another amendment next to mine—No. 339—which wants the deletion of all these words. If that amendment is passed, naturally my amendment will fall through. But if the words are to be retained, then the words should be ‘Council of Ministers’ and not ‘ministers’ for the simple reason that in Clause 10 which we have already passed what we have provided for is a ‘Council of Ministers’. What I have proposed is only a verbal amendment and it is dependent on the fate of the subsequent amendment—No. 339.

(Amendment Nos. 339 and 340 were not moved.)

Shri V. I. Muniswami Pillai (Madras: General): As these matters are being considered by the Minorities Sub-Committee I do not propose to move my amendment (No. 341).

(Amendment No. 342 was not moved.)

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, the only amendment that has been moved is that of Mr. Pataskar. He wants that for the words ‘his ministers’ the words ‘his Council of Ministers’ should be substituted. If Mr. Shibbanlal Saksena had moved his amendment—No. 339—I should have accepted it because really the words ‘on the advice of his ministers’ are absolutely unnecessary. If an appointment has to be made by the President he is not under the principles of the Union Constitution at liberty to make appointments without the advice of his ministers. But the words being there, and no amendment having been moved for the deletion of those words, I do not think it is necessary for me to agree to the substitution of the words, ‘Council of Ministers’ for ‘ministers’.

Sir Alladi Krishnaswami Ayyar: I should like to move the amendment standing in the name of Mr. Shibbanlal Saksena as it will introduce an element of uniformity. Whenever the word ‘President’ is used what is understood is the President in consultation with the Cabinet. As such, suddenly if in a particular clause we mention about the ministers that might give rise to a difficulty. Therefore, for the purpose of clarity and uniformity it is as well that the words ‘on the advice of his ministers’ are omitted.

Mr. Vice-President: I do not think Mr. Saksena meant his amendment in that sense; he probably meant it in a completely different sense.

(By this time Mr. Shibbanlal Saksena was present in the House.)

Prof. Shibbanlal Saksena (U.P.: General): Sir, I beg to move my amendment No. 339 which runs as follows:

“That in Clause 21, the following words be deleted:

‘on the advice of his ministers.’”

These words are unnecessary as the President has not been given any power to act in his discretion and will always act on the advice of his ministers. These words may, therefore, be deleted.

Sir Alladi Krishnaswami Ayyar: I second the amendment.

The Honourable Sir N. Gopaldaswami Ayyangar: Now that the amendment has been moved, I accept it.

Mr. H. V. Pataskar: In view of the fact that amendment No. 339 has been moved I would like to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President: The question is:

“That in Clause 21, the following words be deleted:

‘on the advice of his ministers.’”

The motion was adopted.

CLAUSE 22

The Honourable Sir. N. Gopalaswami Ayyangar: I move Clause 22, viz.:

“22. Provision should be made for the creation of All-India Services whose recruitment and conditions of service will be regulated by Federal law.”

As the House is aware, we have had All-India Services for quite a long time. They have been under the control of the Secretary of State. This control will be terminated from the 15th August. The question arises whether, in conformity with the principle of provincial autonomy, it is desirable that you should continue in being a Service recruited on an All-India basis, but under the control which will be prescribed by Federal law.

Some of you perhaps are aware of the steps which have been taken by the Home Department of the Government of India for the purpose of ascertaining the wishes of Provincial Ministers as regards the desirability of establishing an All-India Administrative Service. There was general unanimity and steps have been taken to establish such a service. This particular clause only attempts to translate the executive action that has been taken into something which will have the authority of law in the future. What it prescribes is that the Constitution should make provision for the creation of All-India Services wherever such a course may be considered necessary. All-India Services will be desirable, I take it, in cases where you wish to attract to the highest services the best material that may be available in the country, and you will have to transgress provincial boundaries for the purpose of attracting this material if you want such material to take service whether under the Provincial Governments or under the Federal Government. A question will arise whether this is in conflict with provincial autonomy, whether it is not the proper thing for you to leave the whole thing in the hands of Provincial Ministers. All that I can say at the present moment is that those responsible Ministers who are in charge of provincial administrations have felt the need already for recruitment on an All-India basis and it will be only the part of wisdom to make provision for such an arrangement in the new Constitution also.

Mr. Vice-President: There is an amendment by Mr. Santhanam.

Shri K. Santhanam: I am not moving it, Sir.

Mr. Vice-President: As there are no other amendments to this clause, I will put Clause 22 to the vote.

The question is:

That, Clause 22 be adopted.

Clause 22 was adopted.

CLAUSE 22A

Mr. Vice-President: There is notice of a new Clause 22A. I call upon Mr. Ananthasayanam Ayyangar to move it.

Sri M. Ananthasayanam Ayyangar: Sir, I move:

“That after Clause 22, the following new clause be inserted:

'22A. Provision shall be made in the Constitution for granting commissions in the Army, Navy and Air Forces and for appointment to other defence services, conditions of service and control of the services.

A military or defence services commission may be set up on the lines of the public services commission for civil appointments.'”

Sir, we just moved and passed Chapter VI relating to Services. Clause 21 makes provision for bringing into existence a Public Services Commission on the lines of the one laid down in the Government of India Act of 1935. In section 266 of the Government of India Act Provision is made to, confer on the Public Services Commission the right to recruit only to civil services. Sub-section (a) reads as follows:

“On all matters relating to recruitment to civil services and to the civil forces.”

Therefore Clauses 21 and 22 relate only to civil forces and no provision has been made in Chapter VI for recruitment to defence services. There is provision in Part X of the Government of India Act, 1935 for the recruitment of defence service. Whether deliberately or by inadvertence this particular provision has not been incorporated in the Draft Constitution. The first part of that Chapter relates to recruitment of defence services and the second part relates to recruitment of civil services for which a Public Service Commission has been appointed. But in our Draft Constitution, Chapter VI relates only to recruitment to civil services, the earlier portion in the Chapter in the Government of India Act which relates to the defence services has been left out. Under the present Constitution, recruitment to Commissioned ranks and grant of King's Commission or the Viceroy's Commission are regulated by Orders in Council of His Majesty. Then there is recruitment to the ordinary defence services. Now what is to take the place of His Majesty's Orders in Council? The Defence services form a very important portion of our services. The gazetted posts and also the civilian posts in the defence services are very important and responsible posts. Shall we leave the recruitment to these posts to the Heads of Departments or the Commander-in-Chief or his lieutenants to fill them up as they like? No doubt rules will be framed regulating the grant of these commissions. But are we not to have an independent body like the Public Service Commission for the recruitment of officers perhaps recommending the grant of King's Commissions?

Sir, hitherto the powers-that-be had classed some people of India as martial and some as non-martial. That view held the field for a long time. But the non-martial races who were recruited during the last war have proved to the hilt that they were equal to the so-called martial races. However, if this power is left in the hands of the powers-that-be for the time being and no independent authority like the Public Service Commission is established for recruitment to defence services, there will be scope for provincialism and some sections of the population might be given encouragement to join the army and not the others. If there is need for having an independent body like the Public Service Commission for recruitment to the civil services and to hold the balance evenly between the Provinces, a *fortiori*, there is greater reason to have something like a Defence Service Commission. That is the amendment I have tabled. I should like to know why it has been omitted and why no provision has been made for recruitment to defence services in the Constitution.

When we copy Chapter X of the Government of India Act, it is necessary that we should copy it in whole. Defence services recruitment

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is an important matter and I do not like it to be left to the Federal Legislature, however good it may be. May be one particular party is in power. My point is, let not one section be given preference to the detriment of another section. Sir, I commend this resolution to the acceptance of the House that a Defence Services Commission ought to be appointed on the lines of the Public Services Commission.

Mr. Vice-President: Any other member who desires to speak on this amendment?

The Honourable Mr. Jaipal Singh (Bihar: General): Mr. Vice-President, Sir, I have great pleasure in supporting the amendment that has just been moved. If you look at Chapter I, Part IV, para, 7, you will find that we have already approved of the President having the supreme command of the Defence Forces of the Federation. Of course, when you have used the expression 'supreme command' I take it that you mean that the President will devise ways and means for recruitment to the Forces under him. Now the amendment seeks to clarify and make the position quite clear as to how officers for the Defence Forces shall be appointed. At the present moment, Mr. President, as you are aware, there are Services Selection Boards, several in the number, throughout the country, and I myself have worked on one of these Boards during the last three years. I know that the present system, the psychiatric system as it is called is the right method. It obviates patronage and cuts right across society. Under this system, everyone has an even chance of getting a commission. The Mover of this amendment has already pointed out that in the future army of India, commissions should be given on the same sort of footing as the superior appointments of the All-India Services, and to my mind, it is imperative that we should have some equivalent of the Services Selection Board. It does not matter whether we call it a Defence Services Commissioner a Services Selection Board but, I have no doubt in my mind that there should be such a body.

Mr. Raghu Raj Singh (Eastern States): Mr. Vice-President, I would like to say a few words on the amendment that has been moved. Recruitment to the Defence Services is a highly technical matter. It should be part of the Defence organisation, and if a Defence Services Commission is set up, it would fetter the hands of the Defence Organisation Committee as I know, no distinction was made even in the past regarding martial and non-martial classes in respect of recruitment to the officers classes. The distinction was made only in regard to the ranks. During the war, a special Directorate was set up to undertake recruitment to the Services and it has developed its own technique. I think this is a matter which you should leave to the discretion of the Defence Department. If you set up a Defence Services Commission, it would fetter the discretion of the Defence organisation.

Prof. N C. Ranga (Madras: General): Mr. Vice-President, Sir, I am very much opposed to leaving such an important matter to the mere whims of the Defence Organisation. For a long time now, there has been a movement in England and many other countries on the continent that the recruitment to the Defence forces should be democratised, so that people from all ranks would be recruited to the defence forces. It has been a notorious fact that officers recruited from particular groups have

not been able to give satisfaction. During the war, the recent one as well as the last one, the triumph of the allies was largely due to the officers recruited from the rank and file. If you want to give a chance to the people at large to throw up their own leadership and assure themselves that their leadership will have a chance of being recruited to the various officer cadres in the defence forces. It is most essential that a Commission should be set up as suggested by my friend, Mr. Ananthasayanam Ayyangar. It may be said by some, "Why don't you leave it to the Federal Parliament?" "Sir, if you have thought it fit to make special provision in this Constitution for a Public Service Commission for the recruitment of a large number of Government officials for the civil services, then certainly it stands to reason that you should make a similar provision for the recruitment of officers to the defence forces. The number of people you are going to recruit for the civil services is not going to be as many as those you will have to recruit for the defence forces. These are times when our defence forces have got to compete with the defence forces of other countries. There is one country as you all know, Soviet Russia, just on the other side of our border. Let us study carefully how the Soviet armies are being constructed, built up and strengthened, and how their officers are being recruited. Their officers are recruited from every community, caste or cadre or society, from every service of social life. If our defence forces are to compete with the defence forces of that country and are to acquit themselves favourably in comparison with the defence forces of that country, then it is most essential that every possible care should be taken to see that competent people capable of providing leadership in times of war are recruited in an impartial manner by a commission like the one that has been suggested by Mr. Ananthasayanam Ayyangar.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, it is true that the draft before the House makes no mention of the defence services. One reason which I can put forward for this omission is that what you find in Chapter I of Part X of the present Government of India Act of 1935 is hardly matter which can be put into the outlines of the Union Constitution which we are considering at the present moment. That particular chapter in the Government of India Act of 1935 concerns itself mainly with questions like the pay of the Commander-in-Chief, the control of His Majesty over defence appointments, the control of the Secretary of State, rights of appeal to the Secretary of State and so on. Most of these will become obsolete when we frame our new Constitution. That is perhaps one of the reasons why it was considered unnecessary to make any special Provision for the defence services in the document that we are now considering. The other point which was raised by the Mover is that we should in the case of the defence services create a body on the lines of a Public Services Commission, in order to deal with the many matters connected with the recruitment and conditions of service relating to the defence services. So far as I am concerned, I do not consider that there is any particular virtue in putting into the law of the Constitution provisions relating to the creation of our Public Services Commission even in the case of the civil services. I do not see why a commission of that sort should not be created by Federal law. After all, what is a Public Services Commission? It makes arrangements for recruitment it gives advice as to the personnel to be selected for appointments, it gives advice as to cases of appeal from punishment and as to the rules to be made for recruitment, conditions of service and so on. It is true that for applying those rules we create a body whose personnel is of the same independent status as that of High Court Judges in order that those rules might be observed impartially. We have made a fetish of having Public Services Commissions provided for by the Constitution Act in the case of the civil services. Any similar arrangements that may be necessary in regard to the defence services can be provided by Federal law; I cannot on the merits see any

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real solid objection to it. Now I would mention a further point. There is a very essential distinction between the generality of civil services and the defence services. The defence services are essentially services of discipline and even, in the civil services, I think, it has been recognised that in regard to services which would involve discipline in an intensified form, it is perhaps not so very desirable that the Public Services Commission should be brought in the matter of recruitment or in the decision of disciplinary cases. I would read to you Section 243 of the present Government of India Act which occurs in the Chapter, on the Civil Services, It says:

“Notwithstanding anything in the foregoing provisions of this Chapter, the conditions of service of the subordinate ranks of the various Police Forces in India shall be such as may be determined by or under the Acts relating to those forces respectively.”

What I wish to point out is that some of the matters like the distinction between martial and non-martial classes, questions relating to the representation of communities in the defence services, in the representation of Provinces in the different service—they are all undoubtedly important. But let me point out to the House that the policy relating to those matters is not a matter for decision by any Services Commission which we could set up. Policy is a matter for decision by the Government of the day. So I would suggest that if you want to eliminate injustice and questionable discrimination in regard to these particular points, you have got to tackle the Government of the day and see that they adopt a policy which is reasonable. No doubt there is the question of carrying out the policy, and I think you can by a Federal law set up a body. It may be the present Selection Boards which function in the Armed Forces at present. It may be a different body, but such bodies could be created by or under the provisions of any Federal law which we may enact in the future. So I would say that perhaps we might have a kind of general provision in the Constitution to say that the Federal law shall make due provision for matters relating to the recruitment. Conditions of service etc. of the defence services and leave the rest of it to be worked out later on. I can perhaps give an assurance to the Honourable the Mover that we shall try and insert a general provision of that nature in the Constitution, though it would not be on the same terms as his amendment. If he is satisfied with this, I would request him to withdraw his amendment.

Sri M. Ananthasayanam Ayyangar: It is only a matter of form and the Honourable Sir N. Gopaldaswami Ayyangar is prepared to put the substance of it in some form which he considers suitable. Therefore I am not interested in pressing this before the House. I beg leave of the House to permit me to withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

CLAUSE 23

The Honourable Sir N. Gopaldaswami Ayyangar: I move Clause 23 which reads as follows:

“Subject to the provisions of this Constitution, the Federal Parliament may, from time to time, make provision with respect to all matters relating to or connected with elections to either House of the Federal Legislature including the delimitation of constituencies.”

Mr. Vice-President : There is an amendment to Clause 23 proposed by Mr. Ananthasayanam Ayyangar and Shrimati G. Durgabai.

Sri M. Ananthasayanam Ayyangar: Sir, I move:

“That the following be added at the end of Clause 23:

‘The first elections and subsequent elections shall be held in accordance with the provisions of Schedule (to be attached to the constitution) and the constituencies shall be those set out in another Schedule.’”

I do not press the other sentence:

“The said schedules may at any time be modified or varied by an Act of the Federal Legislature.”

I stop with the first sentence.

The need for this is this. We propose in Clause 23 that election to the Federal Parliament may, from time to time, be regulated by Acts of the Federal legislature, including the delimitation of constituencies. I want to make provision in the constitution itself for the first elections and the first delimitation of the constituencies. We have made a similar provision in the provincial constitution which we passed recently, a week or a fortnight ago. On the same lines, I have tabled this amendment. Therefore, I move this amendment for the acceptance of the House.

The Honourable Sir N. Gopaldaswami Ayyangar: I accept the amendment, Sir, with the omission of the second sentence as agreed to by him.

Mr. Vice-President: I place the amendment before the House.

The amendment was adopted.

Mr. Vice-President: I now place the clause, as amended, before the House.

Clause 23 as amended was adopted.

CLAUSE 24

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, I move Clause 24:

“24. The superintendence, direction and control of all elections, whether Federal or Provincial, held under this constitution including the appointment of election tribunals for decision of doubts and disputes arising out of or in connection with such elections shall be vested in a Commission to be appointed by the President.”

The object of this clause, Sir, is to ensure as far possible that elections in the country, Federal or Provincial, are conducted in an impartial manner. The idea is to set up a Commission appointed by the President under whose auspices all these various aspects of election activities and postelection activities will be regulated and controlled. As the House is aware the abuse of election procedure, of the election machinery and the prevalence of corruption in elections—these are complaints which are widely

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made in the country and this clause merely an attempt to bring all these election activities under a common centralised independent control.

Mr. H. V. Pataskar : Sir, I move:

“That in Clause 24 for the words ‘all elections’ the words all ‘Federal elections’ be substituted; and the words ‘whether Federal or Provincial’ be deleted.”

After this amendment, Clause 24 will read as follows:

“24. The superintendence, direction and control of all Federal elections held under this Constitution, including the appointment of election tribunals for decision of doubts and disputes arising out of or in connection with such elections shall be vested in a Commission to be appointed by the President.”

Sir, the underlying idea of this amendment is that so far as elections to the Federal legislature are concerned, the superintendence, direction and control should vest with the President; but so far as provincial elections are concerned, that should be left to the Governor of the Province or to some other appropriate authority in the province itself.

The reasons for this amendment are as follows: Sir, if we look at Chapter VII, Clause 23 relates to Federal elections, elections to the Federal Parliament. Naturally enough, Clause 24 which follows must relate only to elections to the Federal Parliament. It appears somehow the idea must have occurred to those that were responsible for the drafting of these clauses, why not include provincial elections as well in the clause? As I could gather from the speech of the Honourable the Mover, his main argument in favour of subjecting provincial elections to the superintendence, control and direction of the President of the Federation was that that would ensure impartiality of elections. I shall deal with this argument later. But, Sir, apart from anything else this is not the appropriate place where they should make provision for the superintendence of provincial elections. In this chapter we are dealing with and could only deal with Federal elections.

There are again one or two very strong reasons why it should not be so. Uptil now, we find that so far as provincial elections are concerned, their superintendence, direction and control, was in the hands of the provincial Governors. We are going to have a Governor in the province who will be elected on the basis of adult franchise and I do not understand why such a Governor should not be entrusted with this work.

Then, another difficulty is that the President of the Federation will be a person for whom it will be very difficult to either superintend, direct or control elections in far off provinces. That could be done better by those who are in the province itself. The President of the Federation will already have so many duties with him that I do not think it proper that he should be burdened with the liability of superintendence, direction and control of provincial elections.

Then, the only point that was made by the Mover of this clause was that it was only intended for the purpose of having impartial elections. I do not understand how it would make any difference whether the superintendence is with the President of the Federation or with the Governor of the province in this matter. They can be impartial in both the cases if sufficient care is taken. With these remarks, Sir, I commend this amendment for the acceptance of the House.

Shri T. Prakasam (Madras: General): Sir, I would like to support this amendment. The provinces need not be tied down to the Centre in regard to this matter. The provinces have been able to conduct very big elections both in 1937 and in the recent one. The coming elections will be.....

Shri Ram Sahai (Gwalior State): *[Mr. Vice-President, I raise a point of order. Neither all of the amendments have been moved as yet, nor have you allowed members to speak on the original resolution or amendment. Under such circumstance how is it possible for Shri Prakasam, to commence his speech?]*

An Honourable Member: Let all the amendments be moved first.

Mr. Vice-President: I agree that it would be better to allow all the amendments to be moved first.

Amendment No. 345. Mr. Muniswami Pillai and others.

Shri V. I. Muniswami Pillai: Sir, we are going to have elections on adult franchise. I feel it necessary that the representatives of the Schedule Castes and other minority communities ought to be represented in the Tribunal that would be set up but as I understand that the rules will be made later on, for these matters, I do not propose to move this amendment just now.

(Amendment Nos. 346, 347 on List II and No. 20 Suppl. List I were not moved.)

Shri T. Prakasam: Sir, the amendment proposes that the Provinces should be left out from the clause and that is the correct position that should have been taken. I do not know why the Provinces have been brought into this clause. It is quite unnecessary for the Provinces to be tackled on to a Commission that might be appointed by the Centre. The Provinces have been able to carry on their work in every respect without any trouble. Very big elections had been fought out in the past both in 1937 and in recent 1946 elections. Therefore it should not be considered necessary that the Provinces should be brought into this and made to depend upon the Centre's Organisation. The future election, Sir, as we all know, that are going to be fought out on adult franchise would be of very great importance and of very great magnitude. Provinces must be left perfect freedom to carry on this work by themselves as they have been doing hitherto. It is impracticable that the Central organization should be thinking of supervising the work in the Provinces. The Centre has got enough of work in every Department and particularly with regard to this also. Therefore, Sir, there is no need to argue very much on this matter. The Provinces must be excluded as stated in the amendment. Sir, I should like to support this amendment. The Provinces need not be tied down to the Centre in regard to this matter.

The Honourable Dr. B. R. Ambedkar (Bombay : General): Mr. Vice-Chairman. I think it is desirable that I should state to the House the origin of this clause.

*[]*English translation of Hindustani Speech.

[Dr. B. R. Ambedkar]

Although this clause appears in the Constitution which deals with the Union, as a matter of fact this matter was dealt with by the Fundamental Rights Committee. The Fundamental Rights Committee came to the conclusion that no guarantee regarding minorities or regarding elections could be given if the elections were left in the hands of the Executive of the day. Many people felt that if the elections were conducted under the auspices of the Executive authority and if the Executive authority did have power, as it must have, of transferring officers from one area to another with the object of gaining support for a particular candidate who was a favourite with the party in office or with the Government of the day, that will certainly vitiate the free election which we all wanted. It was therefore unanimously resolved by the members of the Fundamental Rights Committee that the greatest safeguard for purity of election, for fairness in election, was to take away the matter from the hands of the Executive authority and to hand it over to some independent authority. Although Clause 23 does not specifically refer to the details of the scheme that was considered in the Fundamental Rights Committee, I should like to state to the House that the Scheme that was in the minds of the members of the Fundamental Rights Committee was that there would be a Central Commission appointed by the President in order to deal with the elections throughout India. Although that was the scheme contemplated that there should be a Central Commission appointed by the President to superintend, direct and control elections, it was never contemplated that there would be only one Commission sitting in Delhi or at some centre where the Central Government was seated. The scheme was that there would be one Central Commission which probably would deal with the elections to the Federal Parliament but that the Commission would have also subordinate to it a Commission in each Province or, if a Province was too small, to have a single commission, for two or three provinces combined together, so that their affairs far as elections were concerned, may be carried on by a Local Commission. From the very beginning the idea was that this thing should be decentralized. There should be one Central Commission for Federal election and there should be several Commissions for the elections conducted in the various Provinces. My submission is this that if that scheme comes into operation, the point which my friend Mr. Pataskar has in mind in moving the amendment would be gained, because so far as I understood from him, what he wanted was that there should be a local authority or a Local Commission which would deal and be concerned with elections in that Province. I think that was our intention although that scheme has not been mentioned in Clause 24. That undoubtedly was the matter we had in mind. However, if my friend Mr. Pataskar still persists in putting his amendment through, I would like to ask him one question which remains a matter of doubt when you read the amendment as drafted by him. He wants to omit the words 'all elections' and substitute the words 'all Federal elections'. I have no very great objection to his amendment provided he satisfies me on one point. I want to ask him whether or not he accepts the principle—and after all what we are concerned with is the principle—what I want to ask him is this does he accept the principle that elections should be placed in the hands of an independent body outside the executive? If he accepts that, personally, as I said, I will have no objection if it is agreed by the House that a similar clause which is contained in Clause 24 be introduced in the Provincial Part of the Constitution. I have no desire for centralization. What we had in mind was that the elections should be taken out of the hands of the Government of the day.

Mr. H. V. Pataskar. Before we proceed further with the discussion, I would like to make it clear as the Mover of this amendment that I entirely agree with my friend Dr. Ambedkar that the superintendence, direction and control of elections should be beyond the scope of any executive authority and should be in charge of some independent authority and provision can be made in that behalf in the Provincial constitution.

Shri K. Santhanam : I think the clause as it stands is too wide. What do we mean by elections? First of all, we have to prepare the electoral rolls. Secondly, at the time of the elections, we have to arrange for polling booths and polling officers. Then comes the taking of ballot papers, counting them and so on. I think especially when we have universal adult suffrage the entire machinery of the Provincial Government will have to be harnessed to carry out these elections. Therefore, unless the final executive authority is in the hands of the Government, no independent Commission can control the entire Provincial Government in all its stages. Certain aspects like election tribunals or consideration of the qualifications of candidates or the objections to nominations can be handed over to an independent body, but elections as a whole cannot be handed over to it, I think if any attempt is made to hand it over either in the case of Central elections or in the case of Provincial elections, to an independent Commission it will not function at all. It will not be capable of managing it, because in these days elections mean that the entire resources both administrative and financial of the Governments concerned have to be utilised. Therefore, when the time comes for drafting, these matters will have to be looked into very closely and the powers, or rather, the functions of the Commissions should be narrowly fixed and limited to those things which should be entrusted to a judicial authority and not to an executive authority. It should be really a judicial commission and not an executive commission. Executive functions should be entrusted to the normal Government of the day while all such matters as have to be disposed of in a judicial manner only should be entrusted to the Election Commission. Otherwise, the whole scheme would be a failure.

Shri Biswanath Das (Orissa : General): Sir, the clause as it is leaves certain powers with Provinces. The superintendence, control and direction of elections are left with the Federal Authority that is to be appointed hereafter under the new Constitution. It would be absurd and impossible for any authority except the Province to think of conducting elections without the co-operation of the Province. I would request Honourable Members of this House to visualise the conditions in which elections are held, including preparation of rolls—the taking of buildings required for the purpose, the posting of polling booths and the like. All this has to be done by the Provincial Government. No Federal authority, however powerful it may be, could take on all these responsibilities. Added to this, Sir, the co-operation of Provincial officials is also necessary. No Federation could undertake these responsibilities. People who are conversant with these elections will readily agree that it is not possible for any Federal authority and much less a Commission to undertake these responsibilities. Under these circumstances, it is necessary that the Provinces should be left in charge of the conduct of elections and it is necessary. I would agreed and go to a certain extent with Dr. Ambedkar in his claim that the control and superintendence of these elections be entrusted to some tribunal or to a Central authority to keep a watchful eye over them. Having had bitter experience of these elections, both in local bodies and in Provincial Assemblies in certain places and in provinces, we know how awful it would be to leave the entire thing to the Provinces

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especially when we are to have the future elections run on party lines. Under these circumstances, it is necessary that a distinct division should be kept in view, namely, that the Provinces should conduct the elections and the Central Authority should have a watchful eye over the superintendence and control of these elections.

A word about the Election Tribunal, Sir, cases have come to our knowledge and it is within our experience that Ministries and Governors of Provinces under the advice of Ministries have not been fair even in instituting proper tribunals in some places. They have been utilised for party purposes to inconvenience opposition parties. It is therefore fair that such tribunals should be appointed independently by this Commission or by a separate and independent authority like the Federal Court, it is thus fair to give the Federation control over the elections, but to say that the elections should be solely and wholly conducted by the Federation is an impossibility, and in fact, beyond the power and scope of any Federation or Tribunal to undertake. Under these circumstances I would appeal to Dr. Ambedkar to agree to the acceptance of a part of his amendment by the Mover himself.

Mr. Satyanarayan Sinha (Bihar: General): I move that the question be now put.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. Deputy President.....

Mr. Vice-President : Closure has been moved.

Mr. Naziruddin Ahmad: Sir, I submit that the principle applicable to a closure motion is that there has been reasonable debate and its acceptance is dependent upon the approval of the House. The House has not been consulted. I shall, however, be extremely brief as I have ever been in this House.

Sir, I rise to support the amendment. Dr. Ambedkar has given an interesting psychology about the history of this provision. He has asked a very legitimate and straightforward question, as to whether a body that is to be set up to decide election disputes would be an independent body, Mr. Pataskar has agreed with him and I also agree with him. But I would ask Dr. Ambedkar and people of his way of thinking whether in a Province a sufficiently independent body is not available. I think the speech of Dr. Ambedkar breeds suspicion about the ability and independence of the Provinces. Are not the judicial tribunals in the Provinces independent, and is not our judiciary to be trusted? I submit that the Provincial authorities are well aware of the local conditions under which elections are held. I beg to submit that High Court Judges or other members of the Judiciary selected by the Provincial authorities may be safely left to deal with this matter. In my opinion, the treatment by the Centre of the Provinces in some respects is rather stepmotherly. There is too much interference, too much of suspicion about the ability of the Provinces. Sir, I support the amendment.

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, on the essentials, we are all agreed and I am prepared to accept the amendment which has been moved, that is to say, this clause in the Union Constitution should be limited to Federal elections. I wish to point out to this connection only

one fact, and that is, that the Advisory Committee on Minorities made the following recommendation:

“The superintendence, direction and control of all elections to the legislature whether of the Union or of a Unit including appointment of election tribunal shall be vested in an election commission for the Union or the Unit as the case may be, appointed in all cases in accordance with the law of the Union.”

Now that envisages the appointment of a separate Unit Commission for looking after elections in the Unit, in addition to a Union Commission which will look after Federal elections; and this particular recommendation, I find, was approved by the House when it considered the Model Provincial Constitution. The statement of principle in this paragraph was endorsed by the House.

As regards the point mentioned by Mr. Santhanam, that this might encroach on the legitimate sphere of the executive in the different areas, I need only point out that what this clause provides for is only superintendence, control and direction. The actual conduct of elections, the executive machinery that may be required for conducting them and so on will have to be mobilised through the respective provincial governments. The superintendence or control will come in for instance, in regard to the location of polling stations or the selection of polling officers, methods of voting and the safeguards that have to be provided for any breach of the principle of secrecy in the ballot and so on. It is necessary that matters of this sort are properly and impartially done. Otherwise they may lead to injustice, corruption and so on. Such matters should, therefore, be in the hands of an impartial tribunal of this description. Sir, I accept the amendment.

Mr. Vice-President: Amendment No. 344 proposed by Mr. Pataskar is before the House:

“That in Clause 24 for the words ‘all elections’ the words ‘all Federal elections’ be substituted; and the words ‘whether Federal or Provincial’ be deleted.”

The amendment was adopted.

Mr. Vice-President: Now, I place before the House the Clause 24 as amended.

“The superintendence, direction and control of all Federal elections, held under this Constitution, including the appointment of election tribunals for decision of doubts and disputes arising out of or in connection with such elections shall be vested in a Commission to be appointed by the President.”

Clause 24, as amended, was adopted.

Mr. Vice-President: We shall now adjourn to 10 O’clock tomorrow morning.

The Assembly then adjourned till Ten of the Clock on Wednesday, the 30th July 1947.

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CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 30th July, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The following Member presented his Credentials and signed the Register:

Mr. Mukunda Bihari Mullick (West Bengal: General).

DURATION OF AUGUST SESSION

Mr. H. V. Kamath (C. P. & Berar: General): Mr. President, will you be so good as to tell us how long the August session is expected to last, so that we may be able to adjust our programmes accordingly?

Mr. President: As Members are aware, we are going to have a function on the 15th August and Members will be expected to be present here on that day to join that function. Then 16th happen to be a Saturday and 17th a Sunday on which days we do not ordinarily sit. The 18th and 19th will perhaps be Id days and we cannot sit on those days either. So the next day on which we can sit would be the 20th, and then it depends upon Members as to how long they will take to complete the work. The business to be completed will be the consideration of the reports of the Union Powers Committee and the Advisory Committees; and if anything is left over from now—which I hope will not be the case—that will have to be completed then. There may be some other items also but these two will be the main items for consideration and I hope it will not take more than seven or eight days to complete these two items.

An Honourable Member: What about the Minority Committee's Report?

Mr. President: That is included in the Advisory Committee's Report.

Prof. N. G. Ranga (Madras: General): What about the clauses relating to the provinces and the Indian Union which have not yet been disposed of?

Mr. President: We shall try to complete consideration of this report if possible, but if anything is left over we shall have to take it up then.

Sri M. Ananthasayanam Ayyangar (Madras: General): I would like to make a suggestion that as 18th and 19th will be holidays we may sit on the 16th and 17th even though the later is a Sunday. It is only a sentimental objection and in view of two holidays following we may sit on Sunday.

As regards the amendments I suggest that copies may be sent round soon after we reach home so that we may come prepared to discuss them.

The Honourable Mr. B. G. Kher (Bombay: General): The best course would be to sit from the 20th to the end of the month.

Mr. President: That is what is intended.

Pandit Shri Krishna Dutt Paliwal (United Provinces: General): *Mr. President, perhaps Independence Day would be celebrated on the 16th and after meeting on the 15th here most of the members would like to go back to their respective places in order to participate in celebrations at their places. Hence it would not be possible to work on the 16th.

Mr. President:*—What do you desire?

Pandit Shri Krishna Dutt Paliwal:*—Sir, as most of the members would like to go back to their respective places, I wish that no work should be done on the 16th.

Mr. President: Those who wish to go back might do so. We will resume our work from the 20th.

REPORT ON THE UNION CONSTITUTION

PART IV—CHAPTER I—CLAUSE 7

Mr. President: We shall now take up the discussion of the clauses that have been left over. Clause 7 is one such clause discussion of which has been left over. I understand that there is an agreed substitute to Clause 7 in the draft. Is that ready, Sir Gopaldaswami Ayyangar?

The Honourable Sir N. Gopaldaswami Ayyangar (Madras: General): Sir, I have given notice of an amendment to Clause 7(2) (b); but there is still some little trouble about that. I think I shall be in a position to place the amendment before the House tomorrow morning after drafting the amendment in a form which may be acceptable to both parts of the House.

Mr. President: Then we shall pass that over and take up Part V.

The Honourable Sir N. Gopaldaswami Ayyangar. There is another Clause which we have held over acid that is Clause 14. About that also I hope to be in a position to place before the House a kind of agreed proposal tomorrow morning.

Mr. President: The House will in that case take up consideration of Part V.—Distribution of Legislative Powers between the Federation and

*English translation of Hindustani Speech.

the Units. In regard to this, as I understand it, though there is no specific amendment here, there is a suggestion made on behalf of the Ministers of the States that this might be held over until we have discussed the Report of the Union Powers Committee. Is that the idea?

Sir B. L. Mitter (Baroda State): That is so. I have got an amendment to it.

Mr. President: Is it necessary to move that amendment now? I think we can hold over the consideration of Part V.

The Honourable Sir N. Gopalaswami Ayyangar: We have no objection to have it postponed.

Mr. President: I take it that it is the wish of the House that the consideration of Part V be postponed until we have discussed the Report of the Union Powers Committee.

The House will now take up Part VI for consideration.

PART VI—CLAUSE 1

The Honourable Pandit Jawaharlal Nehru (U.P.: General): Sir, I beg to move:

“1. The Federal Parliament in legislating for an exclusively Federal subject may devolve upon the Government of a Unit whether a Province, an Indian State or other area, or upon any officer of that Government, the exercise on behalf of the Federal Government of any functions in relation to that subject.”

This is a very simple province which hardly needs any words me to commend it.

Mr. President: Rai Saheb Raghuraj Singh has an amendment to this Clause. Does he move it? The Member not being present the amendment is not moved.

(Shri V. I. Muniswami Pillai did not move his amendment No. 362.)

Mr. Naziruddin Ahmad (West Bengal: Muslim): I beg to move:

That in sub-clause (1) of Clause 2, for the words ‘which applies to that unit’ the words ‘in so far as it may be applicable to the Unit’ be substituted.

I have another amendment. That is for Clause 2.

Mr. President: The Honourable Pandit Nehru has moved only Clause 1. Only amendments to Clause 1 can therefore be moved now.

Mr. Naziruddin Ahmad: Mine is only a drafting amendment.

Rai Bahadur Lala Raj Kanwar (Eastern States)—Rai Saheb Raghuraj Singh has just arrived, but I am prepared to move the amendment. I beg to move that for Clause 1, the following be substituted:

“1. The Federal Government may, with the consent of a Government of a Province or the ruler of a Federal State, entrust either conditionally or unconditionally to that Government or Ruler, or to their respective officers, functions in relation to any matter to which the executive authority of the Federation extends.

An Act of the Federal Legislature which extends to a Federal State may confer powers and impose duties upon the State or officers and authorities thereof to be designated for the purpose by the Ruler.”

Mr. Tajamul Husain (Bihar: Muslim): On a point of order, Mr. President, when the member who has given notice of an amendment in the House, can another member move the amendment?

Mr. President: Both the members have signed the amendment. He is, therefore, perfectly in order in moving the amendment.

Rai Bahadur Lala Raj Kanwar: Sir, the wording of the amendment which has just been moved by me is based upon the wording of the Government of India Act, 1935, Section 124, sub-sections (1) and (3). It contemplates that whenever any functions in relation to a matter to which the executive authority of the Federation extends are made exercisable by a provincial government or the Ruler of a State or by their officers. It should be done with their consent and not independently, and that the State officers should be designated by the Ruler and not by the Federation. Sir, the necessity for this amendment is that the delegation of functions to a Provincial or State Unit should be made with their consent and particularly in the case of Indian States, the officers to be designated for the exercise of these functions should be chosen by the Ruler. I, therefore, commend this amendment for the consideration and acceptance of the House.

Mr. President: Does anyone else wish to speak on the clause or the amendment? Both of them are under discussion now.

Rai Saheb Raghuraj Singh: (Eastern States Group 2): Mr. President, Sir, the delegation of federal authority has already been agreed to in an earlier clause, *viz.* Clause 9. It has also been agreed that such delegation may be withdrawn in the discretion of the federation. The amendment which has just now been moved merely says that whenever delegation is made by the Federal Government to a State, it should be done with the consent of the State, and that the exercise of the delegated powers should be through an agency which should be approved by the State Government or the Ruler.

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, this amendment practically repeats what is contained in Section 124 of the Government of India Act, 1935. Clause 1 which has been moved was intended to give the substance of Section 124. There are however two points which have been mentioned by the mover and the supporter of this amendment which deserve some examination. The first point, as I understood it, was that the devolution of functions of administration in relation to federal subjects upon provinces or States should be with the consent of the Governments of those provinces or States. The second point was that the designation of the officers of an Indian State who are to exercise the authority devolved upon them by the Federal Legislature should be by the Ruler or with his consent. I may at once say that whenever there is a proposal to devolve functions of this sort either on provincial or State Governments, or the officers of those Governments, there is bound to be previous consultation between the Centre and the Units concerned. We have got to recognise the fact that, after all, the functions proposed to be devolved are functions in relation to the administration of federal subjects. The authority for providing for executive administration of federal subjects has to be the Centre finally. We could provide for consultation, but I think, Sir, it would be going against the root principles of the exercise of executive authority in relation to Federal subjects if we stipulate that the consent of the Unit Government or the head of that Unit Government should be a condition precedent to such devolution. The substance of what the amendment wants will certainly be recognised by the

future Federal Government. Before such devolution is made either by executive action or under federal laws, the fullest consultation will take place between the Centre and the Unit. I am, therefore, Sir, not in a position to recommend the acceptance of this amendment.

Rai Bahadur Lala Raj Kanwar : In view of the assurance given by Sir Gopaldaswami Ayyangar, I withdraw the amendment.

Mr. President: I will now put the clause to vote. As regards the amendment, the mover wishes to withdraw it. I take it that the House gives him permission to withdraw it. I will now put the original clause to vote.

Part VI. Clause 1 was adopted.

CLAUSE 2

The Honourable Sir N. Gopaldaswami Ayyangar: Clause 2 reads as follows:

“(1) It will be the duty of the Government of a Unit so to exercise its executive power and authority in so far as it is necessary and applicable for the purpose as to secure that due effect is given within the Unit to every Act of the Federal Parliament which applies to that Unit; and the authority of the Federal Government will extend to the giving of directions to a Unit Government to that end.

(2) The authority of the Federal Government will also extend to the giving of directions to the Unit Government as to the manner in which the latter’s executive power and authority should be exercised in relation to any matter which affects the administration of a Federal subject.”

These two sub-clauses really repeat in substance the provisions of the Government of India Act of 1935. These are intended to prevent any clash of authority between the Centre and the Units. They are also intended to secure that the Unit Governments will so exercise their own executive authority, that is to say, their executive authority in relation to Unit subjects, as not to come into conflict with the exercise of executive authority in relation to federal subjects. I do not think, Sir, that any more explanation is needed. Sir, I move.

Mr. Naziruddin Ahmad: I move:

That in sub-clause (1) of Clause 2, for the words ‘which applies to that Unit’, the words ‘in so far as it may be applicable to the Unit’, be substituted.

Sir, may I also move amendment No. 365?

Mr. President: Yes.

Mr. Naziruddin Ahmad: My other amendment is:

“That in sub-clause (2) of Clause 2 for the words the ‘Unit Government’, the words ‘Unit Governments,’ be substituted.”

I submit, Sir, these are only drafting amendments and are put in by way of suggestions for the Drafting Committee.

(Messrs. Thakur Das Bhargava, K. Santhanam and P. S. Deshmukh did not move their amendments Nos. 364, 366 and 367.)

Rai Sahib Raghuraj Singh: I move that the following new Clause be inserted after Clause 2:

“3. Where by virtue of Clause (1) powers and duties have been conferred or imposed upon a Province or Federated State or officers or authorities thereof, there shall be paid by the Federation to the Province or State such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of the Supreme Court in respect of any extra costs of administration incurred by the Province or State in connection with the exercise of those powers and duties.”

The object of this amendment is obvious, *i.e.*, that whenever any duties are imposed on a State or Province or Federated State, the cost of carrying out of those duties should be paid to the State or Province concerned.

Mr. President: There is no other amendment to this Clause. So the clause and amendments are now open to discussion. Those who wish to speak may do so.

Shri Ram Sahai (Gwalior State): *[Mr. President, I beg to support the amendment submitted by the Rai Sahib. My submission is that the amendment is very proper and necessary. The Government of India Act, 1935, Section 124, sub-section (1), provides for “power of the Federation to confer powers on the Provinces and States with the consent of the Government of a Province or the Ruler of a Federated State”. But these words have been deleted from this clause. In order to strengthen the Centre it was proper to invest the Federation with such power without their consent. But in no case is it proper to delete sub-section (4) of Section 124 of the Government of India Act. Rai Sahib has pressed his amendment on the basis of this very sub-section. I, therefore, consider it proper for the House to accept the amendment. By accepting it, the Provincial Government or the State would be able to recover the expenses incurred on behalf of the Centre. In order to consolidate the economical position of the Provincial Government or the State, it is essential that such sort of expenses should be paid to them. For this reason I support this amendment.]*

Rai Bahadur Lala Raj Kanwar: The amendment which I have the privilege of supporting needs no elaborate argument and it is self-explanatory. All that it aims at is to make a statutory provision for the payment of the cost of administration by the Federation to a Federal Unit, when the administration of a Federal subject is entrusted to that unit. As this provision is very necessary and it also finds a place in the Government of India Act, section 124, sub-section (4), it is suggested that it is a necessary provision and may be incorporated in our Constitution. At present the recommendations of the Constitution Committee do not mention anything about the payment of the cost of a administration in Such cases. As this seems to be a necessary provision, it is recommended for acceptance by the House.

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, of the two amendments moved by Mr. Naziruddin Ahmad, the first one is to substitute the words “in so far as it may be applicable to the Unit” for the words “which applies to that Unit”. It is apparently a suggestion for improving the drafting of this particular sub-clause, and whether it is an improvement or not, it is difficult to say. I think the essential purpose of the sub-clause is served by the present drafting as by the amendment

*[] English translation of Hindustani Speech.

that is proposed. I would leave the clause as it stands. I therefore do not accept that amendment.

His second amendment that the words "Unit Governments" be substituted for the words "the Unit Government" I accept. Then the only other amendment to this Clause is Item No. 368. This is taken from section 124, sub-section (4) of the Government of India Act. When the outlines of the Constitution were drafted for the purpose of discussion in this House, it was not considered necessary that all the consequential powers or provisions that may be necessary should be included in this draft. The omission of this particular sub-section of 124 was not motivated by any desire to do away with that provision when the final draft comes to be made, but, as this particular clause has been moved as an addition to the present clause, I accept it and will go into the text of the future Constitution.

Mr. President: I will put the amendments first. The first amendment is by Mr. Naziruddin Ahmad:

"That in sub-clause (1) of clause 2, for the words 'which applies to that unit', the words 'in so far as it may be applicable to the unit' be substituted."

The amendment was negatived.

Mr. President: The next amendment is:

"That in sub-clause (1) of clause 2 for the words 'the unit Government' the words 'unit Governments' be substituted."

The amendment was adopted.

Mr. President: The last amendment is that the following new Clause 3 be inserted after Clause 2:

"3. Where by virtue of Clause (1) powers and duties have been conferred or imposed upon a Province or Federated State or officers or authorities thereof, there shall be paid by the Federation to the Province or State such sum as may be agreed, or, in default of agreement as may be determined by an arbitrator appointed by the Chief Justice of the Supreme Court in respect of any extra costs of administration incurred by the Province or State in connection with the exercise of those powers and duties."

The amendment was adopted.

Mr. President: The clause, as amended, is now put to the House.

Clause 2 as amended was adopted.

Mr. President: There is notice of another amendment that another clause should be added. That is given notice of by four members.

Sri H.R. Guruv Reddy (Mysore State): I beg to move this amendment:

"That after clause 2, the following new clause be added:

"3. It shall be competent for an acceding State with the previous sanction of the federal Government to undertake by an agreement made in that behalf with any Governor's Province or Chief Commissioner's Province or any other acceding Indian State any legislative, executive or judicial functions vested in that Province, Chief Commissioner's Province or other acceding State, provided that the agreement relates, so far as Provinces or Chief Commissioners' Provinces are concerned, to a subject included in the Provincial or Concurrent Legislative List and so far as the other acceding State is concerned to a subject not included in the Federal List.

[Sri H.R. Guruv Reddy]

'On such an agreement being concluded the State may, subject to the terms thereof exercise the legislative, executive or judicial functions specified therein through, the appropriate authorities of the State.'

Sir this is a counterpart of Clause 8 of the Report of the Provincial Constitution Committee. This august House was pleased to accept the Report of the *ad hoc* Committee on Clause 8 Part I of the Provincial Constitution which provides that any Provincial Unit could take over and administer any portion of any State Unit under it. Similarly, a clause which enables the State Unit to take over and administer parts of other Provinces is moved now in this Clause.

Sir, it is but just and fair that once power is taken to take away a portion of a State or a State Unit for administrative purposes, a State which is competent and capable similarly to administer should be allowed that freedom of taking a portion of another Province for similar administration by itself. There need be no doubt in any quarter that it is not a fair and just clause to be introduced.

Sir, there are certain limitations here. First of all, it should be with the previous sanction of the Federal Government which is all powerful. There is no fear of any sort that any such agreement would be rushed through by any two interested parties without first of all coming before the Federal Government and taking its consent. Next, there is another limitation imposed, namely, that there should be a competent agreement under which this action could be taken, if at all. Therefore, unless and until these two portions of this amendment come into operation no such administrative control could be taken over by a State as a matter of course.

Sir, it is but just and right that this House having passed Clause 8, as amended in the Provincial Constitution, should allow that freedom to the States also. It provides nothing more than this.

Mr. K. M. Munshi (Bombay: General): Sir, I move that the consideration so far as this proposition is concerned should be adjourned. The reason is very simple. In considering the Provincial Constitution, the House decided that there should be a similar power given to a Province with regard to the States and in fairness it would appear that a corresponding power should be given to the States. But, at the same time till the Union Powers are discussed and considered and the House is in a position to judge as to the nature and scope of the subjects for which the States are coming, it would be premature to consider this proposition. This clause stands by itself. It is not in the nature of an amendment, but an independent proposition. Any discussion of its merits at the present stage, I submit, will not be very desirable. I therefore submit, Sir, that consideration of this should be postponed till after the Union Powers Committee's Report is discussed by the House.

Shri Gopikrishna Vijayavargiya rose to speak.

Mr. President: Do you want to speak on the main amendment or on the suggestion of Mr. Munshi?

Shri Gopikrishna Vijayavargiya (Gwalior State): On Mr. Munshi's suggestion.

Sir, I come from a State. I am dead against the amendment that has been proposed. (*Hear, hear.*) As long as there is dissimilarity between the political situation in the States and the Provinces, the States should not be given any further rights or any such rights as are proposed. But, as this is a controversial subject, as Mr. Munshi says it ought to be postponed, I think it ought to be postponed.

Shri H.R. Guruv Reddy: I have no objection to its postponement.

Mr. President: The suggestion is that the discussion of this Clause be postponed till after we have discussed the Union Powers Committee's Report. Is it the desire of the House that this should be postponed?

Many Honourable Members: Yes.

Mr. President: It is postponed.

Mr. President: Mr. Ananthasayanam Ayyangar, you gave notice of a proposition that another clause be added—in Supplementary list.

Sri M. Ananthasayanam Ayyangar : I am not moving it. Srimati Durgabai also is not moving it. I do not move my amendment No. 5 in Supplementary List No. IV.

PART VII

Mr. President: We shall now take up Part VII.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, this is a very important part of the Constitution we are considering. The first two clauses raise issues of far reaching importance and if you agree, Sir, and the House agrees, I would ask for permission to postpone the moving of Clauses 1 and 2 to the next session. In doing so, I wish only to say that it will be necessary for us to get more particulars ready under Clause 2 particularly before we shall be in a position to answer all the criticisms that may be levelled against the clauses as they stand. It has been in the minds of the framers of these clauses that we should set up an expert committee on finance which will give a detailed investigation and submit proposals which could be embodied in the text of this Constitution. I hope, Sir, it will be possible for them to request you to appoint a Committee of this sort so that that Committee's report will be available to us before the next session or soon after we commence that session. Sir, if you agree, I request permission not to move Clauses 1 and 2.

CLAUSE 3

Mr. President: You may proceed to Clause 3.

The Honourable Sir N. Gopalaswami Ayyangar: Clause 3, I move:

“The Federal Government will have power to make subventions or grants out of Federal revenues for any purpose, notwithstanding that the purpose is not one with respect to which the Federal Parliament may make laws.”

This is intended to enable the Federal Government to subsidise activities within the range of provincial functions, or, to put it more accurately, outside the range of Federal functions. A power of this sort is necessary in order to enable the Federal Government to use revenues which are primarily raised for meeting the expenditure on Federal administration for items of expenditure which will not ordinarily fall within that field. This liberty to do so will also be helpful in another way. There

[The Honourable Sir N. Gopaldaswami Ayyangar]

are various developmental activities in different directions which the units will have to take up and the units may not have adequate finance for meeting the expenditure on these activities. It will be necessary, I think for the Federal Government to sanction subventions in aid of such developmental activities though they are purely within the provincial sphere. In the interest of the development of the country as a whole, this power in the Federal Government is a very necessary weapon for them to have.

Mr. President: Mr. Omeo Kumar Das has given notice of an amendment.

Shriyut Omeo Kumar Das (Assam: General): Sir, I am not going to move the amendment that stands in my name. I am more interested in Clause 2 the discussion of which Clause has been postponed to a later date and we are assured that an Expert Committee will investigate the whole problem. I hope and trust that our province will certainly get a fair deal from that Committee but I would like to make a few general observations on Clause 3 if you will permit me to do so, after all the amendments are moved.

Mr. President: Yes, we will take Clause 3 and the amendments thereto first. If you wish to take part in the discussion, you may do so later.

(Messrs. H. V. Pataskar, T. A. Ramalingam Chettiar, H. J. Khandekar and Rev. J. Nichols-Roy did not move amendments Nos. 375, 376, 377 in the main list and No. 23 in Supplementary List I.)

So far as I can see there is no other amendment to Clause 3. The Clause is open for discussion.

Mr. B. Das (Orissa: General): Sir, I agree with Sir N. Gopaldaswami Ayyangar that this is the most important chapter of the Union Constitution that has been placed before us. Sir, in the Fundamental rights we have not yet ensured that there should be social security for all. Social security means social justice for all and there should be certain minimum adequate standard of living for all. There should not only be public health and public safety, there should also be minimum education ensured for all. Unfortunately, Sir, we had an alien Government which lived for British domination. Its financial and economic policy was to take all it could take to maintain British Imperialism and British domination not only in India but throughout Asia. It gave nothing to the Provinces. If it gave to the poorer provinces like Orissa or Assam anything, it was just a sustenance allowance and nothing more. The British accession to India meant only expansion of British trade and commerce and there was development and prosperity only in ports like Calcutta, Bombay, Madras and Karachi, and all communications led to these ports and hence these Provinces became so prosperous. Provinces that came later, I mean my own province of Orissa or even Assam, they were victims of circumstances like a poor man's home where children often come and they are not wanted by the parents because they cannot equip them properly for life or give them proper food or proper education.

Sir, I am sick of hearing in this House that in certain respects we are following the Government of India Act, 1935. Those of us who opposed

the enactment of that Act and those of us who knew stage by stage how the stranglehold of Britain and the autocratic British Government was being perpetuated in the Government of India Act, feel ashamed and humiliated to hear that today when we are coming to Free India or Dominion India within a fortnight or so, we are trying to frame a constitution for India on the lines of the Government of India Act that perpetuated these strangleholds on India and postponed the formation of the Federal Government from 1935 to 1947. Sir, these few sections that we find in the Government of India Act,—Sections 136 to 149—about finances and borrowing, about subventions and grants-in-aid were not inserted with any intention of securing social security and social justice to the people of the Provinces that came into existence accidentally. We have seen how these sections were flouted when the World War II came in 1939. By a particular section, section 126 (a) which was passed in 1939, all the Provinces, all the Provincial resources and all the people of India were made the hand-maidens and slaves of the British Government, so that the soldiers of India could help the British Government to fight this war and achieve victory at the cost of India. We know what happened. Nearly Rs. 5,000 crores worth of material were sent out of India to Britain and her allies at controlled pre-war rates and in the same way India was robbed of her food and the result was that 50 to 75 lakhs of people died in Bengal of famine and starvation. Another result was inflation. That was the social security and social justice that the Government of India Act gave us.

To me, Sir, it is painful that in the preamble of the Union Constitution it has not been clearly laid down that the objective is to maintain peace and well-being of the people and bring prosperity to the people of India—it has not yet been defined; I believe and I hope it will be defined. But I think it should be laid down that the first function of the State is to see to the well-being of the people,—not to rule as the British Government have so long ruled and exploited India for England's benefit and for India's misery and death. Therefore, Sir, I am glad to hear from Sir Gopalaswami that a Financial Inquiry Committee will be appointed. But I hope such a Committee would contain not only eminent lawyers but also financiers, economists, etc., who can lay down what is the minimum standard of social security that India's present over-burdened and over saddled financial and economic conditions will warrant for the people of India. In Part V we have provided for a strong Centre, but is it the duty of the Centre only to have administrative functions and legislative functions? I would very much like that the Union Powers Committee contained also men with knowledge of high economics and finance. I know that my friend Pandit Govind Ballabh Pant was in it and he is of course a financial expert, but there might well have been others. It is social justice and social security that we want. The Administration is of course going on. I am sorry to express this view, but I have come to the conclusion that the Union Constitution has not lightened the administrative rigour that was in the Government of India Act. of course, they will bring the final Union Constitution before us and we shall examine it in October; but judging from the tendency of speeches that we have listened to in this House by our leaders and the members of the Union Powers Committee, I find that they want power—administrative power, legislative power and so on. But these are only the tools for the contentment and happiness of the millions by maintaining peace and tranquility in the country. It is the financial and economic chapter of the Union Constitution that will show what these people really mean,—whether they want to ensure social justice or whether they want to evolve another bureaucratic government where power politics will dominate. Those who are in power whether they be my brothers or cousins, are bound to exercise their power in the same way as the British did. The reason is that most

[Mr. B. Das]

of us have grown old in the British tradition. It is very difficult, Sir, to discard that tradition and suddenly visualise democratic principles, so that we may render social justice and secure social security for our teeming millions. I therefore welcome the Union Powers Committee Report, which also will be discussed in the August Session. There I find the Committee members have gone a stage further than the draft of this Union Constitution Committee. There they say: (*vide* para 6 of 2nd report.) (*Interruption*).

Mr. President: I do not wish to interrupt the Hon'ble Member, but may I remind him that we are discussing Clause 3 now? It relates to subventions.

Mr. B. Das: I know, Sir. It is on that question I am talking. That clause talks of giving charity to the Provinces. I do not want any charity, I am merely reading out what the Union Powers Committee have said on this point, because that explains their attitude.

They say:

"It is quite clear, however, that the retention by the Federation of the proceeds of the taxes specified by us would disturb, in some cases violently, the financial stability of Units and we therefore recommend that provision should be made for an assignment or a share of the proceeds of some of these taxes on a basis to be determined by the Federation from time to time."

Sir, whether it is the Finance Minister, or the President or the Federal Government, or whoever gives subvention or charities or grants-in-aid—I do not want that. I want that it should be statutorily provided for in the Constitution Act. My friend Sir Gopaldaswami has told us that there would be an Expert Committee. But I would like that these grants-in-aid should be statutorily provided and they should not be charity grants of the Finance Minister, whoever he may be. He might be the best expert or the best friend of the poor man, it does not matter. These grants-in-aid or subventions should be reviewed periodically, say, every three years or five years. This is the suggestion that I put forward. I want them to state definitely what they are going to do for the teeming millions. The Provinces will come in as poor *zamindaries* and big *zamindaries*. While I support Clause 3 because it gives me a chance to enunciate my views before this House and which I hope the Union Powers Committee will accept, I hope that the sections in the Constitution Act will render social justice and ensure minimum standard of living to every citizen in India.

Shriyut Omeo Kumar Das: Mr. President, Sir, I have already told you while withdrawing my amendment I would like to make a few observations in support of this clause—Clause 3.

Sir, the question of subsidies has been in all federations a very perplexing one. But still these questions are being solved in a spirit of compromise. In all the federations the constitution makers approach this problem with a spirit of compromise and try to give a fair deal to all the units. Sir, we are entrusted with the task of framing our constitution and we have to deal with this most perplexing question of subsidies. This

question is all the more perplexing situated as we are with national income extremely low and with so many different problems in different provinces, with so many backward communities and tribes the provinces and many other complicated problems. Still I feel that the Expert Committee which will be set up in future will deal with this question and try to give a fair deal to all the units.

While framing this draft constitution for the Union we have almost accepted the constitutional set-up envisaged in the Government of India Act, and I have a lurking suspicion in my mind that we may also accept the financial arrangement that was provided for in that Government of India Act. Sir, it is not necessary for me to tell this House that the financial arrangement set up under that Act was conceived with a different outlook. At that time the Provinces were confronted with deficits and the Committee that was set up at that time, I mean the Otto Neimeyer Committee, had to determine how to bring about budgetary equilibrium. Besides, Sir, the Committee approached this question of budgetary equilibrium with the notions which prevailed regarding public finance at that time. These notions have now undergone a radical change in these few years and they have been replaced by a different criterion—the criterion of maintaining full employment, whether maximum advantage for the people can be brought about. A financial system which was designed to meet a static economy is now being called upon to meet a situation which is essentially dynamic. Sir, a government of the people and by the people is being installed and what will be the meaning, and what will be the utility of that government if it cannot bring about the maximum advantage to the people?

Sir, it will not, perhaps, be out of place if I refer here to the Canadian or Australian constitutions. The framers of those constitutions have evolved a better system of meeting the provincial requirements by giving better subsidies to the provincial units. Sir, in my province of Assam, there are special problems. The country is agricultural without any big industries. It is a land full of backward tribes and communities and a large number of backward people have been artificially transferred to that land as labourers to the tea plantations. Then there are the turbulent rivers which devastate the smiling countryside. There are also virulent diseases which bring about ruin to happy families. They need control. These are big problems and unless we have a better financial system, we cannot hope to meet these crying needs. No doubt, ours; is a backward country, but I have to bring to the notice of this House that we are one of the largest contributors to the Central exchequer, by way of the export duty on tea and jute and the excise duty on petrol. By these means we contribute to the Central exchequer not less than seven crores of rupees. But under the present financial arrangement we are receiving only a trifling subvention of Rs. 25 lakhs. I do hope that the expert committee which investigates this question hereafter will try to give a fair deal to Assam.

With these words I beg to support Clause 3.

Mr. Mohammad Sheriff (Mysore State): Mr. President, Sir, those who were responsible for bringing out this Report deserve our congratulations for having thought it desirable to make provisions for the uplift of those who are undergoing so many hardships. So far as this particular clause is concerned, it proposes that the Federal Government, should have the power to make subventions or grants out of federal revenues for any purpose notwithstanding that the purpose is not one with respect to which the Federal Parliament may make laws. There is no need for me to tell

[Mr. Mohammad Sheriff]

you, Sir, that we have got several post-war schemes, schemes designed to improve the economic and commercial and educational standard of the people. These schemes are on the anvil, but it is very necessary that money should be got to put them into execution. So far as the Provinces are concerned, they do not have the wherewithals to put these schemes into immediate effect. And so far as poverty is concerned it is rampant not only in the northern provinces, but also in the south. So many people are dying of starvation and hunger and the enlightenment and education advance of the masses should receive immediate attention too.

So far as these nation-building items are concerned, I do not think the provinces have the money and it is the duty of the Centre to see that money is supplied to them so that out of this money, they may spend for the needs and requirements of the poor people and in the way of their enlightenment and education. These are the two items which will bring progress and advancement to the country. These are very necessary and it is very good of the framers of the report that they should have taken this aspect of the question and decided that from out of the Federal revenues provinces also would have necessary funds. With these words, Sir, I have very great pleasure in supporting it.

Mr. President: I should have thought that it is a very innocent and simple clause and would not have required much discussion. I would ask the House whether further discussion is necessary since there is no opposition.

Honourable Members : No, no.

Mr. President: The question is:

“The Federal Government will have power to make subventions or grants out of Federal revenues for any purpose, notwithstanding that the purpose is not one with respect to which the Federal Parliament may make laws.”

Clause 3 was adopted.

CLAUSE 4

The Honourable Sir N. Gopaldaswami Ayyangar: I beg to move Clause 4:

“The Federal Government will have power to borrow for any of the purposes of the Federation upon the security of Federal revenues subject to such limitations and conditions as may be fixed by federal law.”

This is what every Government has to do if it has to meet expenditure which it cannot meet out of its current revenues, for it has got to meet expenditure whose effects might be of a lasting character—expenditure of a developmental nature. The raising of funds by borrowing is a very necessary item in any kind of governmental finance. This clause is a very necessary item in the Constitution.

Mr. President : Is there any amendment of which any member has given notice?

Mr. M. S. Aney (Deccan States): I suggest that for the words, “upon the security of Federal revenues” substitute “upon the security of Federal assets and revenues”.

Mr. President: Mr. Aney suggests upon the security of federal asset and revenues.

The Honourable Sir N. Gopalaswami Ayyangar: When we consider the draft we will take that into account. I do not think it is really necessary.

Mr. President: Is there any amendment to this clause?

Mr. B. Das: I have one. It is amendment No. 24 in supplementary list No. I.

Mr. President: That I take it is in connection with a new clause. It does not refer to this clause.

The question is:

“The Federal Government will have power to borrow for any of the purposes of the Federation upon the security of Federal revenues subject to such limitations and conditions as may be fixed by federal law.”

Clause 4 was adopted.

CLAUSE 5

The Honourable Sir N. Gopalaswami Ayyangar: Sir; I move:

“The Federal Government will have power to grant a loan to, or guarantee a loan by, any Unit of the Federation on such terms and under such conditions as it may prescribe.”

This also is a simple and very necessary clause. The Federal Government makes itself responsible for the solvency and the adequate meeting of the expenditure of the Units by the Governments of those Units. If they stand in need of a loan the Federal Government will either grant the loan or guarantee a loan which is raised by the Unit.

Sir, I move.

(Amendments 378 and 379 in List No. 2 were not moved.)

Mr. President: There is no amendment to this. The question is:

“The Federal Government will have power to grant a loan to, or guarantee a loan by, any Unit of the Federation on such terms and under such conditions as it may prescribe.”

Clause 5 was adopted.

Mr. President: I have notice of an amendment to this part by way of an addition.

Mr. B. Das: I am not moving. it.

Shri T. T. Krishnamachari (Madras: General): I am not moving VII-A, but VII-B and I would therefore like VII-B to be renumbered as VII-A. Sir, I move:

“Part VII-A. There shall be an Inter State Commission constituted in the manner prescribed by federal law, with such powers of adjudication and administration as may be similarly prescribed for the execution and maintenance of the provisions of this Constitution relating to trade and commerce and generally for adjudicating in similar matters as may be referred to it from time to time by the President”.

[Shri T.T. Krishnamachari]

The object of my moving this amendment is that in the matter of regulation of trade and commerce, so far as this Constitution is concerned the only reference we have come across so far is Clause 10 in the Fundamental Rights which this House accepted in a previous session. Clause 10 says:

“Subject to regulation by the law of the Union Trade and Commercial and intercourse among the units and between the citizens shall be free.”

I find in the report that has been submitted by the Union Powers Committee that Trade and Commerce with Foreign countries is covered by item 17 in List No. I, the Federal List, and Trade and Commerce with the provinces is included in item 26 in List 2, the Provincial List. Actually these two items follow closely the corresponding items in the Government of India Act, 1935, viz., item 19 in List I, Schedule VII and item 23 in List II of the same schedule. A slight change has been made in the wording of these two items but the contents are substantially the same. I however find a lacuna in the new proposals for a Constitution in this respect. I find this Constitution does not contain any clause analogous to Section 297 of the Government of India Act which laid a definite embargo on any device by legislation to put a ban on the freedom of inter-provincial trade. I have no doubt that the Members of this House are fully aware of this particular section in the 1935 Act and of the implications that go with it. I am therefore somewhat surprised that it should find no corresponding mention in this Constitution. Apparently the framers of this Federal Constitution have been guided by the practice that obtains in the matters of dealing with this subject in other Federal Constitutions in the world.

Sir, so far as the United States is concerned the position is that in article I, section 8 of the Constitution, there is a reference in the powers of the Congress to regulate Commerce with Foreign nations and among the several States which has now become practically the sheet-anchor of a vast amount of judicial decisions and has resulted in the creation of a number of administrative bodies to regulate various types of commercial activities within the territory of the United States. I do not think that a Federation, like the one we envisage for ourselves, could leave such important matters as vague as they are in the American Constitution, for the reason that, while the American Constitution is of the Presidential type where the initiative rests with a single individual the President, ours is to be of the parliamentary type where the initiative is not held by any one person. We have in this matter rather to look to the examples of other Federal Constitutions like those of Canada and Australia.

So far as Canada is concerned, regulation of trade and commerce finds explicit reference in the distribution of powers in Section 91, Item 2 of that country's Constitution. Therefore it does not offer any parallel to the position in which we are placed today. Australian Constitution, however, is more or less on the lines we have envisaged for our Constitution in regard to trade and commerce. There is a reference in section 51 of the Australian Constitution to internal trade and commerce. But, apparently having learnt from the experience of the United States they have been wise enough to add a few more sections to their Constitution in the matter of the regulation of trade and commerce. These are sections 101, 102, 103 and 104 and I am now referring to section 101. My amendment is more or less a verbatim copy of this section 101 which provides

for the appointment of an inter-State commission for the purposes of adjudication and administration of the provision of the Constitution in regard to trade and commerce.

Sir, it might be left that the wording of this particular amendment of mine is not appropriate. Actually I have gone a little further than the wording of this section in the Australian Constitution as I have added the words: "and generally for adjudicating in similar matters as may be referred to it from time to time by the President". My reason for doing so is that in section 135 of the Government of India Act, provision has been made for the Governor-General bringing into being a Provincial Council where matters like this may be threshed out and frictions, strains and stresses in the Constitution that might exist, eased by discussion amongst the representatives of the units. We find no provision for any such agency corresponding to this has been made in the Constitution we are now discussing. Therefore I felt that the scope of my amendment should be wider than that of section 101 of the Australian Act and it should be open to the President to refer other matters also to this Inter-State Commission.

Sir, it might be said that a very bold reference like this does not help one very much. What the position of the Inter-State Commission should be I am leaving to the Federal Law to lay down. I have not copied the parallel section of the Australian Act No. 103 and have not provided that the Members should be so many in number, that they should have such and such qualifications and so on. These are matters which have to be considered at length later on when the Constitution is in operation and a Federal Law has to be enacted for the purpose. What I desire is that some room should be left for enlarging the powers of this Inter State Commission. Whether it is only matters regarding trade and commerce and others incidental should be referred to the Commission or whether it should be the means by which some kind of co-ordination in the economic activities of the Units could be achieved and such friction as might arise smoothed are matters which may be left to the draftsman of that Constitution act and to the Federal Law that may be brought into being later on. I hope, Sir, it will be possible for the Mover to accept my amendment. (The Honourable Sir N. Gopaldaswami Ayyangar: You are the Mover). I meant the Mover of the report of the Union Constitution committees proposals. I am quite willing to agree to any changes being made by the draftsmen in my amendment in regard to the wording of it before it comes to us finally in the form of a draft Bill commend my amendment to the House for its acceptance. Sir, I move.

Shri K. Santhanam (Madras: General): Sir, I beg to support the amendment moved by my friend Mr. T. T. Krishnamachari. In all Federal Constitutions there is always a conflict between the need for unity and the need for local autonomy. In certain respects this reconciliation has to be achieved through Federal legislation and administration. But this process is not available in the case of many matters and so, certain non-federal institutions have to be set up. The actual scope of Mr. T. T. Krishnamachari's amendment is rather narrow. I hope when the time comes we shall be able to expand it. We have to evolve not only this Commission, but many Commissions for voluntary co-operation between the Units. Let us for instance, take the Sales Tax. It is a provincial tax. I should expect in the coming years this tax becoming one of the most important sources of revenue for the Units. But unless the Units voluntarily co-operate with one another and evolve a uniform method of taxation, there may be great shifting of trade from one Unit to another

[Shri K. Santhanam]

to the detriment of the normal development of the Units. In certain contingencies, the Units may even be driven to the necessity of handing over the collection and distribution of this tax to the Federation. It is better for that, in the exercise of their functions, the Units voluntarily co-operate, create a machinery for such co-operation and evolve certain standards and methods keeping to themselves full liberty and discretion to make local variations. It is more as a sample of voluntary Inter-provincial co-operation that I support this amendment. As this will be in the Statute Book as part of the Constitution it will set up a precedent which will give a sort of pattern for Units to join in many other spheres. Especially in matters like irrigation, agriculture, etc. such commissions will be of great use. So I suggest that this matter should be gone into by a Special Committee and its scope investigated before it is put in the draft Constitution.

How these Commissions should be constituted, whether they should be elected by the legislatures or nominated by the Units, all these matters require careful consideration and I hope proper steps will be taken to have the scheme circulated among the provincial governments and only after their consent is taken to put it in the final draft of the constitution.

Mr. R. K. Sidhwa (C. P. & Berar: General): Mr. President, Sir I welcome this proposition as it is of a very important nature but I do feel that the wording is rather narrow. Such an Inter-State Commission also requires to investigate the economic conditions of the country, and apart from trade and commerce, I would suggest that the word 'economics' should also be put into it. The question of money will play a prominent part in the future constitution, and as was stated only a few minutes ago by Mr. B. Das in connection with another clause, for the nation-building programmes a good deal of money will be required as subventions from the Federal Government to the provinces and unless we have got sufficient money for the purpose of giving subventions, it is not possible for the nation-building programmes to be accomplished. It has been, Sir, our cherished desire, that when India becomes free, the nation-building, programmes will be given a new fillip, and unless we have also an Economic Commission of the nature proposed for trade and commerce, I am assure you, Sir, we shall never be able to go ahead with our nation-building programmes. This is of considerable importance both to the provinces and the Federation. When the question of finances to be given to the various provinces is raised, the federal government will say that they themselves are hard pressed for money. Therefore, it is necessary that in the constitution itself provision should be made whereby an Economic Commission will be set up so that they may devise ways and means of advancing the nation-building programmes, for, instances public health, social security, social co-operation. All these things require immediate attention. If we do not give them immediate attention, I can assure you, Sir, that the people will not be content with any type of constitution that we may make. In our Objectives Resolution itself we have made it perfectly clear that we stand for the socialist system. Sir, this is a welcome suggestion but I do request the Honourable the Mover to add the word 'economics' also in the wording of the clause. We want to do something really new, something really big for the benefit of the people, and for that it is very necessary that we should have an Economic Commission. While therefore supporting this amendment I request that the word 'economic' may be added in it.

Mr. President: Does anyone else wish to speak?

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, I do not propose to say much on this resolution. The principle of it is sound. It says that provision should be made in the constitution for setting up an Inter-State Commission for the purposes which the mover of this amendment has already explained in detail to the House. I would only say that, in accepting this amendment, I do not stand committed to the actual terms of it, but would like to reserve the liberty to alter the language perhaps even the substance of what is contained in this amendment before we translate it into a section or sections in the Union Constitution. Sir, I accept it.

Mr. President: I would now put the amendment of Mr. T. T. Krishnamachari to vote.

The motion was adopted.

The Honourable Sir N. Gopaldaswami Ayyangar: Part VIII refers to the Directly Administered Areas. The clauses that I want to move run as follows:—

“1. The Chief Commissioners’ Provinces should continue to be administered by the Centre as under the Government of India Act 1935, as interim measure, the question of any change in the system being considered subsequently, and all centrally administered areas including the Andamans and the Nicobar Islands should be specifically mentioned in the Constitution.

2. Appropriate provision should be made in the Constitution for the administration of tribal areas.”

The latter clause really is dependent upon the report we shall receive from the Advisory Committee. Whatever is recommended by that Committee and accepted by the House will go into the new constitution.

As regards the directly administered areas the Committee recommends that the existing state of things might continue, the question of making any changes in the constitution and administration of these Chief Commissioners’ provinces being left to be attended to in the Federal Parliament after it comes into being.

Mr. President: There are certain amendments to this clause.

(Mr. H. J. Khandekar did not move his amendment No. 380)

Shri Gokulbhai D. Bhatt: (Rajputana Eastern States): *[Mr. President, another improved form of the amendment, conveyings nearly the same sense which my amendment has, is about to be moved and so I am not going to move mine.]*

Mr. Deshbandhu Gupta: (Delhi): *[Mr. President the amendment which I am going to move runs as follows:—

“That consideration of clause 1 be postponed and that a special Sub-Committee consisting of seven members to be nominated by the President should be recommended before the next session of the Constituent Assembly to suggest suitable constitutional changes to be brought about in the administrative systems of the Chief Commissioners’ provinces so as to accord with the changed conditions in the country and to give them their due place in the democratic Constitution of Free India.”

Regarding this, I have only to submit that according to the recommendations of the Union Constitution Committee, the Constituent Assembly, at present, intends doing nothing for Chief Commissioners’ provinces. I consulted the members of the Union Constitution Committee, Provincial Constitution Committee and some other members, and I have reached this conclusion. They do not intend that in the Chief Commissioners’ Provinces which include the three major “provinces” of Delhi, Ajmer-Merwara and Coorg, the present form of administration should be

[] English translation of Hindustani Speech.

[Mr. Deshbandhu Gupta]

continued any longer. But it is only for the sake of convenience that they have recommended it. Naturally, when the population of these districts comes to about 30 lacs, they desire that on the occasion of the formation of the Constitution for the whole of the country, there should be a mention of these districts also in that constitution, and that there should be a definite recommendation for their administration in future. With this view, I am placing this amendment before you.

I am of opinion that since we appointed the Union Constitution Committee to formulate a Constitution for the centre and the Provinces likewise it was necessary to appoint a Committee for Chief Commissioners' Provinces, though they are few in number and have a small population which however is not negligible. I am glad that in a way it is an agreed amendment and I think that when the Committee is appointed, it would consider all aspects of this matter. Most of you are residents of Delhi in this way that you spend a major portion of the year here. Most of you are often our guests, and therefore, I think that when the difficulties of Delhi people come before you, this Constitution Committee will duly consider them.

I do not wish to say anything more at present. Considering the difficulties that the people in the Chief Commissioners' provinces have to face, they should not be deprived of any kind of self government now. Besides this, the part they have played in the struggle for freedom should come before the Committee and I hope it would recommend such a constitution as would be acceptable to the whole House.

I do not want to take up the time of the House for long. I hope that this amendment will be accepted. If this amendment is approved, the other amendments of which notices have been given by us need not be moved.]*

Mr. President: There are no other amendments to the clause, but if the amendment suggested by Mr. Deshbandhu Gupta is accepted, it will not be necessary to consider the other amendments.

The Honourable Sir N. Gopaldaswami Ayyangar: I accept his amendment except that I would substitute the word 'Committee' for 'Sub-Committee'.

Mr. President: It is accepted by Sir. N. Gopaldaswami Ayyangar.

Mr. R. K. Sidhwa: Sir, I rise to support this Motion, not because, Sir, in supporting it, I want to make a speech but I want to impress upon the members who will form the Committee for this purpose to realise the importance of this question, and, therefore, I do feel some remarks are appropriate at this stage, when seconding this Motion. There are so many subjects concerning Delhi City, which have been ignored all along. It is said that Delhi is the seat of Imperial Government. The Government here look to All-India affairs and in this way they have neglected Delhi City and the Province. By way of illustration, there is a transport company here in Delhi called G.N.I.T. and people are cursing this Transport Co., because it could not cope with the traffic and at the same time the authorities are charging fabulously heavy rates. Now, if Delhi had its own Provincial Government, and if this matter came within their jurisdiction, it would certainly look into the matter at once. Transport licence is given by local Governments and if a responsible separate Government existed they would either nationalise the service as did the

*[]English translation of Hindustani Speech.

Punjab Government or they would have the service improved. It may look a small matter, but nevertheless it affects the average man. The man, in the street accuses the Government for doing nothing in the matter. Then there are questions like irrigation, P.W.D., prohibition, etc. If there is a separate Provincial organization it will certainly look into the matter, no matter what the population is. Because Delhi is a Capital town, this has been ignored in the past. I do feel strongly that because Delhi has been the Capital of India, this city and the adjoining villages have been ignored in the past.

Sir, I therefore welcome this motion and I do impress upon the Committee to bear all this in mind. I want a responsible Government responsible to this Legislature, so that it can become a forum for ventilating the grievances of the public of the City of Delhi. From this point of view, Sir, I heartily support this Motion. It is already overdue. I must state, Sir, when I found in the Constitution that Delhi will probably remain as it is and later on in the future Constitution a Commission may be set up, I moved also an amendment that in the new Constitution to come, Delhi should have its own Legislature and the public must be enabled to ventilate the grievances of the people of the City or the Province. Therefore, Sir, I whole heartedly support this Motion.

Mr. C. M. Poonacha (Coorg): Mr. President, Sir, I thank Sir Gopaldaswami Ayyangar for having accepted this amendment of ours and in doing so, I would like to make some observations by way of suggestions. On a previous occasion, Sir, on the floor of this House, I had suggested that a Committee of this type should be appointed to examine the question of the Chief Commissioner's Provinces. The problem of the Chief Commissioners' Provinces is not so simple as it appears to be. The problem of each of these areas varies one from the other. This fact is borne out in the reports of the Constitutional Enquiries that preceded the passing of the 1919 and 1935 Acts. The question of the Chief Commissioners' Provinces was not properly dealt with in 1919 and 1935 Acts and the question is still hanging fire. Therefore, Sir, I feel that a full examination of the conditions obtaining in each of these provinces as under the 1935 Acts should be undertaken and suitable recommendations made. It may be necessary for that purpose to make local enquiries or at least elicit view points through a set of questionnaire.

So far as Coorg is concerned, I had stated on a previous occasion that I have given a definite assurance in the Legislative Council there at the time of my election to this Assembly, to the effect that the opinion of the people of Coorg will be ascertained before bringing any drastic changes in the system of administration of Coorg. Coorg has its own problems and requires a through investigation. It may not be out of place here, Sir, if I suggest that the Committee would do well to visit Coorg in order to make a first hand study of the Coorg Legislative Council there. This Council has been functioning for the last 24 years and it would be of great use to the Committee to examine how it has been working for the last quarter of a century.

In conclusion, I may be permitted to say, Sir, that as the matter is of very vital importance to the people of these areas, the members representing the Chief Commissioners' Provinces in this Assembly should be associated in the deliberations of the Committee. As the matter is rather of a complicated nature, I would also suggest that our able constitutional lawyers who have worked so much for the preparation of this Report on the Union Constitution should be included in the Committee. This question deserves very careful examination and able guidance.

Pandit Mukut Bihari Lal Bhargava (Ajmer-Merwara): Mr. President, Sir, I wholeheartedly support the amendment moved by Mr. Gupta. It is strange, Sir, that the Union Constitution Committee which was specially delegated with the authority to deal with the question of the Chief Commissioners' Provinces has not made any suggestion. It has simply deferred the whole question and has stated that the question of change in the system shall be taken up at a later stage. It is really a matter of great pleasure, Sir, that the sponsor of this clause has agreed to accept the amendment and that Committee will be appointed by the President to go into the question of the Chief Commissioners' Provinces.

Sir, the Chief Commissioners' Provinces are a variety of territories situated in different parts of the country and they have got a historical importance of their own. So far as my province, Ajmer-Merwara, is concerned, it is situated in the heart of Rajputana and is a place of historical importance. In fact, its strategic position has been the cause of all this autocratic administration that has prevailed in my province throughout the British rule. All efforts at effecting a change and amelioration in the administrative system have failed. The Minto-Morley Reforms of 1909, the Montagu-Chelmsford Reforms of 1919 and the Constitution Act of 1935 have left altogether unaffected and untouched the autocratic administrative system that prevails in this province and all Other Chief Commissioners' Provinces. In fact, Sir, the recommendation of the Union Constitution Committee to the effect that this question may be taken up at a later stage is altogether out of tune with the democratic constitution of the Republic of India. Therefore, Sir, it is most opportune that simultaneously with the great constitutional changes in other provinces and in the Union, the constitution of the Chief Commissioners' Provinces, which is of a thoroughly autocratic nature, should be overhauled and brought into line with the rest of India, I hope, Sir, that the Special Committee which we are going to appoint will give due consideration to problems of each Chief Commissioner's, Province and suggest a constitution which may be of a thoroughly democratic nature.

So far as Ajmer is concerned, I say that it is a Province which deserves to be raised to the status of a full autonomous Governor's Province and the mere argument of its smallness or its slender financial resources should not stand in the way of conceding to the people their right of self determination and their right to be masters in their own house. I therefore, suggest that the Sub-Committee that is to be appointed by you should consider the problem in all its aspects and should give due hearing to the representatives of the Chief Commissioners' Provinces. In fact, Sir, I wholeheartedly support Mr. Poonacha's suggestion that representatives of the Chief Commissioners' Provinces should be given adequate representation on this Sub-Committee. At any rate, the Sub-Committee should not arrive at any conclusion concerning these provinces unless and until they have given full hearing to the representatives of these provinces. I hope, Sir, that by the end of September, this Sub-Committee would be able to recommend to the House a constitution which will be thoroughly democratic and which will give to the people of these provinces a glimpse as to the liberty coming and as to the establishment of a republic in India. This question should not be shelved by the Committee in the way it has been shelved so far.

With these remarks, I support the amendment.

Mr. B. Das: Sir, I wholeheartedly support the resolution moved by my friend, Lala Deshbandhu Gupta. There must be a Committee to raise the

administrative standard of these Chief Commissioners' Provinces and the people there should enjoy equal privileges like us.

I can visualise there will be difficulties. These Chief Commissioners' Provinces came into existence to maintain the British power and British autocracy in India. The last speaker was speaking on behalf of Ajmer-Merwara. Ajmer-Merwara was the Political Department's paradise so long. Although the Political Department is now abolished, that place still remains the Political Department's paradise and public representatives have little say in the matter.

Delhi, Sir, showed that British autocracy can do anything it likes in the very face of the Government of India, through the Chief Commissioner in Delhi. All along there was an English Chief Commissioner and he could do anything he liked in the face of the Central Assembly that is situated in one part of this building and in the face of the single representative of Delhi in the Central Assembly. The Delhi municipal administration is very antiquated and antedated. It is a body of *jo-hukums* and it elects the Advisory Council which is very strange indeed!

Then, Sir, I go to Panth Piploda in Rajputana, with a population of 15,000 people. Could or the people have any representation? I suggest to the Committee that will enquire into this, that this should be identified with Ajmer-Merwara and form part of that Chief Commissioner's Province, be it a Governor's province or a Deputy Governor's province.

As far as the Andaman and Nicobar Islands are concerned, that blackhole plague-spot in India of which one heard so much, is inhabited by a few Indian ex-prisoners. The Nicobar Islands are inhabited by some 20,000 aboriginals. They live under very primitive customs and conditions.

So far, the Andaman and Nicobar Islands have been administered by a Chief Commissioner always recruited from the Assam Civil Service. I wish to suggest that the people there are not so enlightened except a few Englishmen and Anglo-Indians that have found settlement there for trade purposes. I suggest that the Andaman and Nicobar Islands should have representation in the Provincial Legislature of Assam Assembly and the people of Nicobar Islands should be treated as tribal people and must receive special protection like other tribal people. I do not think the Advisory Committee on Tribes have visited Nicobar Islands and enquired into the capacity and limitations of the people there.

As far as Coorg is concerned, it was created into a Chief Commissioner's Province and the Chief Commissioner there is all in all. The Chief Commissioner has all the freedom—I speak subject to correction by Mr. Poonacha—and is an autocrat. The Coorg planters, who are mostly British, think that it is a British Kingdom.

All these raise a fundamental issue, and as we are making a Constitution for the whole of India, these people should receive equal rights as we have; but how it can be adjusted is for the Committee to decide; but the Committee must visit Nicobar Islands and understand the problem of the people. In the same way I support Mr. Poonacha's suggestion that the Committee should also identify the representatives of the locality. The Committee should visit Coorg. Perhaps except, my friend, Sir Gopalaswami Ayyangar who might have visited Coorg on a holiday very

[Mr. B. Das]

few of us have seen or have known the autocracy of Coorg; but those of us who know what the Chief Commissioners have been in the past can visualise the repression and oppression the people of Coorg must have gone through.

Pandit Thakur Das Bhargava (East Punjab : General): *[Mr. President, I wish to speak a few words regarding this resolution, from a particular point of view. I have great sympathy for the people of Ajmer-Merwara and other Chief Commissioners' Provinces. I have greater sympathy with Delhi in particular, because there is considerable affinity between Delhi and my Constituency. As a matter of fact, before 1912 when Delhi became the capital of India, it was a part of the Ambala Division of the Punjab. Even now Ballabgarh, Sonapat and Palwal, the three Tahsils of Delhi, are included in the Rohtak Districts and portions of the Eastern Punjab are included in Delhi. There is that socio-economic homogeneity between Delhi and villages of the Eastern Punjab which is considered essential for the amalgamation of one region with another. Taking into consideration all these points this part of Delhi which is included in the Chief Commissioner's Province is in reality a major part of Ambala Division and has since long been trying for amalgamation in the Governor's province.

A resolution is shortly to come up before the House, in which the question of redistribution of provinces on cultural and linguistic basis will be discussed and before this many other important questions have also been discussed. Now this is a question which may be considered to be very vital. Large numbers of conferences are being held in the Punjab and U.P., demanding amalgamation of diffused homogeneous tracts of Ajmer-Merwara and Delhi into one province, because they speak the same language and have the same way of life. If it is intended to keep the organically united parts of the East Punjab separated for ever, then I would oppose the resolution. It is my desire that after the all-important question of the Independence of India is settled, we might be able to create some new provinces. Till then, no final decision should be taken on this question.

So far as the question of the constitution of Chief Commissioners' Provinces is concerned, I am not opposed to it. I have only to submit that the, Chief Commissioners' Provinces should also get their rights. When the rest of India is getting a democratic constitution, similar rights should also be granted to them by the Legislature. I am not opposed to it, may, I have always been putting questions in the Central Legislature regarding these parts of Delhi. They are our own part and parcel. I have every sympathy with them and do want that they should be excluded from the list of provinces. I wish that Dr. Pattabhi's scheme of redistribution of provinces on cultural and linguistic basis should remain intact. This question should on no account be finally decided now. This question should be decided on its own merits. I have no objection if this question is referred to a Committee. It is not my intention that the question should be decided irrevocably. With these words I support the resolution.]*

The Honourable Mr. Jaipal Singh (Bihar : General): Mr. President, I welcome the suggestion that a Sub-Committee be appointed to look into the future position of the Chief Commissioners' Province. My own interest lies in the fact that some of these Provinces are overwhelmingly

[] English translation of Hindustani Speech.

inhabited by tribals, the Andaman and the Nicobar Islands in particular. Some reference has been made about the two Sub-Committees which have been appointed by the Constituent Assembly to settle the question of Adibasi tracts, six fully excluded and 18 partially excluded areas, and, I think, it is necessary the position should be made quite clear here that these two Sub-Committees were bound by the very expression that was used; that is to say that they were to examine no more than those Adibasi tracts, the excluded areas and the partially excluded areas. That is how the Committee began their work but, now, a more generous interpretation has been put to those wordings. They may now make recommendations also for tribals who are outside those so-called tribal areas. That being the case, Sir, the two Tribal Sub-Committees are, I think, equally interested in the work that may be done by the Sub-Committee suggested by the Mover of this amendment. My own suggestion is that some members from the present Tribal Sub-Committees may be incorporated in the Sub-Committee that is to go into and examine the position of the Chief Commissioner's Provinces; because there are some provinces where the whole problem will be one which will have to deal with the tribals. I support the amendment.

Mr. President : I will now put the amendment to vote. It has been accepted by the Mover.

The amendment was adopted.

PART VIII—CLAUSE 2

Mr. President: We may now take up Clause 2.

The Honourable Sir N. Gopalaswami Ayyangar: I have already moved it, Sir.

Shri K. Santhanam: On a point of order, Sir. The Tribal Committee has not yet submitted its report.

Mr. President: But that is the proposition before us. Does any one wish to speak on this clause?

The Honourable Mr. Jaipal Singh: I have only a few words to say and I feel that they must be said in order to obviate a situation which might become very serious and dangerous in this country before long. Before I say that, I would like to repeat what I said a few minutes ago that the tribal areas should include also the problem of tribals who are outside the defined tribal areas.

Sir, His Excellency Sir Akbar Hydari, the Governor of Assam, visited the Naga Hills between June 26th and July 2nd. Some very unhappy developments have since then been brewing in the Naga Hills. Members may have read some news appearing in the Press and several Members of the Interim Government, and I understand, you also, Sir, have received telegrams from some of the Nagas about what they intend to do. I myself have been receiving on an average, a telegram per day, the latest telegram becoming more confounded than the previous one. Each one seems to go one step further into the wilderness. The position, if I may have your permission to explain it, Sir, is this. The Nagas have been misguided by certain persons into thinking that, with the withdrawal of British authority, the country would go back to them. They think they are going to be in the same position as the State, where the so-called paramountcy

[The Honourable Mr. Jaipal Singh]

would lapse back to the States, and, therefore, they could do exactly what they liked. The fact that the Naga Hills have always been part of India, have never been anything like a State, has not been pointed out to them. On the contrary, it seems the Nagas have been misguided more and more as days have been going along into the belief that the Naga Hills belong to them and that they were not part of India ever and further, that, as soon as the Dominion of India came into existence, the Naga Hills would be the exclusive property of the Nagas. Sir, some of the leaders of the Naga Hills came to Delhi recently and saw some of the prominent Members of the Interim Government. Those of us who came into contact with them tried to tell them the blunt fact. (*Interruption*) I only desire that what I say should travel to the distant Naga Hills and reverberate there—that they have been misguided by interested persons into believing that they could do what the States could do by His Majesty's Governments June 3 Plan. I only wanted to say this, because I think that it is necessary something definite should be said on the floor of this Assembly. One of the telegrams sent to the Members of the Interim Government puts it in the mouth of the Constituent Assembly that "the offer for joining the Union has been rejected by the Nagas". The fact is there has been no question of an offer. Besides, an offer is unnecessary and uncalled for because the Naga Hills have always been part of India. Therefore, there is no question of secession. They are not an Indian State.

I hope the troubles that have been brewing there will be obviated by this definite statement on the floor of this Assembly. The unequivocal fact is that Naga Hills are part of India and they were never otherwise.

Shri V. I. Muniswami Pillai (Madras : General): Sir, I had given notice of an amendment for the protection of aborigines. But in the note it has been provided that any scheme that may come before the C.A. must be on the report of the Advisory Committee. So far the Advisory Committee has not submitted its report regarding the tribal areas or the aboriginal tribes people living in the areas distributed in various provinces. Until that report comes, I do not wish to move this amendment.

Mr. President: That really means that the report of the Sub-Committee will have to be taken into consideration before any scheme could be provided. I do not think there will be any difference of opinion on such a clause. Therefore, I put it to vote.

Clause 2 was adopted.

Mr. President: I may say here that if there are any amendments they will be considered when the report comes up before the House.

Shri K. Santhanam: Sir, I have an amendment which runs as follows:

"That after Part VIII the following new Part be inserted:—

PART VIII-A—EMERGENCY POWERS

1. If, at any time, the Governor of a Province is satisfied that a situation has arisen in which the Government of the Province cannot be carried on in accordance with the provisions of this constitution and has so reported to the President of the Federation or if the President of the Federation is satisfied that the normal government of the Province has broken down, he may take any action which he considers necessary including (1) suspension of the provincial constitution (2) promulgation of ordinance to be applicable to the Province; and (3) issuing of orders and instructions to the Governor and other officials of the Province.

When any such action is taken by the President he shall report to the Federal Legislature and unless his action is ratified by both Houses of Legislature

within a period of six months from the date of his taking action the normal constitution of the province shall be restored. The situation shall be reviewed by the Federal Legislature and continuation, if necessary, of the emergency action approved every six months.

The President shall restore the normal constitution as soon as he is satisfied that the emergency has ceased to exist.' ”

This is complementary to the provisions which have already been added to the provincial constitution. According to Mr. Gupte's amendment which has been carried, the Governor has power for two weeks to take emergency action. If an emergency arises, he will have to take the sanction of the President. If that emergency arises and this action for two weeks is not sufficient then only the President and the Federal Government have to take action. I have described two contingencies in which the President will have to take action. One is when the Governor reports that he is unable to manage the situation with his special powers given to him. Secondly, if the government of the Province has so utterly broken down that it can do nothing, and when there is no authority capable of dealing with the situation, then the President on his own initiative can take action. When he does so, he will have to report to the Federal Legislature and do so once in six months, and the normal constitution will be restored as soon as the emergency disappears.

I think the whole thing is quite logical and is absolutely necessary. For instance, if the police machinery in a province breaks down and the Governor can do nothing in the matter, he will have to invoke the powers of the President and this provision gives these powers to the President. Therefore, I hope the new provision which I have suggested will be accepted unanimously by the whole House.

Mr. H.V. Kamath: Sir, considering that the motion of Mr. Santhanam has no relation or relevancy to the provisions of Part VIII, I fail to understand how it can be numbered Part VIII-A.

Mr. President : He has moved for the insertion of another part called Part VIII-A. Emergency Powers.

Mr. B.M. Gupte (Bombay: General): Sir, I beg to move:

“That after Part VIII, the following new Part be inserted:—

PART VIII-A—EMERGENCY POWERS

“1. (1) On report being made by the Governor of a Province under Section Part..... of this Constitution, the President of the Federation shall have the power to issue, in consultation with his council of ministers, a proclamation assuming to himself all or any of the powers vested in or exercisable by any Provincial body or authority except the High Court, including the power to confirm modify or revoke the Proclamation issued by the Governor.

(2) The Proclamation, under this section, shall cease to operate at the expiration of 2 months unless its continuance for any further period is approved from time to time by a resolution passed by the Federal Legislature.”

[Mr. B.M. Gupte]

Mr. Santhanam, has, already shown how such a clause as this is necessary. We have already accepted the position, by passing Clause 15 of the Provincial Constitution that there shall be some emergency powers vested in the President. But in the Report there is no such provision made; hence my amendment and the amendment of Mr. Santhanam. They are both designed to remove this lacuna. My amendment provides that as soon as the President gets the report from the Governor he may issue a proclamation, in consultation with his Council of Ministers. As the Governor is authorised to take immediate action, there is no urgency for the President to act without the advice of his cabinet. That he does this in consultation with his Council of Ministers, is a point I want to emphasise as a point of difference between my amendment and that of Mr. Santhanam.

Shri K. Santhanam: Sir under the Federal Constitution, the President always acts on the advice of his Ministers.

Mr. B. M. Gupte: That is all right. I only emphasise it. It was agreed in the course of the debate on Governor's powers, that overriding power should be given to the President. There was heated controversy about power being given to the Governor; but so far as the President was concerned, there was unanimity of opinion. That power is now given to the President, of course circumscribed by the condition that he has to consult his Ministers.

Another difference between Mr. Santhanam's amendment and mine is that he has provided for a period of six months while I have put it down as only two months. This is a power we give for dealing with an extraordinary situation and I think only the minimum power should be given and a period of two months is quite sufficient to convene the Legislature. Only that much power should be given as is absolutely necessary. The Federal Legislature is the supreme authority on this matter and therefore an endorsement from that legislature should be obtained. I have provided that unless the Legislature endorses the action of the President within two months, the proclamation of the President shall cease to operate. As the Legislature is supreme I have put no time limit on its power. If necessary the Legislature can from time to time give its assent to the proclamation. If it is a grave emergency, it will not last long; but if it should continue in a sub-acute form then the legislature can certainly from time to time extend the proclamation.

Therefore, I submit, Sir, that my amendment is a better provision. In fact my amendment is based on the position arising from the acceptance by the House of the provision vesting the authority in the Government to issue a proclamation. Mr. Santhanam's amendment does not fit in with that position. It does not refer to the Governor's proclamation at all. It is based on the assumption that merely the power to report had remained with the Governor. I, therefore, submit that my amendment makes a better provision and should consequently be accepted by the House.

Mr. R. K. Sidhwa: If Sir Gopaldaswami could state which of the amendments he is prepared to accept, that would perhaps facilitate the discussion.

Mr. President : Sir N. Gopaldaswami, would you like to say anything now?

Shri M. Ananthasayanam Ayyangar: Mr. President, Sir....

Mr. President: Mr. Ayyangar.

Shri M. Ananthasayanam Ayyangar: Which Ayyangar Sir?

Mr. President: Sir N. Gopaldaswami Ayyangar.

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, I cannot categorically answer what Mr. Sidhwa has asked, but I will certainly indicate my views. Both the amendments that have been moved are intended to make provision for what the House has already accepted in the case of the Provincial Constitution. The House will remember that when we were discussing the Provincial Constitution, it put into that Constitution a clause which is substantially the same as section 93 of the Government of India Act, 1935 with slight variations in details. The Governor was given power to assume to himself all or any of the functions of Government or any of the powers vested in or exercisable by any Provincial body and so on. Then there was a sub-clause which said:

“The proclamation of the Governor shall be forthwith communicated by the Governor to the President of the Union who may thereupon take such action as he considers appropriate under his emergency powers.”

It becomes necessary, therefore, that we should somewhere in the Constitution make provision indicating what the powers of the President may be in a certain emergency which arises in a province; and, from that point of view, I think both the amendments attempt to supply the omission which would otherwise exist in the outlines of the Constitution. The point for us to consider is what sort of provision should be made. The Governor himself has been given the powers to suspend practically all or any portion of the Provincial Constitution and take to himself powers possessed by the various authorities indicated in the Provincial Constitution. Having done that, he has got to make a report to the President and, if nothing happens, the proclamation will cease to operate on the expiry of two weeks. The emergency might be of a character which extends beyond two weeks or it may be such that the President of the Federation might consider did not warrant all the extraordinary measures which the Governor chose to take for tackling that particular situation. Therefore it is necessary that we should invest the President of the Federation with some powers to act on a report which he receives from the Governor of province.

Mr. Santhanam in his amendment has proposed a number of detailed measures which the President could take after receiving the report of the Governor. Now it is difficult for me to accept all the details of the measures that he has suggested in his amendment. For instance, he suggests that these powers should include suspension of the provincial constitution by the President, promulgation of ordinances applicable to the province and thirdly, issuing of orders and, instructions to the Governor and other officials of the province. A Governor takes some action. It may be right or it may be wrong. If it is right, it might deserve to be extended beyond the two weeks for which that action could normally be in force. If it is wrong, the President has powers under the clause already carried in connection with the Provincial Constitution to revoke the proclamation of the Governor. And then the President will have to take action on his own which he considers appropriate for tackling the particular emergency. whether the powers that we should vest in the President should be so all-comprehensive as Mr. Santhanam has suggested is a matter which, I

[The Honourable Sir N. Gopaldaswami Ayyangar]

think requires very serious consideration. It makes a breach into Provincial autonomy which many of us may not be Willing to agree to but it is necessary that the President should have such power as may be essential for the purpose of tackling particular situation. If Mr. Santhanam will permit those who will frame the text of the Constitution to examine this provision both in substance and in language more carefully and propose something, for the consideration of the constituent Assembly, which would co-ordinate the action of the Governor in the Province and the action that the President may have to take on the report of the Governor. I am prepared to accept the principle of vesting in the President certain emergency powers in this connection.

I would say the same thing in regard to the amendment of Mr. Gupte. The net result of what I have indicated is that while I am not prepared to hand over the entire administration of a province into the hands of the President even in an emergency of that sort, I am prepared to concede the position that he should have certain emergency powers in order to decide what appropriate action should be taken for dealing with a particular emergency and no more. I accept that principle. So if the movers of these two amendments will accept my assurance that we will try to translate into the draft some provisions which will implement this principle, there will be time for Mr. Santhanam and Mr. Gupte to scrutinise the draft when it comes up before the House again and propose any amendments of detail which they would like to press. That being so, I would ask that on this assurance they should withdraw the particular amendments of which they have given notice.

Shri K. Santhanam: In view of the assurance given I beg to withdraw my amendment.

Shri B. M. Gupte: Sir, I withdraw my amendment.

The amendments were, by leave of the Assembly, withdrawn.

PART IX

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, I move Part IX, which reads as follows:

“The provisions for the protection of minorities as approved by the Constituent Assembly on the report of the Advisory Committee should be incorporated in the Constitution.”

This is a very innocent clause.

Mr. President: The question is:

“That Part IX be accepted by the House.”

The motion was adopted.

The Assembly then adjourned till Ten of the Clock on Thursday, the 31st July, 1947.

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 31st July 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Mr. President: Think there is no member who has to take his seat today. We shall proceed with the Agenda.

The first item on the Agenda is the motion of Shri Deshbandhu Gupta for amending Rule 5 concerning representation of Delhi and Ajmer-Merwara in the Constituent Assembly.

Mr. H. V. Kamath (C. P. & Berar : General): Sir, with reference to the transfer of power ceremony on the 15th August, may I submit that your dignity and prestige as the President of the Sovereign Constituent Assembly demand that, so far as the ceremonial programme in this House at least is concerned, that should be settled and finalised by you and you alone without any official interference or dictation whatsoever. I am sure the House will be deeply indebted to you for an assurance on this point.

While chalking out the programme, Sir, I would implore you to include in it our traditional National Song, *Vande Mataram*, as well as that other beautiful song popularised by our great warrior-statesman Netaji Subash Chandra Bose, namely, the song beginning with the words :

शुभ सुख चैन की बरखा बरसे भारत भग है जागा
(*Subh sukh chain ki barsha, barse Bharat bhag hai jaga*)

Secondly, permit me to remind you, Sir, of the request I made to you on Monday regarding the presentation of the National flag to every Member of the Constituent Assembly. We are rather anxious to have the Flag before the 15th August. I venture to hope that the Steering Committee will not stand in the way and will raise no objection to this proposal.

Mr. President: I may inform the House and the Hon'ble Member Mr. Kamath that, as regards the programme, I propose to make a statement at the close of the sitting today. There is no question of any dictation by any outside authority. We shall fix our own programme. (*Applause.*) As regards the arrangements for the 15th August, I have some ideas in my mind which I have considered with Pandit Jawaharlal Nehru and some other friends and I will place them before the House.

AMENDMENTS OF THE RULES

Mr. Deshbandhu Gupta (Delhi): *[Mr. President, the motion which stands in my name is this:

“(1) That in sub-rule (2) of rule 5 (as amended) of the Constituent Assembly Rules, the words “the Advisory Councils of Delhi and Ajmer-Merwara” occurring after the words “as the case may be” be deleted.

*[]*English translation of Hindustani Speech.

[Mr. Deshbandhu Gupta]

(2) That for sub-rule (12) of Rule 5 (as amended), the following be substituted:—

‘If any vacancy occurs by reason of death, resignation, or otherwise in the office of a member representing Delhi or Ajmer-Merwara in the Constituent Assembly, the President shall notify the vacancy and shall call upon the Chief Commissioner of Delhi or Ajmer-Merwara as the case may be, to take steps to hold, a bye-election to fill the vacancy.

The bye-elections shall be held, as nearly as may be, in accordance with the procedure prescribed by the Legislative Assembly Electoral Rules, as in force on August 1, 1947, for the election of a member to represent Delhi or, as the case may be, the Ajmer-Merwara constituency of the Indian Legislative Assembly.’”

As regards this, I have only to say that according to the earlier amendment of Mr. Santhanam a casual vacancy in the case of Delhi and Ajmer-Merwara was to be filled up the Advisory Council which consists of not more than seven members.

It was natural that objections were raised from Delhi and Ajmer-Merwara as the Advisory Council was not an elected body like the Provincial Legislative Council. It is only a small body formed by indirect election. Its powers are limited and it seems inappropriate that the Advisory Council consisting of a few members should be called upon to form an electoral college for filling a casual vacancy. If you look at it carefully you will find that the task of electing devolves only on three non-official members out of a total of seven. As far as Delhi is concerned, the Advisory Council has been elected by the elected members of Delhi and New Delhi Municipalities. The latter is the bigger body. It has some nominated members also, and therefore all its members do not take part in elections. There is another objection. It is this: If the Advisory Committee is entrusted with the task of election it would mean that 3 lacs voters of New Delhi would be disfranchised. This is not expected now, as Delhi has no legislative Council. It was thought that the Advisory Council would do this job. But people have reason to complain view, it is proposed to amend this rule. In the case of Delhi, a casual vacancy can be filled in the manner by which election was originally held in Delhi. The position of Delhi members is a bit different from that of others. These have been elected by Provincial Assemblies, but those for Ajmer-Merwara have been elected directly. Therefore, it would be right in principle that the bye-election should be held in the same manner as the original election. This is my motion, I think it has been accepted by the Steering Committee. I hope the House will have no objection to it.]*

Mr. President: Does any member wish to say anything about this amendment.

(No member rose to speak.)

I take it that no member wishes to say anything on this. I will put the amendment to vote.

The motion was adopted.

REPORT ON THE UNION CONSTITUTION

Mr. President: Then we come to the discussion of the remaining clauses of the report of the Union Constitution Committee. Shall we now take up Part X, Sir Gopaldaswami Ayyangar.

The Honourable Sir N. Gopaldaswami Ayyangar (Madras : General): If I may suggest it for your consideration, Sir, we may perhaps take up the clauses left over for consideration.

Mr. President: You suggest that we now take up Clause 7 and I have no objection.

The Honourable Sir N. Gopaldaswami Ayyangar: I have already moved Clause 7. You may now call upon the members who have given notice of amendments to this clause to move their amendments.

CLAUSE 7

Mr. President: The first is Clause 7. We had a number of amendments regarding Clause 7. Shall we take up these amendments or is there any amendment which has been arrived at by way of an agreement. Is there any agreement like that?

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, what I would like to say is that after having a discussion with those particularly interested in this amendment, we came to an agreed conclusion, and I gave notice of an amendment in terms of that conclusion. But I understand that there is some difference of opinion even as regards the form of the amendment of which I have given notice. If Honourable Members representing the States will move the amendments of which they had given notice and will indicate their views and if I see that the views indicated in the House are not exactly the views which I thought they held some days ago, then I would suggest some course of action which might perhaps bring the two points of view together. I would therefore suggest that you call upon the representatives of the States to move their amendments and to indicate their views.

Mr. President: The best thing is to take up all the amendments of which I have got notice. The first amendment to Clause 7 is by Mr. Naziruddin Ahmed.

Mr. Naziruddin Ahmed (West Bengal: Muslim): Mr. President, I beg to move amendment No. 192, with a little verbal alteration of a minor nature. I beg to move that for para (b) of sub-clause (2) of clause 7 the following be substituted:

“(b) Notwithstanding the provisions of the Code of Criminal Procedure, 1898 or of any other law for the time being in force, relating to the remission of the punishment imposed on any person by any court exercising criminal jurisdiction, the President shall have the supreme right and power to remit wholly or in part the sentence passed by such court on any such person.”

I beg to submit that this only a drafting amendment and I submit it for the consideration of the Drafting Committee.

Mr. President: Sir B. L. Mitter.

Sir B. L. Mitter (Baroda State): Sir, the amendment which I move is:

That in sub-clause (2) (b) of Clause 7 after the word “jurisdiction” the words “in a Province” be inserted.

[Sir B. L. Mitter]

The object of the amendment is that the power of pardon and reprieve which now vests in a Ruler of a State may be preserved. If this amendment is accepted, then this power of the President will be exercised in matters arising in Provinces and not in a State. I see the point that in regard to crimes which are created by the Union Legislature, the President should be the supreme authority. I could concede that point, but at the same time the States do not want the existing powers of the Rulers to be curtailed. A solution may be concurrent jurisdiction in the Rulers as well as the President. If Sir Gopaldaswami will draft an amendment reserving the power of the Ruler and giving the same power to the President, I am quite willing to accept it.

Mr. President: Then I have got three amendments in the names of Mr. Channah, Mr. Guruv Reddy and Mr. Himmatsingh Maheshwari, which are all to the same effect. So they need not move them.

Then amendment No. 197 by Mr. Chengalaraya Reddy.

Mr. K. Chengalaraya Reddy (Mysore State): I am not moving it.

(Mr. Gupte did not move his amendment No. 198).

Mr. Debi Prosad Khaitan (West Bengal : General): I am not moving amendment No. 199.

(Shri M. Ananthasayanam Ayyangar did not move his amendment No. 4 of Supplementary List 1.)

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, I beg to move for Clause 7 (2) (b), the following be substituted:

“(b) The power to grant pardons, reprieves, respites, remissions, suspensions or commutations of punishment imposed by any Court exercising criminal jurisdiction shall be vested in the President in the case of convictions—

(i) for offences against Federal laws relating to matters in respect of which the Federal Parliament has, and the Unit Legislature concerned has not, the power to make laws; and

(ii) for all offences tried by Courts-Martial.

Such power may also be conferred on other authorities by Federal Law:

Provided that nothing in this sub-clause affects any power of any officer in the Armed Forces of the Federation to suspend, remit or commute a sentence passed by a Court-Martial.”

Sir, this amendment was given notice of after there had been discussion between me and the representatives of a number of States who have sponsored the amendment which Sir B. L. Mitter has just moved. The intention of that amendment was to restrict the power of pardon granted under this clause only to punishments imposed in Provinces. In other words, they wanted to retain, in the Rulers of Indian States, the unlimited power of pardon which they now possess in respect of all convictions.

Now, Sir, that raised an issue of some importance. We are now setting up a Federation and we are dividing sovereign powers between the Federation and the Units; in respect of certain subjects the Federation has the power to make laws and in other subjects the Units have the power to make laws to the exclusion of the Federation. In the case of the Provinces there is a third list of subjects in respect of which both the Federation and the Provinces have the power to make laws.

Now, in considering this question of where the power of pardon should be located, there are two principles which we have to keep in view. The first is that we must have due regard to the authority which makes the laws against which the offences are committed. The second consideration that we have to take into account is the kind of courts which pronounce these sentences or convictions. It so happens that, so far as British India is concerned, we have a unified system of judicial administration and the courts in the provinces from the lowest to the highest have got jurisdiction to try offences not merely against Provincial Laws, but against Federal Laws also. In Indian States the same thing is in force. The courts of Indian States have power to try all kinds of offences, even offences which might become offences against the Federal Laws after the Federation comes into being. And the power of pardon also is more or less similar as between the Province and the Indian State with perhaps one exception. It is the Provincial Government, according to the Criminal Procedure Code as last amended, that has the power to pardon, commute or remit sentences in the case practically of all offences with the one proviso that if a sentence happens to be a death sentence the Central Government has a concurrent power. In the case of Indian States there is not that exception now in existence. Now we had to consider the question, whether in these circumstances we should vest the power of pardon in the Provinces or in the Centre or in both. I think, Sir, the House will agree that, when we are setting up a Head of the Federation and calling him the President, one of the powers that should almost automatically be vested in him is the power of pardon. Now, is the power of pardon going to be unlimited in its character, or are we going to give him only limited powers of pardon? He is not like a hereditary monarch in a position to derive his powers of pardon from any theory on a royal prerogative and so on. If he exercises the power of pardon, we must vest the authority for it to the Constitution or to some Federal Law. That is why, in the Constitution, we have got to decide this question.

I may say at once that practically in all federations this power of pardon has been divided between the head of the federation and the head of the unit and the principle on which this division is made is that the head of the federation has the power to pardon offences against the federal laws and the head of the unit has power to pardon offences against the unit laws. Now, the question for us to consider is whether we would follow the practice of all federations.

As the draft now stands, both in the Union Constitution and the Provincial Constitution, the power of pardon is vested in the President of the Federation. But provision is made for that power being conferred on other authorities by Federal Law. There is no provision in the draft model provincial constitution which you have already adopted which confers any power of pardon on the Governor of Provinces. So, it comes to this, that the intention of the present clause is that the President is the primary pardon granting authority, and that Federal Law might confer such authority on other people.

Mr. President: There is one difficulty which I feel. Will you please explain that? Does your amendment exclude pardon by the President in the case of offences under the Penal Code, say murder?

The Honourable Sir N. Gopalaswami Ayyangar: The clause as stands does.

Mr. President: The clause as amended by you, does it give the President power of pardon of the offence of murder?

The Honourable Sir N. Gopalaswami Ayyangar : No. It does not. As I explained, the clause as it stands, confers the entire power of pardon. On the President though a Federal Law might confer it on other authorities. Now the amendment that I have given notice of gives the President the power to grant pardon only in the case of offences against Federal Laws, and that is all. He cannot, for instance, grant pardon in the case of sentences under the ordinary criminal law. In the Provinces, ordinary criminal law occurs as item 2, I think, of the concurrent list and in a case like that in the concurrent list, the theory of the 1935 Act is that the executive power does not necessarily extend to concurrent subjects, in respect of which the federation also has power of making laws.

Mr. President: What are the cases that you contemplate in which the President would have the power to grant pardon? Practically the whole of the penal law is a provincial subject. What will be the offences in which the President will have the power to grant pardon.

The Honourable Sir N. Gopalaswami Ayyangar: I might mention, Sir, offences, say, against the Income-tax Act; may be against the Sea Customs Act and Acts of a similar description which are exclusively Federal.

Now, the principle behind my amendment is that the President will have the power to grant pardon, etc., only in the case of offences against the Federal Laws. The power to pardon offences against the ordinary criminal law and against laws made by the Provinces or the States will vest in the heads of the Provinces or the States.

Sir Alladi Krishnaswami Ayyar (Madras: General): I presume that a corresponding change will be made in the provincial constitution conferring power apart from any delegation by the federal government to the provincial government both in respect of concurrent subjects and subjects, specially falling in the provincial list.

The Honourable Sir N. Gopalaswami Ayyangar: Yes, Sir. The intention is that if you carry this amendment in the Union constitution, a corresponding provision will have to be made in the model provincial constitution and steps will be taken to that end.

I shall, now, deal, Sir, with the point raised by Sir B. L. Mitter's amendment. His amendment says that this power of pardon in this particular Clause should be limited to Provinces. Of course the Indian States are not concerned with how we divide the power of pardon between the Centre and the Provinces. That particular amendment is motivated by the facts which are now in existence in the Indian States, namely, that it is the Ruler who has the power of pardon in respect of every offence for which conviction is obtained in his courts. Now, the objection to excluding the President from power to grant pardon in such cases cannot hold, Sir, on any ground of principle because of the other consideration that I asked the House to take in to account in considering questions of pardon, namely, that the authority which makes the law and the executive which is responsible to it, whose function it is to execute the law, cannot be deprived of the power to decide the policy with regard to the grant of pardons, remissions, reductions, and so on. Therefore the power in respect of federal offences has necessarily to vest in the President of the Federation. The amendment that has been tabled by me took note of one element. What I apprehended was, a certain amount of sensitiveness a delicacy on the part of the Rulers who may not be willing to part with any portion

of the power which, they now exercise as regards pardon of sentences, and so on, and the further sensitiveness that, if you vest a concurrent power in any portion of that field in an outside authority, it would mean a certain amount of clash and conflict between the way in which the Ruler of a State might choose to exercise this power and the manner in which the President of the Federation might choose to exercise it.

So, I was impressed by the fact that, if possible opportunities for this conflict should be avoided and that is why I have in this amendment divided the offences into two different categories, in respect of one of which the President of the Federation alone has the power to grant pardon and that is with regard to offences against federal laws, and another category in which the Ruler of a State or the Governor of a Province were to exercise this power. Now, I wish the House to understand that, if this means a curtailment of the present powers of pardon possessed by the Ruler of a State, it also means a curtailment of the powers of pardon which the Provincial Government now possesses under the Criminal Procedure Code. This amendment therefore seeks to place both the Provinces and the States on the same footing as regards this power. The vesting of the power in the President is necessitated by the fact that we are creating a federation and we cannot omit to vest in the President of the Federation the power to pardon offences.

Now, Sir it may be asked why is it that you want this power to be vested in the President in the case of all offences against the federal laws, while, under the present state of things, the Governor-General can exercise this power, and that only concurrently, with the provincial government and only in respect of death sentences. Well, the answer to that is simply this. We are making a new constitution and we are not necessarily bound by what obtains today. We have got certain principles to guide us in the making of the new constitution.

If under that constitution we are assigning certain powers exclusively to the Centre which formerly belonged to the States, then it is only reasonable that all ancillary powers in regard to the administrations of such subjects must also be assigned to the Centre and if incidentally it happens to interfere with the present practice in the Provinces also, we must be quite prepared to face that curtailment. That is really at the back of the amendment of which I have given notice.

Now there are two or three matters at the end of this amendment to which I might make reference in passing. This gives the President the power to grant pardons, etc., in respect of all offences tried by Courts-Martial. Courts-Martial are constituted under the Indian Army Act and the Indian Army has to be under the control of the Centre. It is only right that the personnel of the Indian army who get convicted by these Courts-Martial should look to the President of the Federation for pardons, commutations and similar concessions.

The second matter to which I should like to make reference is the proviso at the end of the draft. This is taken from Section 295 of the Government of India Act, 1935. It says that "nothing in this sub-clause affects any power of any officer of the Armed Forces of—the Federation"—that expression has been substituted for 'His Majesty's Forces' in the Government of India Act—to suspend, remit or commute a sentence passed by a Court-Martial. Under the Rules framed under the Indian Army Act certain officers of the Indian army have powers to grant remissions of punishment and those powers are saved by this proviso.

[The Honourable Sir N. Gopaldaswami Ayyangar]

I think, Sir, that on the whole this particular amendment is quite in accordance with the principles which underlie the framing of any Federal Constitution and the curtailment of the powers of the Rulers of States and of the Governors of the Provinces which is implied in this amendment is only a thing which should be expected naturally from any Federal Constitution. Sir, I move this amendment.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, I beg to move:

“That in sub-clause (2) (b) of the draft as amended, at the end, the following may be added.”

I am referring to the draft amendment circulated to members and this is an amendment to Sir N. Gopaldaswami Ayyangar’s amendment. This amendment relates to the addition to the rights of the President, to extend his right to pardon in cases of sentences of death passed in any province. I shall read the text of my amendment:—

“Where any person has been sentenced to death in a province, the President shall have all such powers of suspension, remission or commutation of sentences as are vested in the Governor of the Province.”

I am confining this, Sir, to the power to grant pardon in cases of death sentences passed in a Province. I would be glad to extend this power even to cases of death sentences passed in a State. Death sentences are being abolished in various countries in the world. In Norway, Capital punishment has been done away with. Even in such a country as Russia where we heard a long time ago of blood baths, they have also abolished capital punishment. All progressive countries in the world have altogether abolished capital punishment. Under the existing Government of India Act the Governor-General is entitled to pardon concurrently with a Governor in all cases of death sentences. In other cases it is the exclusive right of the Governor in all Provinces to condone or reprieve or grant pardons in any manner under the ordinary Criminal Law. The Governor-General can interfere only in cases of death sentences. It was before the 1935 Act was passed that the Governor-General could interfere in all cases of punishment in a like manner as the Governor was entitled to exercise his right of pardon. But after the 1935 Act, to make Provincial Autonomy perfect the right of the Governor-General to have concurrent jurisdiction in respect of pardon was taken away except in the matter of death sentences. That alone was preserved. Now under the draft amendment that has been placed before this House by Sir N. Gopaldaswami Ayyangar, no right to pardon has been conferred upon the President except in matters exclusively within the competence of the Federation, *i.e.*, wherever the Federal Legislature may pass a law. In those subjects alone the President has been given power to pardon. This is, no doubt, an improvement over the 1935 Act. But in the matter of granting pardon in the case of death sentences, wherever convictions might have been given, that right of pardon has been taken away. Life sentence is a very serious one and therefore there must be another agency also to consider if there are any cases in which pardon should be exercised. There may be some doubt if the President were an appellate authority in certain matters. There is no question of appellate jurisdiction of the President. He has concurrent jurisdiction. It is open to the Governor himself to grant a pardon. If he does not the President will exercise his right to grant a pardon. In cases where the pardon is granted by the Governor, the President has no right to revoke that pardon and then convict him. I am trying to disabuse or remove certain doubts that might remain in any quarters. In criminal cases, if a man is granted pardon by the Governor, he goes

scot-free. If it is not granted by the Governor, then he has a chance to go to the President who can interfere and exercise the right of pardon in cases of death sentences. I hope the House will kindly accept this amendment which tries to incorporate in this amendment of Sir Gopalaswami a power which is now being exercised by the Governor-General.

Sir, as regards the other powers that have been conferred upon the President to have exclusive right to grant a pardon in the matter of offences against Federal Laws, I would only appeal to the States not to try to take away that right of the President in so far as they are offences against Federal Laws. The States have Submitted, they have come with open eyes and they have acceded to the Union with respect to Defence, Foreign Affairs and Communications. There may be other taxation measures also to keep these Departments going. If there are offences again these Departments and against these laws, it is but natural that the President should have the power, wherever they may be exercised. The Rulers of the States ought not to feel that their right to grant pardon is taken away. The Ruler has by his accession himself conceded the right to interfere in three federal matters as regards his State. Therefore there is no meaning in the objection. If it should prevail it will be giving by one hand and taken away the same by the other. If Defence is entrusted to the Federation any interference with that subject or contravention should be punishable, on a complaint instituted by the President. There is no question of prestige in this matter, when particularly, the people from the States are in favour of this amendment. I appeal to the Ministers who represent the States here that they ought not to try to avoid the States conferring the power so far as Federal subjects are concerned in the matter of pardon, to the President of the Federation exclusively, for this reason that Defence and those subjects have been entrusted by the Rulers of the States to the Federation. Otherwise merely passing laws would not be useful unless there are sanctions and the sanctions could not be enforced. If the President of the Federation or the Federal Executives, is trying to enforce a particular law which pertains to a right ceded by the Ruler himself any interference by the Ruler would be interference with the powers that he has conceded to the President. I am requesting the Ministers to kindly consider this matter and fall in line and not move any amendment to the draft that has been proposed by Sir N. Gopalaswami Ayyangar. With all respect I would urge upon them not to take this as a matter of prestige. They have taken a particular step; this is an ancillary power that must be conferred on the President. Otherwise, there will be a conflict between the two and the conferment of that right to the Centre will become useless.

Mr. President: The original clause and the amendments are now open to discussion. I do not think there are any other amendments of which I have notice.

Mr. Mahomed Sheriff (Mysore State): Mr. President, Sir, I have heard with rapt attention the admirable speech made by Sir N. Gopalaswami Ayyangar and also Mr. Anathasayanam Ayyangar regarding this very intricate point. That it is a point which is full of complication admits of no dispute. I wish that in view of its complicated nature we had been given more time to study the pros and cons of this question, but as it has come before us and as you want us to give our opinion upon it, I think it is necessary for us to state, in our capacity as the representatives of the States what our opinion is in this matter.

Sir, I do concede that so far as the President is concerned, in view of the fact that he is at the helm of the administration, he should have the power of pardon and he should have the power of commuting sentences

[Mr. Mohamad Sheriff]

in respect of cases arising out of criminal jurisdiction. Situations may arise in which he should have to exercise clemency. But the submission to you, Sir, is that so far as this power is concerned, it must be confined to provinces only. If it is made to affect the sovereignty of the Rulers, I submit there would be a clash. The Congress Party times without number have stated that so far as the sovereignty of the people is concerned it is not going to be affected. His Excellency the Viceroy in the statement that he made on 25th instant said that so far as the Rulers are concerned, they need not apprehend any danger. It was argued that so far as this right is concerned, it will confine itself to Federal subjects. Yesterday we discussed Part VI and there, Clause I runs:

“The Federal Parliament in legislating for an exclusively Federal subject may devolve upon the Government of a Unit, whether a Province, an Indian State or other area or upon any officer of that Government the exercise on behalf of the Federal Government of any functions in relation to that subject.”

So when we say that so far as these Federal subjects are concerned, they could be administered by a Ruler, I don't see why we should take away from him the right of pardon, the right of commutation of sentences, etc., in criminal jurisdiction. So far as Mysore is concerned, His Highness the Maharaja has rarely exercised this prerogative. Everything is left to the High Court. He does not interfere at all. So, even supposing this power is going to be vested in him, there is no possibility of it being misused. In view of this, I cannot make up my mind to agree with the amendment proposed by Sir N. Gopaldaswami Ayyangar.

Shri Gopikrishna Vijayavargiya (Gwalior State): Mr. President, Sir, I have come to express my point of view here. I also come from a State and I think that in a Federation the sovereignty is divided and some of the sovereignty is given to the Federation also. Therefore, it is in the fitness of things that the right of pardon that is provided for the President of the Federation must remain and it is also not proper that Rulers should keep that sovereignty in their hands. When they are conceding their sovereignty in favour of the Federation in other matters, they should also concede this right. I therefore suggest that the amendment of Mr. Ananthasayanam Ayyangar and Sir N. Gopaldaswami Ayyangar must be accepted.

Mr. K. Chengalaraya Reddy: Mr. President, Sir, after bearing the lucid and convincing speech of Sir N. Gopaldaswami Ayyangar, I thought there would be no debate on the draft presented by him to the House, but I find that a certain difference of opinion has been expressed by one of my Hon'ble friends from Mysore. It will be seen that the draft, as it was put in the memorandum originally, was a very comprehensive one. It extended the right of pardon, etc., to all offences and it appeared to vest comprehensive powers in the President of the Federation, but I was one of those who thought that even the draft clause as it stood read along with Clauses 8 and 9 did not really give that comprehensive power but that power had been governed by certain conditions. But an amendment was tabled by certain representatives from the States that this power of right of pardon, etc., to be vested in the President should be confined to offences committed in the provinces. Well, Sir, as a counterblast to that, if I may use that word, I had tabled an amendment that this power should be vested in the President in relation to offences against Federal Laws.

Sir, I view the draft put forward by Sir Gopaldaswami Ayyangar as a compromise draft which should satisfy all sections of the House. Well, Sir, we should not be carried away by loyalties which have been existing in this country till now. New loyalties are coming into being. When we are contemplating the loyalties to the States from which we come, let

us not be oblivious to the fact that we have to be loyal to the Federation which we are creating now in this country (*hear, hear*). Our loyalties will have to undergo a change; there must be a harmonising of our loyalties. Let us remember that the strength of the Units consists in the strength of the Federation and the strength of the Federation also consists in the strength of the Units. The two are reciprocal. Let us not run away with compartmental ideas and think of the strength of the Unit only or the strength of the Federation only. I would like to urge that we must think of the strength of the unit and the strength of the Federation as in integrated strength. To the extent to which the States concede to the Federation, to that extent they will have to give the right of pardon, etc., to the President, in respect of offences against the Federal Laws. I would even go to the extent of saying that the President of the Federation must be the Supreme authority in respect of offences against Federation Laws. So I urge that the amendment of Sir Gopalaswami Ayyangar, being a compromise draft, should be acceptable to all sections of the House. If I may say so, let us not be more loyal to the king than the king himself. Even the Rulers of the Indian States who are going to come into the Federation will do so with their eyes open and prepared to accept the Federation with all its implications, and not with all kinds of reservations. On one or two matters like this, Sir, we must be quite plain-spoken. Let us not try to evade these issues. With respect to the Federal subjects—I have in mind now only Defence, Foreign Affairs and Communications and with respect to offences against the Federal Laws, the supreme authority should be the President. This is the position which has got to be accepted if we view the whole problem from a liberal, statesman-like and patriotic point of view, and I do hope that no objection will be taken to the amendment moved by Sir Gopalaswami Ayyangar and which he has supported in such a lucid and cogent manner. I support his amendment without any reservation in the interest of the State, in the interest of the Federation and in the interest of India as a whole.

Mr. M. S. Aney (Deccan State): Sir, are the clause as well as the amendments under discussion?

Mr. President: Yes, the clause and the amendments.

Sir B. L. Mitter: Sir, I do not want to press my amendment and so ask leave of the House to withdraw it.

Mr. President: Does the House give Sir B. L. Mitter leave to withdraw his amendment?

Mr. Himmat Singh K. Maheshwari (Sikkim and Cooch Behar States): But Sir, there are others who have similar amendments, but have not moved them because Sir, Mitter had moved his. Can I speak a few words, Sir?

Mr. President: Certainly.

Mr. Himmat Singh K. Maheshwari: Sir, I heard the admirable speech of my *Guru* Sir Gopalaswami Ayyangar with great attention and respect but with due deference to him, I must say that I do not stand convinced. The main argument I think, which he made was that because the Governors of the Provinces will not have the power to grant pardon, the existing power of pardon enjoyed by the Rulers of the States should also be curtailed or withdrawn.

The Honourable Sir N. Gopaldaswami Ayyangar : Sir, I am not sure that I put it in that form.

Mr. Himmat Singh K. Maheshwari : I stand corrected. He seems to think that this was more or less a question of sensitiveness. On that point I am inclined to agree with him. After all, within the borders of the State the dignity of the Ruler has to be maintained and if you take away from him the power of dispensing justice which he had hitherto been enjoying that dignity is adversely affected, even within the orders of the State. In his Press Statement of the 5th July, the Honourable Sardar Patel gave the assurance to the Princes that our common objective should be to understand each other's point of view and to come to decisions acceptable to all and in the best interests of the country. In the light of this assurance, Sir, I venture to suggest that the framers of the draft should reconsider the entire position once more and see if a happy *via media* cannot be arrived at. The difficulty arises mainly in respect of one matter. The courts which will try the cases under the Federal Law will be the State Courts. The State Court convicts a person of an offence under the Federal Law and the conviction is upheld by the High Court of the State and then at the end of all this, an outside authority grants pardon. In such a case, there is going to be a certain amount of complexity and a certain amount of uneasiness and possibly clash. In order to avoid this, Sir, it seems to me desirable that the constitutional experts should put their heads together once more. I, for one, do not desire a settlement or decision on this matter which would leave any sense of unpleasantness or which would cause any misunderstandings specially because some of the speakers before me hinted or suggested from their speeches that there was certain amount of excitement in the matter. So far as offences under the ordinary law are concerned, the question of powers does not arise at all. The original draft took away even that power. Now the draft has been amended and it has been made clear that offences under the ordinary laws shall remain exclusive concern of the Rulers and the pardons under the ordinary laws of the land will remain the exclusive concern of the Rulers. But even this does not improve the position substantially. In the amended draft there is a clause which runs thus:

“Such power may also be conferred on other authorities by federal law.”

It appears to be the intention that these powers may be conferred concurrently on the Governor of a Province also. So far as the Rulers of States are concerned, there can be no question of conferring any power on them because they already exercise such power. In the light of this clause, therefore, it becomes all the more necessary to re-examine the entire position. I shall feel most grateful if the House will agree to a postponement of this clause to enable every one to reconsider his attitude.

Mr. K. M. Munshi (Bombay: General): Sir, this is a matter of great constitutional importance and I submit it cannot be discussed from the point of view only of the rights of the Rulers of States or the Governors of Provinces, or, for the matter of that either the Criminal Procedure Code or the provisions of the present Government of India Act. As a matter of fact, Sir, as is well known, in a federation a citizen is related directly with the centre as regards his rights and obligations. The allegiance of every citizen, whether he is in in Indian State or in a Province, will be direct so far as the Union is concerned. Federal Laws will operate upon every citizen directly, and an offence in relation to such a law is not merely an offence against the State or the Province; it is an offence against the Federal Government. And therefore a reprieve or pardon

must, as a matter of constitutional principle, vest in the head of the Federation, that is, the President. And to that extent, I submit, the position is incontrovertible.

All the acceding States, when they come into the Federation, form part of the Union, accepting the operation of Federal Laws in their States. They accept to that extent that the Federal Government is supreme in the sphere of Federal Law and the President, as representing the Federal Government, can alone be the last, and also the first authority who can grant reprieve or pardon. That is why in the American constitution as is well known, the President has been authorised to grant reprieve or pardon for offences against the United States.

A similar provision, I submit, is not only necessary from the point of view of constitutional principle but also of expediency. Sir, the position is this. My Honourable friend Sir Gopaldaswami Ayyangar, has referred to the Income-tax laws. But there may be other federal laws—laws relating to extradition, to naturalisation, to defence and external affairs, to treason against the Federal Government—which are matters of the most vital importance to the existence of the Centre; and therefore the power of pardon cannot be given. I submit, to anybody except the head of the Federal Government. If the right is given to either the Ruler of a State or a Provincial Governor, the consequences will be, in a contingency, disastrous. Take for instance this. In principle the Governor or the Ruler—because they will be in the same position—will be entrusted with a part of the prerogative, which must vest in the head of the Union as a whole and any part of it. This, I submit, is inconsistent with principle. But apart from that there will be an inequality of treatment. Supposing in province 'A' the responsible ministry takes a particular view and advises the Governor to release a particular person; there is no appeal from it. But then in another province a different view is taken. Therefore, for the same offence you will find one provincial Governor giving pardon and in the other the Governor not giving a pardon. And let us not assume that the Rulers of States are going to be for ever and ever absolute little sovereigns that they think they are now. Many States have introduced an element of responsibility; I have no doubt in my mind that the general progress of the country will soon compel every State to have some element of responsibility in its Government. And when that comes, it is not the Ruler who will exercise the right of reprieve and pardon but the Ministry of the State who will advise the Ruler, which will give a pardon. In a conceivable instance, therefore, it may be that it will not suit a Province or a State to allow a particular kind of criminal to remain in jail. Take a case of war; it has happened in Ireland and England but I do not want to go into cases. It has happened very often in War that different views have been taken in regard to certain offences against the State. What would happen if, against the desire and against the policy of the Centre, the heads of the units or the unit ministries take upon themselves to grant, reprieve or pardon? If the policies of the State and the Centre are of different character and the former want to grant a reprieve for a set of offences—and reprieve, as you know, means postponement of a sentence—and if this power is not with the President but vested in the Governor or a Ruler, serious complications will arise. Therefore, I submit that a crime against the Federal Government is, really speaking, based upon the loyalty of each citizen to the Federal Government as a citizen of the Union as a whole. Therefore, pursuing that principle, the power of reprieve and pardon must vest in the President of the Federal Government and it cannot be parted with.

[Mr. K. M. Munshi]

With regard to other matters, Mr. Ananthasayanam Ayyangar's amendment is there. If members desire that the provinces should have concurrent power with the President in regard to death sentences there is no difficulty. With regard to the States, I, for one, am not very keen that with regard to State laws the President should be vested with any concurrent power. But we must not forget a very important fact. There are States small and big. All the acceding States are not of the size of the large States whom you see represented on the front bench here. There are States which under the existing machinery of things are not entitled to pass a death sentence without the consent of some representative of the Paramount Power. Many small States, I know as a fact, even when they pass a death sentence, are subject to influence being brought to bear upon them by the representative of the Paramount Power. Therefore it is to be considered by the country as a whole, whether very small States who do not enjoy such power, have to be given an unlimited power of passing death sentences and granting reprieve and pardon at their sweet will and without any control. These are complications on which there may be reference to a committee to be discussed fully. But on the first and fundamental question I submit, it is interfering with the direct allegiance of a citizen to the Federal Government to take away the power from the President to grant reprieve and pardon in all cases relating to federal laws. That, Sir, is all I have to submit.

Sir Alladi Krishnaswami Ayyar: Sir, I should like to say a few words in support of the proposition so ably moved by Sir Gopaldaswami Ayyangar and also in support of the amendment of Mr. Ananthasayanam Ayyangar. In the first place I am happy to note that the popular representatives of some of the States have come forward and have given their support to this proposition, namely, that it is a natural consequence of the federal system that the President of the Federation must have the inherent right of pardon.

An Honourable Member: Sir, may I know the insinuation behind the phrase "popular representatives"? Are the others unpopular?

Sir Alladi Krishnaswami Ayyar: I do not mean to say that the others are unpopular representatives but I do not recognise that officials are popular representatives because I believe that in the representation there are divisions in the case of certain States, between certain representatives of rulers and representatives of the people. Both of course represent the State but from a practical and commonsense point of view there is a different between the two sets of representatives. You may take it with that qualification or amendment if you like; but there is no denying the fact that there is a very great distinction between these popular representatives in the sense in which I use that expression and all representatives selected by the Government or the ruler.

Mr. H. R. Guruv Reddi (Mysore State): We are all elected people and not nominated people.

Dr. B. Pattabhi Sitaramayya (Madras: General): I rise to a point of order. These are collateral issues. I wish that side-issues are not raised and discussed and that you, Sir, may stop such a thing.

Sir Alladi Krishnaswami Ayyar: The States are entering as members of a Federal Union.

Sir B.L. Mitter: On a point of order, Sir. I have asked for leave to withdraw my amendment. Therefore the argument whether the States should have this power or not need be pursued.

Sir Alladi Krishnaswami Ayyar: Some speeches have been made, by the representatives of the Kathiawar States for instance, that the President should not have this power.

Mr. President: The difficulty is that although Sir, B.L. Mitter has asked for permission of the House to withdraw his amendment, one Member has objected to this leave being granted. The matter has rested there.

Sir Alladi Krishnaswami Ayyar: If the amendment had been permitted to be withdrawn, most of the speeches made, including that of Mr. Munshi, would have been out of order. If there really is common agreement on the part of all, there need not have been a debate at all.

The first principle of a Federal system is that the Federal law is binding upon every citizen and there is a direct relation between the citizen and the Federal Government. And when there is a breach of that Federal law, the representative of the Federation, namely the President of the Federation, must have the inherent right to pardon any offence as against the Federal law. That is the principle of Sir N. Gopalaswami Ayyangar's amendment. There is no point in raising any issue as to sovereignty, because whatever the States might otherwise be, when once they accede to the Federation, there is a *pro tanto* cession of sovereignty in regard to the subjects ceded to the Union. The States may console themselves that in regard to all other matters they have plenary powers of sovereignty, but, to the extent they cede to the Union they cease to be sovereign in respect of that matter. It is not *infra dig* for any State or State people to think that there is a restraint on sovereignty in that regard, because that is the very essence of a federal compact. The great states of the American Union are still sovereign in many respects; but they are not sovereign in the federal sphere. That is the accepted principle in all Federal constitutions. The amendment here refers only to offences against the Federal laws. If any one has any objection to it, it must be the Provinces because up to now, even in regard to Federal subjects, the Provincial Governments had the power of pardon. Only in order to bring the States into line with the Provinces on a Federal basis, the provincial representatives are willing to let the power of pardon in regard to Federal subjects being exclusively vested in the President of the Union. If there is a concession it is a concession on behalf of the Provinces. They are giving up a right which they have been hitherto exercising under the recent Government of India Act. At the same time let it be clearly understood that when the Provincial Constitution is framed, there should be the power of pardon vested in the Provincial Governors in so far as the concurrent subjects and the subjects in the Provincial list are concerned. There must be inserted a corresponding provision in respect of vesting the power of pardon in the Heads of the Provincial Governments so far as these subjects are concerned. Sir N. Gopalaswami Ayyangar has given an assurance, in the sense in which any spokesman in respect of any proposal can give, that this matter will be taken up at a later stage and an amendment moved in regard to that matter. This is so far as the provincial sphere is concerned.

Then the only remaining point is about death sentences. It was felt that, though logically you need not make any exception in regard to death sentences, having regard to the fact that a citizen of a province

[Sir Alladi Krishnaswami Ayyar]

has enjoyed this privilege up to the present day, there is no reason why he should be deprived of that privilege of invoking the aid both of the Centre and Province. That is the spirit of Mr. Ananthasayanam Ayyangar's amendment which I support.

Mr. Naziruddin Ahmad: Mr. President, Sir, I wish to deal with only one aspect of the subject which has created some amount of subdued heat. It is that we are considering the case of those States who are acceding to the Federation in regard to the three subjects of Defence, External Relations and Communications. It is the principle of all Federal constitutions that where there is any subject vested in a Federation the offences relating to that subject should also be within its jurisdiction. There are certain taxes which are necessary to be made over to the Federation in order to enable it to work those subjects vested in the Federation. As a matter of fact offences relating to those taxes should also naturally be dealt with by the Federation.

Now, Sir, I submit that when a State accedes to the Federation that State absolutely surrenders all its sovereignty and powers to the Federation and therefore, by necessary implication, it surrenders also its jurisdiction over offences relating to certain subjects and the offence against the taxation in relation to those subjects. If this be the case it is a voluntary act of cession. There should be no misunderstanding that this cession of power includes also the cession of sovereign rights as to pardoning and commuting of offences. In these circumstances I beg to submit that the whole controversy and the sentimental outbursts have arisen only out of a misunderstanding. I submit that if the problem is looked at from the point of view of cession of certain necessary powers, then of course it follows as a corollary that the power of pardon and other things must reside in the President of the Union. This is all I have to say on this subject.

Mr. Satyanarayan Sinha (Bihar: General): Sir, the question may now be put.

Mr. President: The question is:

"That the question be now put."

The motion was adopted.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I have very little to say by way of replying to the debate. The points that were raised by some members in criticism of the amendment that I had moved have been very satisfactorily answered by other members. So there is really very little, left for me to say.

As regards Mr. Ananthasayanam Ayyangar's amendment, there are only two points which need be mentioned. One of them is that, if his amendment is confined to the provinces alone as he has suggested, it would introduce a distinction between the provinces and the States. That is number one. The second point that I might mention is that we shall be taking away from the provinces some more of the powers which my amendment would have conferred exclusively upon them but that is a

small matter. If the House agrees that in the case of death sentences there should be concurrent authority for the President of the Federation in respect of provinces alone, I for one will not object to it. We shall leave the States alone, to take their own course in this matter.

Mr. President: I will now put the amendments to the vote. The first amendment is that moved by Mr. Ananthasayanam Ayyangar that at the end of amendment moved by Sir Gopaldaswami Ayyangar the following be added:

“Where any person has been sentenced to death in a province, the President shall have all such powers of suspension, remission or commutation of sentences as are vested in the Governor of the province.”

The amendment was adopted.

Mr. President: Then, I will put to vote the amendment of Sir Gopaldaswami Ayyangar, as amended by Mr. Ananthasayanam Ayyangar.

The amendment was adopted.

Mr. President: I will put the original clause as amended, now, to vote.

Clause 7, as amended, was adopted.

Clause 14

Mr. President: We all now take up Clause 14.

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, I have already read this clause out to the House, and I do not think it is necessary for me to read it out again. A very large number of amendments had been tabled in respect of this particular clause, and naturally an attempt has been made to see if the various points of view represented in these amendments could be brought together and a sort of agreed arrangement placed before the whole House for unanimous acceptance. I have taken the liberty, Sir, of sending notice of an amendment this morning which I think represents an agreed solution of the difficulties, and if it is the wish of the House that I move that particular amendment and, if it is passed, the other amendments need not be moved, I am prepared to move it.

Mr. President: Please move it. Or do you think that we should take up the other amendments?

The Honourable Sir N. Gopaldaswami Ayyangar: If this is carried, I think there will not be any necessity for the other amendments to be moved.

Sir, the amendment which I beg to move is this:

“That for items (a), (b) and (c) of sub-clause (1) of Clause 14, the following be substituted:

‘(a) The strength of the Council of States shall be so fixed as not to exceed one half of the strength of the House of the People. Not more than 25 members of the Council shall be returned by functional constituencies or panels constituted on the lines of the provisions in section 18(7) of the Irish Constitution of 1937. The balance of the members of the Council shall be returned by constituencies representing Units on a scale to be worked out in detail:

Provided that the total representation of Indian States does not exceed 40% of this balance.

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Explanation.—A Unit means a Province or Indian State which returns in its own individual right members to the Federal Parliament. In the case of Indian States which are grouped together for the purpose of returning representatives to the Council of States a Unit means the group so formed.

(b) The representatives of each Unit in the Council of States shall be elected by the *elected* members of the legislature of such Unit and in cases where a legislature consists of two Houses by the *elected* members of the Lower House of that legislature.

(c) The strength of the House of the People shall be so fixed as not to exceed 500. The Units of the Federation, whether Provinces, Indian States or groups of Indian States, shall be divided into constituencies and the number of representatives allotted to each constituency shall be so determined as to ensure that there shall be not less than one representative for every 750,000 of the population and not more than one representative for every 500,000:

Provided that the ratio of the total number of Indian States' respectively to their total population shall not be in excess of the ratio of the total number of representatives for the Provinces to their total population.'”

“2. That in sub-clause (1) of Clause 14, following new item (e) be inserted:—

‘(e) The fixing of the actual strength of the Council of States and of the House of the People. The distribution of the strength so fixed amongst the Units of the Federation, the determination of the number, nature and constitution of functional panels or constituencies for the Council of States, the manner in which the smaller State should be grouped into Units for purposes of election to the two Houses, the principles on which territorial constituencies to the two Houses should be delimited and other ancillary matters shall be referred back to and investigated by the Union Constitution Committee. After such investigation, the Union Constitution Committee shall submit to the President of the Constituent Assembly its recommendations as to the provisions relating to these matters which should be inserted in the draft text of the Union Constitution.’”

Sir, I wish only to draw attention to the more important aspects of this draft amendment. Sir, the first point to which I should like to make a reference is that in this amendment we are definitely fixing the strength of the Council of States and in doing so we say that that strength should not exceed one half of the strength of the House of the People. I think Sir, the House will agree that that is a fair proportion to fix. Now out of this strength that we so fix we propose to allocate 25 members to functional constituencies. In the draft, as originally placed before the House, it will be remembered that ten of the seats were to be filled by nomination by the President in consultation with universities and scientific bodies.

It has been felt by a very large number of people that that is not a sufficient provision for the purpose of getting on to the Council of States people who may not belong to universities or scientific bodies, but who on account of their connection with very important sides of the Nation's activity, deserve to be on a body of that description. In this connection a reference has been made to Section 18 (7) in the Irish Constitution. As you know, the bulk of the Senate in the Irish Constitution is filled by functional constituencies of this description. These constituencies relate to the representation of culture, education, of trade and commerce, of agriculture, of labour, of social services and various other national activities of that description. Now the one important difference between the provision in the Irish Constitution and the provision that is proposed to be made here is that that principle will be applied only to a very small number of members of the Council of States. If we fix the maximum strength of the House of the People at five hundred, the maximum strength of the Council of States can only be two hundred and fifty. If out of that we take twenty-five for being filled by constituencies of this description, it only means about ten per cent of the

total strength, so that we retain the essential character of the Council of States, as originally planned. An overwhelming majority of members of the Council will be returned by units more or less on a territorial basis, but a very small number not exceeding ten per cent will be returned by constituencies of this special description. There is also another limitation that we have placed on the representation of Indian States in the Council of States. This amendment says that the total representation given to Indian States should not exceed forty per cent of the strength of the Council of States minus the number allotted to special constituencies.

Then, Sir, I would refer to item (b) in this new sub-clause. It practically reproduces item (b) in the original clause with this one important difference, namely, that the election should be by the elected members of the legislatures and that, if a unit legislature happens to have two Houses, the electorate will be the elected members of the Lower House of that legislature. Perhaps I might explain that I have retained the description 'Lower House' here in keeping with the description that has been used in other parts of this particular draft. The idea is not to retain this description of the Chamber that we all of us have in mind, but to find another description which would not be open to the same criticism.

Then, Sir, with regard to the House of the People the maximum strength is fixed at five hundred and the limits of one million and 7,50,000 which you find in the existing draft have been reduced to 7,50,000 and 500,000. Incidentally this accepts a number of amendments notice of which has been given which are more or less in the same terms.

Then, Sir, you come to the proviso to item (c). Perhaps some people might consider this is not very necessary, but, in order to allay fears, perhaps suspicions, it has been decided that it is desirable to put in a Proviso of this description. The House of the People is essentially a Chamber whose composition is based entirely on the population and it is only reasonable that the ratio which the number of Members representing the Indian States bears to the total population of Indian States should not exceed the ratio which the number of seats for the Provinces bears to the total population in the Provinces. So I do not think it needs any justification. Any special treatment which we desire to give to units of the Federation, whether Provinces or Indian States—that treatment will be provided for in the composition of the Council of States.

Then, Sir, having stated these general principles as regards the composition of the two Houses, it is necessary that they should be elaborated and should be put in a form which could go into the draft Constitution for the future. A good deal of spade work will have to be done in this connection, fixing the actual strength of the two Houses, the way in which that strength should be distributed amongst the units, the kind and composition of the special constituencies and the principles on which territorial constituencies in Indian States should be delimited—all these are very important things on which the Constitution will have to lay down certain fundamental principles and for that the purpose I have introduced an additional item (e) which assigns to the Union Constitution Committee the task of investigating these problems in some detail and then proposing clauses or sections which could be embodied in the new draft Constitution.

That will certainly come up before the House for discussion. The Report of the Union Constitution Committee will be made to the President

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and then the Report becomes really the property of the House. If it is so decided that this report should be discussed in the House before the actual recommendations of the Committee are put into the draft text, that discussion can be held at the future session. But if the House should agree that the recommendations of the Union Constitution Committee as regards these matters can straightway go into the draft, text of the Union constitution, the House will still have an opportunity of examining the merits of these provisions when it comes to debate the text of the constitution.

Sir, I move this amendment.

Mr. President: I have got a number of amendments to this clause. I shall take these amendments now one after another.

(Messrs. Jagat Narain Lal, H. V. Pataskar, B. M. Gupte, R. M. Nalavade, Seth Govind Das and G. L. Mehta, did not move their amendments, Nos. 232 to 237.)

Dr. Mohan Sinha Mehta (Udaipur State): I withdraw my amendment (No. 238).

Col. B. H. Zaidi (U.P. States): I withdraw the amendment (No. 238).

Maharaj Nagendra Singh (Eastern Rajputana States): Mr. President, Sir, the amendment of Sir Gopaldaswami Ayyangar meets the view point of small States admirably and he ought to be congratulated on this amendment because it creates effective democracy. After all, Sir, the greatness and balance of a constitution lies in its portraying with the minutest attention to detail the various entities and interests that lie in the country at large. The amendment will certainly achieve this object and I wholeheartedly support it. I, therefore, withdraw my amendment, Sir, but I request that as far as the consideration of the allocation of seats *inter se* between the States is concerned there should be some representatives of the small States in the Union Constitution Committee. The grouping of small States and the formation of constituencies will affect these States vitally and it is therefore important from the point of view of these States that there should be a representative of the small States in the Union Constitution Committee to express their views.

I withdraw my amendment (No. 239).

(Messrs. Rai Saheb Ragho Raj Singh and H. J. Khandekar did not move their amendments, Nos. 239 and 240.)

Shri Himmatsingh K. Maheswari: I withdraw amendment No. 241. (Amendment Nos. 242 to 260 were not moved.)

Shri Vishwambhar Dayal Tripathi (United Provinces: General): *[Sir, I do not propose to move my amendment as it is covered by the resolution of Sir Gopaldaswami Ayyangar.]*

(Amendment No. 262 was not moved.)

*[]*English translation of Hindustani speech.

(Sir V. T. Krishnamachari did not move his amendment No. 263.)

Mr. President: I take it that none of the other Ministers are moving.

Sir V. T. Krishnamachari (Jaipur State): Yes.

(Amendments Nos. 264 to 271 were not moved.)

Mr. Naziruddin Ahmad : Mr. President, Sir, I beg to move:

“That sub-clause (2) of Clause 14 be deleted.”

The simple purpose of this amendment is that the sub-clause refer to a schedule which is not yet in existence. If we agree to sub-clause (2) it would be signing a blank cheque or a transfer deed without a schedule. I submit that this is a difficult thing to do.

Then, I find after the amendment of my Honourable friend, Sir Gopalaswami Ayyangar this amendment is in an anomalous position. After we gave notice of a large number of amendments the original clause has been re-drafted and put forth here on the floor of the House. We have had no opportunity of considering the draft. I have no particular objection to the revised draft which has been submitted for consideration. But still I should think that perhaps it would have been better to give us some time to consider this important subject. A draft of such intricate nature like this, containing important constitutional principles cannot be easily handled at a moment's notice. I therefore respectfully submit that, as in any other important case, some time should be given for consideration of the subject and then it would be easy for us to submit amendments. It may be that we would fully agree with the principles, but still, for the sake of safety, it would be better to give us some time. I hope the Honourable member will kindly consider the difficulty in which some of us have been placed and postpone the subject for further consideration. This is a very important subject and its importance justifies the suggestion.

(Amendments Nos. 273 to 278 were not moved.)

Prof. Shibbanlal Saksena (United Provinces: General): Mr. President, Sir, my amendment to sub-clause (4) of Clause 14 runs as follows:

“That in sub-clause (4) of Clause 14, for the word ‘one third’, the word ‘one half’ be substituted.”

In accordance with the present provision in sub-clause (4) of Clause 14, one-third of the members will retire every second year. Now according to the time-table which we have laid down, the life of the House of the People shall be of four years' duration, and a new House of the People as well as new provincial legislatures shall be elected every fourth year in the normal course of things. What I want is that in the Council of States as well instead of one-third of the members being elected every second year, one-half of the members should be elected every second year. In this manner we shall be having a new Council of States every fourth year. It may be argued that the Lower House may be dissolved before their full terms expire, and the four year cycle may not recur. But dissolution, I am sure, will not be a normal feature in the life of the legislatures; and even if one or two legislatures in the provinces are dissolved before their full terms, the four year cycle will not be materially disturbed at least during the present century.

An Honourable Member: On a point of information, is he going to move the amendment?

Prof. Shibbanlal Saksena: Yes, Sir, I move it.

According to the amendment of Sir N. Gopaldaswami Ayyangar the States will have a fairly large representation in this House and, as is well known the Lower Houses of the States have a majority of nominated members, so a majority of the members will be Rulers' representatives. Therefore what I want is that this House which will have a fairly large number of reactionary members, should not be a House which should be continued for very long intervals. I want at least half of this should change every second year and then it might not be so reactionary. I have already voiced my opposition to second Chambers before but if we are to have them, at least we should have a change of half of the members every second year so that in the 4th year the whole Council of States will be changed.

(Amendment Nos. 280 to 299 were not moved.)

(Amendment Nos. 13 to 16 in Supplementary List No. I, Amendment Nos. 10 & 11 in Supplementary List No. II, and Amendment Nos. 4 to 6 in Supplementary List No. III were not moved.)

Begum Aizaz Rasul (United Provinces: Muslim): Sir, the amendment standing in my name is—

“That in sub-clause (1) (d) of Clause 14, the following be added at the end:—

‘by a system of proportional representation by single transferable vote.’”

Sir, I do not propose moving this amendment at the present moment in view of the amendment moved by Sir N. Gopaldaswami Ayyangar. I hope that this very important aspect of the question as to the method of election to the Council of States will be considered by the Union Constitution Committee in order to safeguard the interest of minorities. I do not wish to move this amendment at this time, Sir, because of the great possibility of getting a negative vote on it in case the House rejects it but I reserve to myself the right of moving this amendment later on, if need arise.

Mr. President: There is another amendment in your name.

Begum Aizaz Rasul: There is another amendment standing in my name:

“That in sub-clause (4) of Clause 14, for the word “second” the word “third” be substituted.

Sir, the clause will then read:

“The Council of States shall be a permanent body not subject to dissolution, but as near as may be, one-third of the members thereof shall retire in every third year in accordance with the provisions in that behalf contained in Schedule—”

Sir, my object in moving this amendment is that I feel that the period of two years is a very short period for a Legislator. As soon as he becomes conversant with the business, gets to know legislative work, and settles down to it he will have to retire. To my mind this is not very fair and he ought to have a slightly longer period in which to show his worth and do justice to the House to which he is elected.

Sir, if my amendment is accepted it will mean that the House being a permanent body, one-third of the members retiring every three years, it will be a rotation of nine years. As most Honourable Members are aware, this is the system at present prevailing under the Government of India

Act of 1935. Therefore, people in India are not unfamiliar with this system. I feel that this system, as it has been working for the last ten years, in this country, has proved absolutely satisfactory. Sir, in the constitutions of most of the western countries there are two Houses of the Legislature; Members of the Upper House are mostly either life members or the life of that House also synchronises with the life of the Lower House. It is only in the United States Senate that one-third of the members retire every second year. I however feel that it is not necessary that we in India should try to copy the system that prevails in the United States because, for one thing, the members of the U.S. Senate are chosen by popular vote whereas for the Council of States that is envisaged by the Union Constitution these members will not be elected by direct election but will be elected by the members of the Lower House. Sir, another strong point that I wish to make in support of my contention is that I do not think that the members of the Lower House should elect members to the Council of States twice in their term of membership and I think this right should only be exercised once. If this provision stands as at present, and if the members of the Upper House have to retire every second year, that means that the members of the Lower House will have the right to elect twice in their lifetime members to the Upper House. With these few words, I commend my amendment to the consideration of the House. I feel it is a very fair amendment and hope it will be accepted.

Mr. President: The clause and the amendments are now open for discussion.

Mr. Jainarain Vyas (Jodhpur State): Mr. President, Sir, I rise to support the fresh proposals recently put forward by Sir N. Gopaldaswamy Ayyangar, but while doing so, I would like to offer a few remarks on the subject matter. When we support these proposals, it should not mean that we feel that the proposals will favourably affect the people of the Indian States. We support these proposals purely on political grounds. When these proposals are accepted, fourteen more States will come in the Lower House. These 14 States will include four States of Kathiawar, seven of the Eastern States, one from Rajputana, one from Assam and one from Simla Hill States. I am very glad to observe that four maritime States, Junagadh, Nawnagar, Bhavnagar and Cutch will find their place in the Lower House on account of these proposals and the border State of Manipur will also come in. So, from that point of view, it is a very good thing to increase the membership of the Lower House as has been done. Sir Gopaldaswamy Ayyangar while putting forward Clause I (b) said that only elected members of the Legislature in the Lower House will be able to vote for the election of the Lower House. I mean the elected members of the Legislative Assemblies of the States. There is some confusion in the words "elected members" because when we think of the elected members of the Lower House of our Union, we think that these are elected on the basis of adult franchise, but in Indian States things are not so. I know of a State in Punjab where the son of a Ruler is an elected member of the Assembly and his wife also finds a place among the elected members, and Sir, they are unfortunately both Ministers or rather, they are "popular ministers" of the Assembly. So this is how elected members and elected "popular ministers" come in through the Lower House of the Assembly in States. There is a State which has got an elected member on the basis of four members in the constituency. So he is also an elected member. I know of another State which has got ten jagirdars out of about fifty elected members in the Lower Houses or in the Legislative Assembly.

That way, the elected members of the Assembly do not mean really elected representatives because they are not elected on popular franchise or on adult franchise. Sir, I want to bring these instances to your notice

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and through you, to the notice of the House, so that when a draft is being prepared those who are at the helm of affairs in drafting the Constitution will see that truly elected members come in, not members elected on bogus franchise in bogus legislatures as they exist in some of the States.

One thing more I would like to bring to your notice and that is, then popular representatives of the States have got no place in the Union Constitution Committee of this House, and when the rules or clause are framed their opinion does not come up before the Constitution Sub Committee. I hope Sir, when there is a vacancy in the Union Constitution Committee, then claim of the popular elements will be considered and, if necessary, the strength of the Committee will be increased in order to find a place for the popular members from the States.

With these remarks, Sir, I commend Sir Gopaldaswamy Ayyangar's proposal to the House. I hope, Sir, my request will be considered when the real drafting is taken in hand.

Pandit Hiralal Shastri (Jaipur State): *[Mr. President, I had no intention to participate in the debate today. But when Sir Gopaldaswamy Ayyangar stated that the amendment he was moving had the unanimous support of the House, I felt that I must say something about it.

With all respect, I ask Sir Gopaldaswamy as to how his amendment has the unanimous support of the House. So far as I know, all the representatives of the States people present in the House are of the opinion that the original proposal in the report of the Union Constitution Committee should stand. Again, I wish to know why the strength of the Upper and the Lower Houses should be increased. We have often passed a resolution in the all India States Peoples' Conference, that larger States should join the Indian Union separately while the smaller ones should join the Indian Union in a group. The standard and the qualifications we have fixed for the States joining the union are sufficiently high. According to our standard, a State with a population of 5 million and having a revenue of 30 millions can join the Union individually. We were satisfied to note that for election to both the Houses, the minimum population limit was fixed at a million. Many attempts were made and many amendments were brought in to reduce this limit to a quarter million but in vain. I clearly see that behind the proposed amendment, of reducing the limits of one million and 750,000 to 750,000 and 500,000 respectively, underlies the policy that some State, with a population of more than half a million may get representation not only in the Upper House, but also in the Lower House I do not like this. Therefore, I have not agreed to the proposal. There is no unanimous support of the House. Sir Gopaldaswamy Ayyangar possibly was the author of the original proposal- in the report and if it is true that he himself is moving amendment to the original proposal I do not think it proper to oppose him. However, I cannot but express my feelings in this connection. When our country is going to be politically a Union, in spite of the division, when differences between provinces and States are being removed, I do not think it proper that small States, should come into the Union as separate entities. I disapprove of the idea of small States coming into the Union as separate entities, for I know that if separate units of these

*[]*English translation of Hindustani speech.

small States are formed, that would only be for the purposes of elections. I know that this will go contrary to the proposal of grouping and States will get all opportunities for coming in as individual units. If we intend that the small States should come into the union in groups, they should be allowed the minimum opportunity to exercise their franchise as individual units for election to this House. According to our original proposal only fifteen States were to participate in the Assembly elections as individual units. But because their representatives have been recognised and because of this and other amendments by the States, fifteen other States will now come in as individual units and this is the number of small States joining as individual units will be increased. Besides this, a provision has also been added. The amendment of Sir N. Gopaldaswami considers many vital matters of detail regarding the formation of units and delimitation of constituencies etc. This matter will go up before the Union Constitution Committee where the final decision will be taken on it, I am very sorry to have to say in this connection that so far no representative of the States people has been taken in the said Committee. However, this is not the point. We are discussing here a very important and vital matter and our decision will be placed before the Union Constitution Committee. Maharaj Nagendar Singhji has demanded here that the small States must be represented on this Committee. I do not know as to how many representatives will be taken but I must voice our demand that representatives of the States people must also be taken on this Committee. Many matters of great importance will be discussed in the Committee and decision thereon taken; and hence a representative of the States people must be there to voice their opinion. I give this particular warning to the House that the smaller States should not be individually allowed to come in as representatives of each separate unit. The more they are grouped the better it is. I have reasons to say this. However, I do not think it proper to go into controversies over this. One is greatly pained and astonished to hear of the atrocities and repression going on in those small States. The States people are very miserable on account of the atrocities of the authorities. Many of the States that have joined this Assembly whether individually or in groups feel as if they have obliged our leaders and the National Congress by doing so. I do not like to say any thing against it but in the manner the smaller and the bigger States have joined the Assembly, they feel as if they have been given a written authority to have absolute power over their people. Thus they have not only begun to exercise their absolute authority over the people but have also begun to oppress them. If we enquire into the important news of the States, appearing every day with pictures on the front Pages of the newspapers, we would find that great atrocities are committed on the people by the States authorities. This is not the proper time to say all this but I had to give vent to my heartfelt pain at some time. Syt. Vyas has just stated that the State authorities are generally interfering with elections. Therefore, I would like to draw the particular attention of Sir Gopaldaswami to this and request him to see that when the constituencies and the units are formed the smaller States do not come in as individual units in large numbers and that the view point of the representatives of the States peoples is also somehow secured.

I do not oppose the motion but wish to state that at least the voice of the States subject must not be ignored. I would also appeal to the Honourable the President to see that the representatives of the States subjects should be included in the Committee.]*

] *English translation of Hindustani Speech.

Mr. Satyanarayan Sinha: The question be now put.

Mr. President: The question is:

“That the question be now put.”

The motion was adopted.

Mr. President: I shall now put the amendments. I shall First put the amendments of Sir N. Gopaldaswami Ayyangar. The question is:

1. That for items (a), (b) and (c) of sub-clause (1) of Clause 14, the following be substituted:

“(a) The strength of the Council of States shall be so fixed as not to exceed one half of the strength of the House of the People. Not more than 25 members of the Council shall be returned by functional constituencies or panels constituted on the lines of the provisions in Section 18(7) of the Irish Constitution of 1937. The balance of the members of the Council shall be returned by constituencies representing Units on a scale to be worked out in detail:

Provided that the total representation of Indian States does not exceed 40% of this balance.

Explanation.—A Unit means a Province or Indian State which returns in its own individual right members to the Federal Parliament. In the case of Indian States which are grouped together for the purpose of returning representatives to the Council of States a Unit means the group so formed.

(b) The representatives of each Unit in the Council of States shall be elected by the *elected* members of the legislature of such Unit and in cases where a legislature consists of two Houses by the *elected* members of the Lower House of that legislature.

(c) The strength of the House of the People shall be so fixed as not to exceed 500. The Units of the Federation, whether Provinces, Indian States or groups of Indian States shall be divided into constituencies and the number of representatives allotted to each constituency shall be so determined as to ensure that there shall be not less than one representative for every 750,000 of the population and not more than one representative for every 500,000 :

Provided that the ratio of the total number of Indian States representative to their total population shall not be in excess of the ratio of the total number of representatives for the Provinces to their total population.”

2. That in sub-clause (1) of Clause 14, the following new item (e) be inserted:

“(e) The fixing of the actual strength of the Council of States and of the House of the People, the distribution of the strength so fixed amongst the Units of the Federation, the determination of the number, nature and constitution of functional panels or constituencies for the Council of States, the manner in which the smaller States should be grouped into Units for purposes of election to the two Houses, the principles on which territorial constituencies to the two Houses should be delimited and other ancillary matters shall be referred back to and investigated by the Union Constitution Committee. After such investigation, the Union Constitution Committee shall submit to the President of the Constituent Assembly its recommendations as to the provisions relating to these matters which should be inserted in the draft text of the Union Constitution.”

The amendment were adopted.

Mr. President: There are some more amendments which were moved.

I shall put Mr. Naziruddin Ahmad’s amendment. The question is:

“That sub-clause (2) of Clause 14 be deleted.”

The amendment was negatived.

Mr. President: There is another amendment by Mr. Shibban Lal Saksena, which I shall put. The questions is:

“That in sub-clause (4) of Clause 14, for the word ‘one-third’ the word ‘one half, be substituted.”

The motion was negatived.

Mr. President: I shall now put the amendment moved by Begum Aizaz Rasul. The question is:

“That in sub-clause (4) of Clause 14, for the word “second” the word “third” be substituted.”

The motion was negatived.

Mr. President: I shall now put the original clause as amended by Sir N. Gopaldaswami Ayyangar’s amendment which has been adopted. The question is:

“That Clause 14, as amended, be adopted.”

The motion was adopted.

Mr. M. S. Aney: There is a note under this clause and in that note the different Provinces and States are named. I find among the names the name of the Central Provinces mentioned as ‘C. P.’ The name of the Province under the Act under which it was formed as “C.P. and Berar” That name is also reproduced in some other clauses which we have already passed. So I think this might be a clerical mistake. But I do want to bring this fact to your notice and to the notice of the House. When the final draft is made, if the Note happens to be there, the proper name of the Province should be given as “the Central Provinces and Berar.”

Mr. President: I think that is a slip because in the Schedule it is correctly stated.

Part X

Mr. President: We shall now take up part X.

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, I may here request your permission for asking that the moving of this Part be postponed because some of the amendments have raised a very important issue as to what provision should be made for giving Provincial Legislatures some constituent power for amending the Constitution of the Province. That requires some consideration. Therefore, if you permit, we will take up this matter at the next session.

Mr. President: The consideration of Part X will be held over.

Part XI

Mr. President: We shall take up Part XI.

The Honourable Sir N. Gopaldaswami Ayyangar: The first clause in Part XI runs as follows:

“The Government of the Federation shall be the successor to the Government of India established under the Government of India Act, 1935, as regards all property, assets, rights and liabilities.”

I request your permission to move this clause with a verbal addition which would bring the terms of this clause up-to-date with reference to recent happenings. Since this clause was drafted, Parliament has passed an Indian Independence Act. Under the powers given by that

[The Honourable Sir N. Gopaldaswami Ayyangar]

Act, very comprehensive adaptations of the Government of India Act are being ordered by the Governor-General. So at the time we shall be bringing this new Constitution into force it will be the Government of India Act, 1935, as adapted. Therefore, if you will permit me to do so, I would move:

“That after the words ‘the Government of India Act, 1935’ in Clause I the words ‘as adapted under the provisions of the Indian Independence Act’ be added.”

Mr. President: Clause 1 has been moved with some alteration. We have got several amendments of which I have received notice.

Shri K. Santhanam (Madras: General): Sir, I want to know if that expression has been substituted.

The Honourable Sir N. Gopaldaswami Ayyangar: The Clause will read after my amendment as follows:

“1. The Government of the Federation shall be the successor to the Government of India established under the Government of India Act, 1935, as adapted under the provisions of the Indian Independence Act, as regards all property, assets, rights and liabilities”.

Shri K. Santhanam: I do not move my amendment No. 401.

Mr. President: The clause that has been moved as amended is this:

“1. The Government of the Federation shall be the successor to the Government of India established under the Government of India Act, 1935, as adapted under the provisions of the Indian Independence Act, as regards all property, assets, rights and liabilities.”

Shri K. Santhanam: The difficulty is that the Indian Independence Act must take precedence over the Government of India Act of 1935. Therefore, it will not be correct to put the latter first. The order will have to be reversed.

Mr. President: The 1935 Act is adapted.

Shri K. Santhanam : The Act in operation is the Indian Independence Act. The adaptation is under the Indian Independence Act.

The Honourable Sir N. Gopaldaswami Ayyangar: May I explain the point? After all, Sir, the Indian Independence Act is largely an enabling Act, the Constitution under which we shall work from the 15th August 1947 onwards will still be the Government of India Act, 1935, as adapted by the Orders which the Governor-General has been empowered to issue under the Indian Independence Act.

Shri K. Santhanam: I do not think it will be legally correct. We will be working under the Indian Independence Act or under the Government of India Act, 1935, in certain respects.

Sir Alladi Krishnaswami Ayyar: I think Mr. Santhanam is right. The real Constitution will be the Dominion Constitution. We are adapting certain provisions of the 1935 Act to suit the Dominion Act. The future Government will be the successor of the Dominion Government.

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, I bow to the legal opinion though I do not feel convinced, I doubt its correctness.

Shri K. Santhanam : Suitable arrangements may be made.

Mr. President: Though there is no difference in meaning, there is a dispute. You had better leave it to Sir N. Gopaldaswami Ayyangar to put it in proper form.

As Messrs. Nijalingappa, Krishnamoorthy Rao and Ananthasayanam Ayyangar are not moving their amendments, I will put Clause 1 of part XI to the vote.

The question is:

“That Clause 1, as amended, of Part XI be adopted.”

The motion was adopted.

CLAUSE 2

The Honourable Sir N. Gopaldaswami Ayyangar: Sir, I move:

“2. (1) Subject to this Constitution, the laws in force in the territories of the Federation immediately before the commencement of the Constitution shall continue in force therein until altered, or, repealed, or amended by a competent legislature or other competent authority.

(2) The President may, by Order provide, that as from a specified date any law in force in the Provinces shall, until repealed or amended by competent authority, have effect subject to such adaptations and modifications as appear to him to be necessary or expedient for bringing the provisions of that law into accord with the provisions of this Constitution.”

“These are necessary to keep the existing Acts in force.

(Shri Jainarain Vyas did not move his amendment No. 404):

Mr. Naziruddin Ahmad: Mr. President, I beg to move:

“That in sub-clause (2) of Clause 2, for the words ‘by competent authority’ the words ‘by a competent authority’ be substituted.”

Sir, this is only a drafting amendment.

Mr. S. V. Krishnamurthy Rao (Mysore State): Mr. President, this is only an enabling provision similar to the one provided for the Provinces. This has references to such of the States as accede to the Union. My amendment runs thus:

“That in sub-clause (2) of Clause 2, after the word ‘Provinces’ the following be inserted:

‘and such of the States as are parts of the Indian Dominion as per provision Section 2, Clause 4 of the Indian Independence Act of 1947’ ”.

I hope the Mover of the Clause will accept this amendment.

Mr. President: As there are no other amendments to this Clause and as no Member wishes to speak, Sir N. Gopaldaswami Ayyangar may reply to the debate.

The Honourable Sir N. Gopaldaswami Ayyangar: Mr. President, Mr. Naziruddin Ahmad’s suggestion is a drafting amendment. But I am not sure that it is a drafting improvement. I would rather retain “competent authority” in the place of “a competent authority”.

As regards the amendment of Mr. Rao, I think that if the representatives of Indian States are prepared to agree, I am prepared to accept it. But I am afraid the question will require to be very carefully examined before we can agree to it. I would rather that the clause is left alone and the matter examined later.

Mr. President : I will now put the amendments to the vote. The amendment of Mr. Naziruddin Ahmad is:

“That in sub-Clause (2) of Clause 2, for the words ‘by competent authority’ the words ‘by a competent authority’ be substituted.”

(The amendment was negatived.)

Mr. S. V. Krishnamurthy Rao: Sir, I withdraw my amendment.

Mr. President: Mr. Krishnamurthy Rao withdraws his amendment. I take it that the House gives him leave to withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Then I will put the clause to vote.

The motion was adopted.

CLAUSE 3

The Honourable Sir N. Gopalaswami Ayyangar: Sir, Clause 3 runs as follows:

“Until the Supreme Court is duly constituted under this Constitution, the Federal Court be deemed to be the Supreme Court and shall exercise all the functions of the Supreme Court:

Provided that all cases pending before the Federal Court and the Judicial Committee of the Privy Council at the date of commencement of this Constitution may be disposed of as if this Constitution had not come into operation.”

That is to say, cases pending before the Judicial Committee at the inception of this Constitution will continue to be disposed of by that Committee. Sir, I see that there are certain amendments to effect improvements in this clause. I shall be prepared to accept the amendment of which Sir Alladi Krishnaswami Ayyar has given notice.

(Messrs. K. Santhanam, Biswanath Das and Thakur Das Bhargava did not move their amendments Nos. 407, 408 and 409.)

Sir Jaspal Roy Kapoor (United Provinces: General): I am not moving No. 410 in view of Sir Alladi’s amendment.

(Mr. R. K. Sidhwa did not move his amendment No. 411.)

Sir Alladi Krishnaswami Ayyar: My amendment runs in these terms:

“That for the Proviso to Clause 3, the following be substituted:

‘On and after the coming into force of this Constitution, the jurisdiction of the Judicial Committee of His Majesty’s Privy Council to entertain and dispose of appeals and petitions from any Court in the Union of India, including the jurisdiction in respect of criminal matters in the exercise of His Majesty’s prerogative shall cease and all appeals and other proceedings pending before the Judicial Committee of the Privy Council shall stand transferred to, and be disposed of by the Supreme Court. Further provision may be made by the Parliament of the Federation to implement and give effect to this provision.’”

Sir, in commending this amendment for the acceptance of the House I should like to make a few observations. Even in the British Commonwealth, judicial autonomy is recognised as necessarily incidental to the new status which the Dominions have attained. In Australia, there is no right of appeal at all except with the leave of the High Court of that country. In Canada, under recent legislation, the right of appeal from the Supreme Court of Canada both in civil and criminal cases has been abolished. In South Africa, under the South African Constitution, there is no right of appeal to the Judicial Committee. If that is the position even in regard to the Dominions within the British Commonwealth, it is inconceivable that there should, be any retention of jurisdiction in the judicial Committee after India has become a Republic and the Constitution we are enacting comes into force. There has necessarily to be an

automatic cessation of jurisdiction in regard to pending appeals. It is inconceivable that what is in effect a foreign Court should be in a position to reverse or modify the decisions of Indian tribunals. The Supreme Court to be established is the only final Court of Appeal for all India, and it is but proper that all pending cases should be transferred to the Supreme Court. The point has been raised in certain quarters whether we could direct the transfer of records from the Judicial Committee. All that we enact is that cases do stand transferred, that hereafter the Supreme Court will have the Jurisdiction to deal with all these cases. I do not believe that the Judicial Committee will fail to act in aid of our legislation. As a matter of fact there are very few original records in the custody of the Judicial Committee. If there is any difficulty in regard to procedure and other matters federal legislation, will be enacted. That is the object of the latter part of this amendment. I therefore ask the House to accept the amendment.

Sri M. Ananthasayanam Ayyangar: I am not moving my amendment No. 11 in supplementary List IV.

Mr. President: I think there is only one amendment now.

The Honourable Sir N. Gopalaswami Ayyangar: I accept the amendment of Sir Alladi Krishnaswami Ayyar.

Mr. President: The amendment is accepted by the Mover of the clause. I will now put it to vote.

The amendment was adopted.

Mr. President: I will now put the clause, as amended by Sir Alladi, to vote.

Clause 3, as amended, was adopted.

Mr. President: We have only two minutes now, and.....

The Honourable Sir N. Gopalaswami Ayyangar: There are only two or three clauses left.

Mr. President: If the wish of the House is that we should complete these clauses. I have no objection, but there is a meeting of the Advisory Committee at 2-30 P.M., and members might like....

Sri M. Ananthasayanam Ayyangar: Thinking that the Assembly would sit today only up to 1 o'clock, we have already booked our berths for today.

Mr. President: Does the House want that the consideration of the remaining clauses should be taken up in the next session?

Many Honourable Members: Yes.

Mr. President: Then the consideration of the remaining clause is held over.

ANNOUNCEMENTS BY THE PRESIDENT

Mr. President: Before we disperse, I have some announcement to make. There was notice of a resolution by Rajkumari Amrit Kaur about Khadi being used for the National Flag. The notice of the resolution came, at a time when we could not call a meeting of the Steering Committee, and so we could not place it before the House. But I may inform the House that so far as this Constituent Assembly is concerned,

[Mr. President]

there will be no Flag used which is made of anything else but Khadi. It is also the policy of the Government which has been communicated to the Provincial Governments also that all National Flags should be made only of Khadi that is to say, of hand-spun and hand-woven cloth, whether it is of cotton, of wool, or silk or of any other material.

Yesterday, the House passed a resolution asking me to appoint a Committee to prepare a draft constitution for the Chief Commissioners' provinces, and I have pleasure in announcing that I have appointed the following Committee for that purpose:

Sir N. Gopaldaswami Ayyangar.

Dr. Pattabhi Sitaramayya.

Mr. K. Santhanam.

Mr. Deshbandhu Gupta.

Mr. Mukut Bihari Lal Bhargava.

Mr. C. H. Poonadha.

Mr. Hussain Imam.

There is one other important matter to which reference was made in the earlier part of the debate with regard to which I have to make certain announcements, *i.e.*, the Function on the 15th. The programme which we have thought of is this:

That on the night of the 14th and 15th just at midnight, we have a session of this House, and at that time just as the clock strikes twelve, we either start our Proceedings or end our Proceedings by which we take power under the New Act which has been passed and either by a Resolution or otherwise, we authorise the Leader of the House to proceed to Lord Mountbatten and to request him to accept the Governor-Generalship and thus regularise his appointment as Governor-General as being made at our request and the Leader of the House will also communicate to him at that hour the names of the Members of the Cabinet, which he will constitute. That will be the Proceeding at night. The next morning we have a session of this House at 10 o'clock here and that will be attended by the Governor-General and here we shall have some sort of a formal ceremony—the actual handing over of power to us.

Mr. M. S. Aney: On the 15th?

Mr. President: That would be the midnight of the 14th and the early morning of 15th.

Shri Balkrishan Sharma (United Provinces : General): That will be our D Day.

Mr. President: As regards the details of the programme for the night session or for the morning session, we have not yet worked out all the details, but I propose to work out the details in consultation with Members like Pandit Jawaharlal Nehru and some others who will be available here.

Mr. B. Das (Orissa : General): What about the Finance Committee in regard to financial distribution?

Mr. President: Let me first complete this thing.

As regards the admission of visitors, as Members are aware, we have very limited accommodation in this House. There has been a demand made on behalf of Members, that we should allow them to bring their own guests, of course, under the ordinary conditions of cards being issued by us. It will be necessary also to invite to that function representatives of foreign countries who are here, the Consular representatives and others and some of the higher Civil and Military authorities of the Government of India will have also to be invited. The Press will naturally like to be present in full strength on that occasion. It will therefore be very difficult to accommodate all who desire to come and attend the function, but I hope the House will leave it to us to work out some programme by which we shall accommodate, as fairly and equitably as possible, as many as we can.

An Honourable Member: Can two cards be issued for every Member?

Mr. President: If we allowed two visitors to each Member, and we do not allow anyone else even then we shall have no accommodation.

Shri Gopikrishna Vijayavargiya: At least one card for every Member.

Mr. President: On the 14th night visitor passes will be allowed on the usual conditions in the usual way.

Shri Mahavir Tyagi (United Provinces : General): Can you not kindly spare this House the part of the programme according to which we are required to invite Lord Mountbatten to be our Governor-General in future; because this House has never discussed that question; nor has the House passed so far, any Resolution, nor agreed to the idea of Lord Mountbatten being the Governor-General of India? The rest of the programme may proceed as it is.

Mr. President: If the Honourable Member is so anxious, I shall put this matter to the House for discussion. (*Many Honourable Members:* No, no). That was at least my impression, but if the Honourable Member wants it, I shall put it to the House.

Mr. Shankar Dattatraya Deo (Bombay : General): What is the proposition, we have not understood. Let us understand what is his proposal.

Mr. President: I had chalked out a Programme which I indicated in the earlier part of my statement. One Member says that we should not raise the question of Lord Mountbatten being the Governor-General because the House has not considered it. I said that if he is anxious, I shall put it to the House.

Many Honourable Members: No, no. It must be left to the President.

Pandit Govind Malaviya (United Provinces : General): Sir, without going into the merit of the question at all may I say that it seems to me that what the Honourable Member meant was that since that matter had been decided without the House having in any way been brought into it, we should not have the ceremony of the Leader of the House going to the Viceroy straight from this House and asking him on behalf of this House to accept the Governor-Generalship. I understand that he meant only that much and not that we should not have Lord Mountbatten as Governor-General.

Shri Mahavir Tyagi: What I meant was not to record any objection on behalf of the House to the acceptance of Lord Mountbatten as the Governor-General of India. That thing has already been done and if

[Shri Mahavir Tyagi]

there were any Members in this Honourable House who object to that they could have sent a Resolution to that effect. I do not want to take up that question in this House. What I was suggesting was that you had better drop the idea of going through that item of the programme in which you say, on behalf of this House, Lord Mountbatten was to be invited to accept the Governor-Generalship. I think he has already done it and this formality may better be given up because the House has never discussed this issue, and if without the House having considered this issue, he is invited this will be too formal and in my opinion slightly unfair. What I was suggesting was that without disturbing the scheme or without objecting to his being the Governor-General of India, the House may not be committed. He is the Governor-General. He has also accepted the offer and he remains so without any commitment on behalf of this House.

Pandit Govind Malaviya : Sir, I propose that there should be no further discussion on this subject and we should leave it to the President to fix up what he thinks best.

Mr. Tajamul Hussain (Bihar : Muslim): May I have your permission Sir, to move a formal Resolution to this effect:

That this House accepts the programme as chalked out by the Honourable the President in connection with the Independence Day Celebration in its entirety?

Mr. President: I do not think it is necessary to put any Resolution to vote like this. I think I shall fix the programme as I said, the details of which I shall work out.

Mr. H. V. Kamath: Will you be so good as to direct the Members of the Assembly shall not be deprived of the right of introducing at least one visitor each on this historic occasion?

Mr. President: It depends upon the accommodation. As I said, we shall do our best to accommodate as many as we can, but if we cannot, we shall devise some means by which all members will be accommodated in an equitable manner.

An Honourable Member: May I know, Sir, at what time we should come here?

Mr. President: You have to come here on the night of the 14th. I shall announce the exact time later on. It will be at midnight.

Mr. H. V. Kamath: About the presentation of the National Flag to every Member, we would be grateful if it could be given before the 15th August.

Mr. President: Purchase a flag each.

Mr. H. V. Kamath: Presentation by you, Sir!

Mr. President: That is a matter which we have to consider. We cannot undertake to provide each member with a flag. It does not seem to be practicable at the present Moment.

Shri Ajit Prasad Jain (United Provinces : General): You said you will draw up a scheme according to which visitors shall be equitably admitted to the House. I would like to know the time when we shall be able to know that scheme.

Mr. President: We shall work it out in a day or two and we shall announce it in the Press.

Shri Mahavir Tyagi: In this regard, may I make one suggestion, Sir. Since you say that several personalities have to be invited, and we are also anxious to have our friends to witness this auspicious ceremony would suggest that instead of holding it here, we may again go to the Old Fort or somewhere else where we can have a big ceremony and a large number of people may be accommodated. Many people in India, who are not in Delhi, many come from outside to witness this occasion. My suggestion therefore is that we may make it a big show and have it somewhere, at some such place where we may have enough accommodation.

Many Honourable Members: No. No.

Mr. President: As we have been holding our session in this Hall, I think we must have, this function also in this Hall (*Hear, Hear*).

An Honourable Member: I propose that for accommodating more visitors these adjoining rooms may also be used.

Mr. President: We shall utilise every little bit of space.

There was one thing more which I desired to tell you. We have announced the next session on the night of the 14th and on the morning of the 15th. Notices will be sent out from the office in due course. It is just possible that members may not get notice in time. So they may take this as notice and they may also take whatever is published in the press as notice to them in this regard, and they need not wait for formal notices being delivered to them.

We adjourn now till the 14th.

The Assembly then adjourned till Thursday, the 14th August 1947.

Volume V



**14-8-1947
to
30-8-1947**

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF INDIA

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THE HONOURABLE DR. RAJENDRA PRASAD.

Vice-President:

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Joint Secretary:

SHRI S.N. MUKERJEE.

Deputy Secretary:

SHRI JUGAL KISHORE KHANNA.

Under Secretary:

SHRI K.V. PADMANABHAN

Marshal:

SUBEDAR MAJOR HARBANS RAI JAIDKA.

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CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 14th August 1947

The Fifth Session of the Constituent Assembly of India commenced in the Constitution Hall, New Delhi, at Eleven P.M., Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

SINGING OF VANDE MATARAM

Mr. President: The first item on the Agenda is the singing of the first verse of VANDE MATARAM. We will listen to it all standing.

Shrimati Sucheta Kripalani (U.P.: General) sang the first verse of the VANDE MATARAM song.

PRESIDENT'S ADDRESS

Mr. President:

(Mr. President then delivered his address in Hindustani the full text of which is published in the Hindustani edition of the Debates.)

In this solemn hour, of our history when after many years of struggle we are taking over the governance of this country, let us offer humble thanks to the Almighty Power that shapes the destinies of men and nations and let us recall in grateful remembrance the services and sacrifices of all those men and women, known and unknown, who with smiles on their face walked to the gallows or faced bullets on their chests, who experience living death in the cells of the Andamans, or spent long years in the prisons of India, who preferred voluntary exile in foreign countries to a life of humiliation in their own, who not only lost wealth and property but cut themselves off from near and dear ones to devote themselves to the achievement of the great objective which we are witnessing today.

Let us also pay our tribute of love and reverence to Mahatma Gandhi who has been our beacon light, our guide and philosopher during the last thirty years or more. He represents that undying spirit in our culture and make-up which has kept India alive through vicissitudes of our history. He it is who pulled us out of the slough of despond and despair and blowed into us a spirit which enabled us to stand up for justice to claim our birth-right of freedom and placed in our hands the matchless and unfailing weapon of Truth and Non-violence which, without arms and armaments has won for us the invaluable prize of Swaraj at a price which, when the history of these times comes to be written, will be regarded as incredible for a vast country of our size and for the teeming millions of our population. We were indifferent instruments that he had to

[Mr. President]

work with but he led us with consummate skill, with unwavering determination, with an undying faith in our future, with faith in his weapon and above all with faith in God. Let us prove true to that faith. Let us hope that India will not, in the hour of her triumph, give up or minimise the value of the weapon which served not only to rouse and inspire here in her moments of depression but has also proved its efficacy. India has a great part to play in the shaping and moulding of, the future of a war distracted world. She can play that part not by mimicking, from a distance, what others are doing, or by joining in the race for armaments and competing with others in the discovery of the latest and most effective instruments of destruction. She has now the opportunity, and let us hope, she will have the courage and strength to place before the world for its acceptance her infallible substitute for war and bloodshed, death and destruction. The world needs it and will welcome it, unless it is prepared to reel back into barbarism from which it boasts to have emerged.

Let us then assure all countries of the world that we propose to stick to our historic tradition to be on terms of friendship and amity with all, that we have no designs against any one and hope that none will have any against us. We have only one ambition and desire, that is, to make our contribution to the building up of freedom for all and peace among mankind.

The country, which was made by God and Nature to be one, stands divided today. Separation from near and dear ones, even from strangers after some association, is always painful. I would be untrue to myself if I did not at this moment confess to a sense of sorrow at this separation. But I wish to send on your behalf and my own our greetings and good wishes for success and the best of luck in the high endeavour of government in which the people of Pakistan, which till today has been a part and parcel of ourselves, will be engaged. To those who feel like us but are on the other side of the border we send a word of cheer. They should not give way to panic but should stick to their hearths and homes, their religion and culture and cultivate the qualities of courage and forbearance. They have no reason to fear that they will not get protection and just and fair treatment and they should not become victims of doubt and suspicion. They must accept the assurances publicly given and win their rightful place in the polity of the State, where they are placed, by their loyalty.

To all the minorities in India we give the assurance that they will receive fair and just treatment and there will be no discrimination in any form against them. Their religion, their culture and their language are safe and they will enjoy all the rights and privileges of citizenship, and will be expected in their turn to render loyalty to the country in which they live and to its constitution. To all we give the assurance that it will be our endeavour to end poverty and squalor and its companions, hunger and disease; to abolish distinction and exploitation and to ensure decent conditions of living.

We are embarking on a great task. We hope that in this we shall have the unstinted service and co-operation of all our people and the sympathy and support of all the communities. We shall do our best to deserve it.

Mr. President: After this I propose that we all stand in silence to honour the memory of those who have died in the struggle for freedom in India and elsewhere.

(The Assembly stood in silence for two minutes.)

MOTION RE. PLEDGE BY MEMBERS

Mr. President: Pandit Jawaharlal Nehru will now move the motion which stands in his name.

The Honourable Pandit Jawaharlal Nehru (U.P. : General): *[Mr. President, many years ago we had made a tryst with destiny itself. We had taken a pledge, a vow. Now the time has come to redeem it. But perhaps the pledge has not yet been redeemed fully through stages have been reached in that direction. We have almost attained independence. At such a moment, it is only appropriate that we take a new pledge, a new vow to serve India and her people. After a few moments, the Assembly will assume the status of a fully free and independent body and it will represent an independent and free country. Therefore great responsibilities are to devolve upon it. If we do not realise the importance of our responsibilities, then we shall not be able to discharge our duties fully. Hence it becomes essential for us to take this pledge after fully understanding all its implications. The resolution that I am presenting before you relates to that pledge. We have finished one phase, and for that rejoicings are going on today. Our hearts are full of joy and some pride and satisfaction. But we know that there is no rejoicing in the whole of the country. There is enough of grief in our hearts. Not far from Delhi, big cities are ablaze and its heat is reaching us here. Our happiness cannot be complete. At this hour we have to face all these things with a brave heart. We are not to raise a hue and cry and get perturbed. When the reins of Government have come to our hands, we have to do things in the right way. Generally, countries wrest their freedom after great bloodshed, tears and toil. Much blood has been spilt in our land, and in a way which is very painful. Notwithstanding that, we have achieved freedom by peaceful methods. We have set a new example before the world. We are free now but along with freedom, come responsibilities and burdens. We have to face them, and overcome them all. Our dream is now about to be translated into reality. The task of wresting freedom and ousting the foreign government was before us till now and that task is now accomplished. But uprooting the foreign domination is not all unless and until each and every Indian breathes the air of freedom and his miseries are banished and his hard lot is improved. Our task remains unfinished. Therefore a large portion of our task remains to be done, and we shall try to accomplish it. Big problems confront us and at their sight sometimes our heart quivers, but, then again, the thought that in the past we have faced many a big problem and we shall do so again, gives us courage. Shall we be cowed down by these? It is not the individual pride and strength that is comforting, rather it is the pride of the country and the nation, and a confidence in people who have suffered a terribly for the cause that makes me feel bold to think we

*[]*English translation of Hindustani speech.

[The Honourable Pandit Jawaharlal Nehru]

shall successfully shoulder the huge burden of hardships, and find a solution of these problems. After all, India, is now free. That is well and good. At a time when we are on the threshold of freedom, we should remember that India does not belong to any one party or group of people or caste. It does not belong to the followers of any particular religion. It is the country of all, of every religion and creed. We have repeatedly defined the type of freedom we desire. In the first resolution, which I moved earlier, it has been said that our freedom is to be shared equally by every Indian. All Indians shall have equal rights, and each one of them is to partake equally in that freedom. We shall proceed like that and whosoever tries to be aggressive will be checked by us. If anyone is oppressed we shall stand by his side. If we follow this path then we shall be able to solve big problems, but if we become narrow minded we shall not be able to solve them.

I shall read out in English this resolution which I am now putting before you]*

Long years ago we made a tryst with destiny, and now the time comes when we shall redeem our pledge, not wholly or in full measure, but very substantially. At the stroke of the midnight hour, when the world sleeps, India will awake to life and freedom. A moment comes, which comes but rarely in history, when we step out from the old to the new, when an age ends, and when the soul of a nation, long suppressed, finds utterance. It is fitting that at this solemn moment we take the pledge of dedication to the service of India and her people and to the still larger cause of humanity.

At the dawn of history India started on her unending quest, and trackless centuries are filled with her striving and the grandeur of her successes and her failures. Through good and ill fortune alike she has never lost sight of that quest or forgotten the ideals which gave her strength. We end today a period of ill fortune and India discovers herself again. The achievement we celebrate today is but a step, an opening of opportunity, to the greater triumphs and achievements that await us. Are we brave enough and wise enough to grasp this opportunity and accept the challenge of the future?

Freedom and power bring responsibility. That responsibility rests upon this Assembly, a sovereign body representing the sovereign people of India. Before the birth of freedom we have endured all the pains of labour and our hearts are heavy with the memory of this sorrow. Some of those pains continue even now. Nevertheless the past is over and it is the future that beckons to us now.

That future is not one of ease or resting but of incessant striving so that we might fulfil the pledges we have so often taken and the one we shall take today. The service of India means the service of the millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity. The ambition of the greatest man of our generation has been to wipe every tear from every eye. That may be beyond us but as long as there are tears and suffering, so long our work will not be over.

And so we have to labour and to work and work hard to give reality to our dreams. Those dreams are for India, but they are also for the world, for all the nations and peoples are too closely knit together today for any one of them to imagine that it can live apart. Peace has been said to be indivisible, so is freedom, so is prosperity now, and so also is disaster in this One World that can no longer be split into isolated fragments.

To the people of India, whose representatives we are, we make appeal to join us with faith and confidence in this great adventure. This is no time for petty and destructive criticism, no time for ill-will or blaming others. We have to build the noble mansion of free India where all her children may dwell.

I beg to move, Sir,

“That it be resolved that:

(1) After the last stroke of midnight, all members of the Constituent Assembly present on this occasion, do take the following pledge:

‘At this solemn moment when the people of India, through suffering and sacrifice, have secured freedom, I....., a member of the Constituent Assembly of India, do dedicate myself in all humility to the service of India and her people to the end that this ancient land attain her rightful place in the world and make her full and willing contribution to the promotion of world peace and the welfare of mankind;

(2) Members who are not present on this occasion do take the pledge (with such verbal changes as the President may prescribe) at the time they next attend a session of the Assembly.” (*Loud applause.*)

Chaudhari Khaliquzzaman (United Provinces: Muslim): *[Mr. President, after midnight today a great revolution is to take place in the history of India a revolution, for which India had been working for the last one hundred years in her fight for freedom, an event for which many Indians have sacrificed their lives to achieve, is now approaching very near. Now that as a result of these sacrifices we have achieved this freedom, a new question confronts us, which is even more vital. That struggle is over but a fresh one of a different type is to begin; this new struggle is not to be fought against any outsider but is to be settled among our own selves. It is evident that when a nation had to fight against another nation we were swayed by different emotions, we had to adopt different tactics, and different methods. Now the time has come when we shall have to shoulder great responsibilities when there will be no room for clapping and for high-sounding slogans. After today the task before this House, before the leaders of the country, will not be a spectacular one but one that requires diligence, industry and service to the people. We know that great responsibility rests on this Assembly and that is of framing a Constitution, which would be acceptable not only to the minorities but also to all the people of the country, to the poor and to the common man and through which we may serve the people of India. This is the greatest task. Similarly, this House has to shoulder the responsibility of the administration of the country till such time as fresh elections are held. The administrative responsibility sometimes brings with it scoldings and one has to put up with abuses etc., and is even subjected to brickbats. But all this has to be endured. A reading of the pledge,

*[]*English translation of Hindustani speech.

[Chaudhari Khaliqzaman]

which is before us now, shows that it entails heavy responsibility. Ordinarily, I think that all the members, when they came here, had already taken the pledge of serving their country honestly and faithfully and as best as they could. But a pledge formally administered leaves some psychological effect on the mind of every person. Hence, I think that today, before we shoulder the responsibility, this is a most opportune moment for all of us to bind ourselves with this pledge that henceforth all our actions and deeds would primarily be directed towards the good of the State and no communal considerations would be allowed to prevail and we shall do our utmost to give everyone his due. After taking this pledge, when we step out of this Chamber, we shall give a message to the people of the country that we have taken a vow honestly to shoulder the responsibility, and in discharging our duties we shall show no favour to anyone.

With these words, I support the pledge and the motion moved by Pandit Nehru. I think that every one of the members, present here, will faithfully and honestly take this pledge that he would devote his life to the service of the State.]

Dr. S. Radhakrishnan (United Provinces: General) : Mr. President, Sir, it is not necessary for me to speak at any great length on this Resolution so impressively moved by Pandit Jawaharlal Nehru and seconded by Mr. Khaliqzaman. History and legend will grow round this day. It marks a milestone in the march of our democracy. A significant date it is in the drama of the Indian people who are trying to rebuild and transform themselves. Through a long night of waiting, a night full of fateful portents and silent prayers for the dawn of freedom, of haunting spectres of hunger and death, our sentinels kept watch, the lights were burning bright till at last the dawn is breaking and we greet it with the utmost enthusiasm. When we are passing from a state of serfdom, a state of slavery and subjection to one of freedom and liberation, it is an occasion for rejoicing. That it is being effected in such an orderly and dignified way is a matter for gratification.

Mr. Attlee spoke with visible pride in the House of Commons when he said that this is the first great instance of a strong Imperialist power transferring its authority to a subject people whom it ruled with force and firmness for nearly two centuries. For a parallel he cited the British withdrawal from South Africa; but it is nothing comparable in scale and circumstances to the British withdrawal from this country. When we see what the Dutch are doing in Indonesia, when we see how the French are clinging to their possessions, we cannot but admire the political sagacity and courage of the British people. (*Cheers.*)

We on our side, have also added a chapter to the history of the World. Look at the way in which subject peoples in history won their freedom. Let us also consider the methods by which power was acquired. How did men like Washington, Napoleon, Cromwell, Lenin, Hitler and Mussolini get into power? Look at the methods of blood and steel, of terrorism and assassination, of bloodshed and anarchy by which these so called great men of the world came into the possession of power. Here in this land under the leadership of one who will go down in history as

perhaps the greatest man of our age (*loud cheers*) we have opposed patience to fury, quietness of spirit to bureaucratic tyranny and are acquiring power through peaceful and civilised methods. What is the result? The transition is being effected with the least bitterness, with utterly no kind of hatred at all. The very fact that we are appointing Lord Mountbatten as the Governor-General of India, shows the spirit of understanding and friendliness in which this whole transition is being effected. (*Cheers.*)

You, Mr. President, referred to the sadness in our hearts, to the sorrow which also clouds our rejoicings. May I say that we are in an essential sense responsible for it also though not entirely. From 1600, Englishmen have come to this country—priests and nuns, merchants and adventurers, diplomats and statesmen, missionaries and idealists. They bought and sold, marched and fought, plotted and profited, helped and healed. The greatest among them wished to modernise the country, to raise its intellectual and moral standards, its political status. They wished to regenerate the whole people. But the small among them worked with sinister objective. They tried to increase the disunion in the country, made the country poorer, weaker and more disunited. They also have had their chance now. The freedom we are attaining is the fulfilment of this dual tendency among British administrators. While India is attaining freedom, she is attaining it in a manner which does not produce joy in the hearts of people or a radiant smile on their faces. Some of those who were charged with the responsibility for the administration of this country, tried to accentuate communal consciousness and bring about the present result which is a logical outcome of the policies adopted by the lesser minds of Britain. But I would never blame them. Were we not victims, ready victims, so to say, of the separatist tendencies foisted on us? Should we not now correct our national faults of character, our domestic despotism, our intolerance which has assumed the different forms of obscurantism of narrow-mindedness, of superstitious bigotry? Others were able to play on our weakness because we had them. I would like therefore to take this opportunity to call for self-examination, for a searching of hearts. We have gained but we have not gained in the manner we wished to gain and if we have, not done so, the responsibility is our own. And when this pledge says that we have to serve our country, we can best serve our country by removing these fundamental defects which have prevented us from gaining the objective of a free and united India. Now that India is divided, it is our duty not to indulge in words of anger. They lead us nowhere. We must avoid passion, and wisdom never go together. The body politic may be divided but the body historic lives on. (*Hear, hear.*) Political divisions, physical partitions, are external but the psychological divisions are deeper. The cultural cleavages are the more dangerous. We should not allow them to grow. What we should do is to preserve those cultural ties, those spiritual bonds which knit our peoples together into one organic whole. Patient consideration, slow process of education, adjustment to one another's needs, the discovery of points of view which are common to both the dominions in the matter of Communications, Defence, Foreign Affairs, these are the things which should be allowed to grow in the daily business of life and administration. It is by developing such attitudes that we can once again draw near and gain the lost unity of this country. That is the only way to it.

[Dr. S. Radhakrishnan].

Our opportunities are great but let me warn you that when power outstrips ability, we will fall on evil days. We should develop competence and ability which would help us to utilise the opportunities which are now open to us. From tomorrow morning—form midnight today—we cannot throw the blame on the Britisher. We have to Assume the responsibility ourselves for what we do. A free India will be judged by the way in which it will serve the interests of the common man in the matter of food, clothing, shelter and the social services. Unless we destroy corruption in high places, root out every trace of nepotism, love of power, profiteering and blackmarketing which have spoiled the good name of this great country in recent times, we will not be able to raise the standards of efficiency in administration as well as in the production and distribution of the necessary goods of life.

Pandit Jawaharlal Nehru referred to the great contribution which this country will make to the promotion of world peace and the welfare at mankind. The *Chakra*, the Asokan wheel, which is there in the flag embodies for us a great idea, Asoka, the greatest of our emperors, look at the words of H. G. Wells regarding him “Highnesses, Magnificences, Excellencies, Serenities, Majesties—among them all, he shines alone a star—Asoka the greatest of all monarchs.” He cut into, rock his message for the healing of discords. If there are differences, the way in which you can solve them is by promoting concord. Concord is the only way by which we can get rid of differences. There is no other method which is open to us.

Samavaya eva Sadhuh

We are lucky in having for our leader one who is a world citizen, who is essentially a humanist, who possesses a buoyant optimism and robust good sense in spite of the perversity of things and the hostility of human affairs. We see the way in which his Department interfered actively and in a timely manner in the Indonesian dispute. (*Loud applause.*) It shows that if India gains freedom, that freedom will be used not merely for the well-being of India but for *Vishva Kalyana i.e.,* world peace, the welfare of mankind.

Our pledge tells us that this ancient land shall attain her rightful and honoured place. We take pride in the antiquity of this land for it is a land which has been nearly four or five milleniums of history. It has passed through many vicissitudes and at the moment it stands, still responding to the thrill of the same great ideal. Civilisation is a thing of the spirit, it is not something external, solid and mechanical. It is the dream in the people’s hearts. It is the inward aspiration of the people’s souls. It is the imaginative interpretation of the human life and the perception of the mystery of human existence. That is what civilisation actually stands for. We should bear in mind these great ideals which have been transmitted to us across the ages. In this great time of our history we should bear ourselves humbly before God, brace ourselves to this supreme task which is confronting us and conduct ourselves in a manner that is worthy of the ageless spirit of India. If we do so, I have no doubt that, the future of this land will be as great as its once glorious past.

*Sarvabhutdisahamatmanam
Sarvabhutani catmani
Sampasyam atmayajivai
Saarwjyam adhigachati*

Swarajya is the development of that kind of tolerant attitude which sees in brother man the face Divine. Intolerance has been the greatest enemy of our progress. Tolerance of one another's views, thoughts and beliefs is the only remedy that we can possibly adopt. Therefore I support with very great pleasure this Resolution which asks us as the representatives of the people of India to conduct ourselves in all humility in the service of our country and the word 'Humility' here means that we are by ourselves very insignificant. Our efforts by themselves cannot carry us to a long distance. We should make ourselves dependent on that other than ourselves which makes for righteousness. The note of humility means the unimportance, of the individual and the supreme importance of the unfolding purpose which we are called upon to serve. So in a mood of humility, in a spirit of dedication let us take this pledge as noon as the clock strikes 12.

Mr. President: I will now put the Resolution to the vote. I shall read it first:

"Resolved that—

(1) After the last stroke of midnight, all members of the Constituent Assembly present on the occasion do take the following pledge:—

'At this solemn moment when the people of India through suffering and sacrifice, have secured freedom and become masters of their own destiny, I..... a member of the Constituent Assembly of India, do dedicate myself in all humility to the service of India and her people to the end that this ancient land attain her rightful and honoured place in the world and make her full and willing contribution to the promotion of world peace and the welfare of mankind;'

(2) Members who are not present on this occasion do take the pledge (with such verbal changes as the President may prescribe) at the time they next attend a session of the Assembly."

Mr. H. V. Kamath (C. P. & Berar: General): Mr. President, there are two amendments standing in my name, but since you have invoked the holy name of God in your address and incorporated the spirit of it in the pledge by modifying it slightly in the form in which it has come before us, and above all, since the zero hour is fast approaching, I do not propose to move my amendments.

Mr. President: Thank you. I will put the Resolution to vote. Members will please express their assent by saying 'Aye'.

The motion was adopted.

Mr. President: We have just resolved that as the clock strikes 12, we shall take, the pledge. In taking the pledge, I shall read it out sentence by sentence in our own language first and I shall expect those members who know that language to repeat it sentence by sentence. Then I will read it out also sentence by sentence in English and I shall expect the members to repeat it sentence by sentence. Members will please stand when the pledge is taken, but other visitors will remain seated. It is just half a minute to 12. I am expecting the clock to strike 12.

As the clock struck twelve (mid-night), Mr. President and all the Members stood up and took the pledge as below. Mr. President reading it out sentence by sentence and the Members repeating it after him in Hindustani and in English.

"At this solemn moment when the people of India, through suffering and sacrifice, have secured freedom, I..... a member of the Constituent Assembly of India, do dedicate myself

[Mr. President]

in all humility to the service of India and her people to the end that this ancient land attain her rightful and honoured place in the world and make her full and willing contribution to the promotion of world peace and the welfare of mankind."

INTIMATION TO THE VICEROY ABOUT THE ASSUMPTION
OF POWER BY THE CONSTITUENT ASSEMBLY AND THE
ASSEMBLY'S ENDORSEMENT OF LORD MOUNTBATTEN'S
APPOINTMENT AS GOVERNOR-GENERAL OF INDIA

Mr. President: I propose that it should be intimated to the Viceroy that—

- (1) the Constituent Assembly of India has assumed power for the governance of India, and
- (2) the Constituent Assembly of India has endorsed the recommendation that Lord Mountbatten be Governor-General of India from the 15th August 1947.

and that this message be conveyed forthwith to Lord Mountbatten by the President and Pandit Jawaharlal Nehru. (*Cheers.*) I take it the House approves it.

The motion was adopted.

PRESENTATION OF THE NATIONAL FLAG

Mr. President: Shrimati Hansa Mehta will now present the National Flag on behalf of the women of India. (*Cheers.*)

Mrs. Hansa Mehta (Bombay: General): Mr. President, Sir, in the absence of Shrimati Sarojini Naidu, it is my proud privilege, on behalf of the women of India, to present this flag to the Nation through you.

I have a list* here of nearly a hundred prominent women of all communities who have expressed a desire to associate themselves with this ceremonial. There are hundreds and hundreds of other women who would equally like to participate in this function. It is in the fitness of things that this first flag that will fly over this august House should be a gift from the women of India. (*Cheers.*) We have donned the saffron colour, we have fought, suffered and sacrificed in the cause of our country's freedom. We have today attained our goal. In presenting this symbol of our freedom, we once more offer our services to the nation. We pledge ourselves to work for a great India, for building up a nation that will be a nation among nations. We pledge ourselves for working for a greater cause, to maintain the freedom that we have attained. We have great traditions to maintain, traditions that made India so great in the past. It is the duty of every man and woman to preserve these traditions so that India may hold her spiritual supremacy over the world. May this flag be the symbol of that great India and may it ever fly high and serve as a light in the bloom that threatens the world today. May it bring happiness to those who live under its protecting care. (*Cheers.*)

*MEMBERS OF THE FLAG PRESENTATION COMMITTEE

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|-------------------|-------------------------|
| 1. Sarojini Naidu | 3. Vijayalakshmi Pandit |
| 2. Amrit Kaur | 4. Hansa Mehta |

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|-------------------------------------|-----------------------------|
| 5. Ammu Swaminathan | 40. Lavanya Prabha Dutt |
| 6. Sucheta Kripalani | 41. Sophia Wadia |
| 7. Kudsia Aizaz Rasool | 42. Mrinalini Chattopadhyay |
| 8. Durga Bai | 43. Sarada Ben Mehta |
| 9. Renuka Ray | 44. Zarina Currimbhoy |
| 10. Dakshayini Velayudan | 45. Prem. Captain |
| 11. Purnima Banerji | 46. Hemaprabha Das Gupta. |
| 12. Kamala Chaudhri | 47. Premavati Thappar |
| 13. Malati Chaudhary | 48. Zora Ansari |
| 14. Abala Bose | 49. Jaishri Raiji |
| 15. Lakshmi Bai Rajwade | 50. Kitty Shiva Rao |
| 16. Maitreyi Bose | 51. Shanooodevi |
| 17. Rameshwari Nehru | 52. Violet Alva |
| 18. Sherifa Hamid Ali | 53. Susheela Ilukusing |
| 19. Goshi Ben Captain | 54. Bina Das |
| 20. Dhanavanti Rama Rao | 55. Uma Nehru |
| 21. Anasuya Bai Kale | 56. Iravati Karve. |
| 22. Premleela Thakersy | 57. Raiban Tyabji |
| 23. Mani Ben Patel | 53. Asha Arvanayakam |
| 24. Sarla Devi Sarabhai | 59. Mridula Sarabhai |
| 25. Avantikabai Gokhaley | 60. Raksha Saran |
| 26. Sakine Lukmani | 61. Margaret Cousins |
| 27. Jankiben Bajaj | 62. Kamaladevi |
| 28. Muthulakshmi Reddi | 63. Lakshmi Menon |
| 29. Charulata Mukerji | 64. Lavanya Chanda |
| 30. Rukamani Lakshmani Lakshnipathi | 65. Ayasha Ahmed |
| 31. Mithan Tata Lam | 66. Krishna Hutheesingh |
| 32. Hannah Sen | 67. Rajan Nehru |
| 33. Aswah Hussain | 68. Indira Gandhi |
| 34. Radhabai Subbroyan | 69. Suraya Tyabji |
| 35. Tarabhai Premchand | 70. Memubai |
| 36. Jethi Sipahimlani | 71. Padmaja Naidu |
| 37. Ambuja Amma | 72. Kiran Bose |
| 38. Janaki Amma | 73. Kusum Sayani |
| 39. Leelavathi Munshi | 74. Lajjavati Devi |

Mr. President: I have, in anticipation of the consent of the House accepted with thanks a poem composed by His Excellency Dr. Chia Luen Lo, the Chinese Ambassador in India, on this occasion.

SINGING OF NATIONAL SONGS

Mr. President: The next item is the singing of the first few lines of *Sare Jahan se Achcha Hindustan Hamara* and the first verse of *Janaganamana Adhinayaka Jaya He*.

(Shrimati Sucheta Kripalani sang the first few lines of *Sare Jahan Se Achcha Hindustan Hamara* and the first verse of *Janaganamana Adhinayaka Jaya He*.)

Mr. President: The House will now adjourn for a few hours, till Ten of the Clock.

The Assembly then adjourned till Ten of the Clock on Friday, the 15th August 1947.

BLANK

THE CONSTITUENT ASSEMBLY OF INDIA

Friday, the 15th August 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock. Mr. President (The Honourable Dr. Rajendra Prasad) entered the Hall along with their Excellencies Lord Mountbatten, Governor-General of India, and Lady Mountbatten.

MESSAGES

Mr. President: I shall read out certain messages which have been received.

1. Message from the Prime Minister of the United Kingdom.

My colleagues in the United Kingdom Government join with me in sending on this historic day greetings and good wishes to the Government and the people of India. It is our earnest wish that India may go forward in tranquillity and prosperity and in so doing contribute to the peace and prosperity of the world.

2. Message from His Grace the Archbishop of Canterbury.

At this time when India and Pakistan become independent Dominions and take upon themselves the full responsibilities of self-Government, on behalf of the Christian people of this country, I send you my greetings and good wishes. In God's providence apparently insuperable difficulties have so far been overcome and all the travail of past ages has led up to this moment of fulfilment and hope. I pray that the two Dominions may go forward to a noble future ever growing in justice and peace, in brotherhood and prosperity.

3. Message from Generalissimo Chiang Kai-shek, President of the Republic of China.

On this auspicious occasion when the people of India celebrate the Dawn of a new era of freedom, I wish to convey to you and the people of India my warm congratulations on the glorious and monumental achievement in which you and Mahatma Gandhi have played such an eminent and noble part, and which, I am confident, will be a source of inspiration to all peoples striving for independence, equality and progress. Please accept my best wishes for India's bright and promising future of success and greatness.

4. Message from the Prime Minister of Canada.

It affords me much pleasure to extend to you, and through you to the Government and people of India, the most cordial wishes of the Government and people of Canada on the occasion of the establishment of India as a completely self-governing nation.

[Mr. President]

5. Message from the Prime Minister of Australia.

I desire to convey the greetings and good wishes of the Government and people of Australia to the Government and people of India on the historic occasion which is being celebrated on the 15th August.

The Australian people rejoice in your new status as a free and sovereign nation and warmly welcome your fellow membership in the British Commonwealth of Nations.

It is confidently anticipated that your traditions, your ancient culture and the spirit which is animating you in making smooth this period of transition, will ensure the future welfare and greatness of the people of India.

6. Message from the President of the Executive Yuan, Nanking.

On this historic occasion of India's attainment of her long cherished aspiration I take especial pleasure in extending to you and the Indian people my sincere felicitations. The Chinese people are deeply gratified by the rebirth of another great nation on the Asian continent. India and China with a common frontier of 2,000 miles have enjoyed the closest and most friendly relations in the course of many centuries. Our two nations having stood together through the late world war will undoubtedly continue to march forward together toward the common goal of world peace. I send you my warmest wishes for your continued success and for the happiness and prosperity of the Indian people.

7. Message from Dr. Soedarsono on behalf of the Republic of Indonesia.

On the eve of the establishment of the Dominion of India it is a great pleasure to the Republic of Indonesia to express her feelings of heartfelt joy, sympathy and friendship.

The Republic of Indonesia looks upon India as her Comrade who in time of danger and distress has helped her and will always help her. She may—as both their nationalism is based upon humanity—hope that in the very near future still tighter bonds will be welded, bonds of comradeship in the struggle for Justice and Peace and for the Freedom and Prosperity of millions who for so long a time have lived in squalor amidst luxury and wealth.

The people of India since years led by its eminent Leaders undoubtedly is approaching a better and happier future. India will not only become a land of Justice and Prosperity but at the same time a bulwark of and a guard for peace in Asia.

The Government and the People of the Republic of Indonesia send your People, your Government and your Excellency at this great historical moment their deeply felt wishes for Happiness and Prosperity.

8. Message from His Majesty's Minister in Nepal.

My staff join me in offering warmest congratulations on establishment of Dominion of India and send all good wishes for future happiness and prosperity of State and its people.

9. Message from the Prime Minister and Acting Minister of Foreign Affairs, Oslo.

On this Great Day of National Rejoicing for the Peoples of India I have the honour to transmit to you my very best wishes for the prosperity of your country.

ADDRESS OF H.E. THE GOVERNOR-GENERAL

Mr. President: May I invite your Excellency To address the House?

H. E. the Governor-General: Mr. President and members of the Constituent Assembly.

I have a message from His Majesty the King to deliver to you today. This is His Majesty's message:—

“On this historic day when India takes her place as a free and independent Dominion in the British Commonwealth of Nations, I send you all my greetings and heartfelt wishes.

Freedom loving people everywhere will wish to share in your celebrations, for with this transfer of power by consent comes the fulfillment of a great democratic ideal to which the British and Indian peoples alike are firmly dedicated. It is inspiring to think that all this has been achieved by means of peaceful change.

Heavy responsibilities lie ahead of you, but when I consider the statesmanship you have already shown and the great sacrifices you have already made, I am confident that you will be worthy of your destiny.

I pray that the blessings of the Almighty may rest upon you and that your leaders may continue to be guided with wisdom in the tasks before them. May the blessings of friendship, tolerance and peace inspire you in your relations with the nations of the world. Be assured always of my sympathy in all your efforts to promote the prosperity of your people and the general welfare of mankind.”

It is barely six months ago that Mr. Attlee invited me to accept the appointment of last Viceroy. He made it clear that this would be no easy task—since His Majesty's Government in the United Kingdom had decided to transfer power to Indian hands by June 1948. At that time it seemed to many that His Majesty's Government had set a date far too early. How could this tremendous operation be completed in 15 months.

However, I had not been more than a week in India before I realised that this date of June 1948 for the transfer of power was too late rather than too early communal tension and rioting had assumed proportions of which I had had no conception when I left England. It seemed to me that a decision had to be taken at the earliest possible moment unless there was to be risk of a general conflagration throughout the whole sub-continent.

[H.E. the Governor-General]

I entered into discussions with the leaders of all the parties at once and the result was the plan of June 3rd. Its acceptance has been hailed as an example of fine statesmanship throughout the world. The plan was evolved at every stage by a process of open diplomacy with the leaders. Its success is chiefly attributable to them.

I believe that this system of open diplomacy was the only one suited to the situation in which the problems were so complex and the tension so high. I would here pay tribute to the wisdom, tolerance and friendly help of the leaders which have enabled the transfer of power to take place ten and a half months earlier than originally intended.

At the very meeting at which the plan of June 3rd was accepted, the Leaders agreed to discuss a paper which I had laid before them on the administrative consequences of partition; and then and there we set up the machinery which was to carry out one of the greatest administrative operations in history—the partition of a sub-continent of 400 million inhabitants and the transfer of power to two independent governments in less than two and a half months. My reason for hastening these processes was that, once the principle of division had been accepted, it was in the interest of all parties that it should be carried out with the utmost speed. We set a pace faster in fact than many at the time thought possible. To the Ministers and officials who have laboured day and night to produce this astonishing result, the greatest credit is due.

I know well that the rejoicing which the advent of freedom brings is tempered in your hearts by the sadness that it could not come to a united India; and that the pain of division has shorn today's events of some of its joy. In supporting your leaders in the difficult decision which they had to take, you have displayed as much magnanimity and realism as have those patriotic statesmen themselves.

These statesmen have placed me in their debt for ever by their sympathetic understanding of my position. They did not, for example, press their original request that I should be the Chairman of the Arbitral Tribunal. Again they agreed from the outset to release me from any responsibility whatsoever for the partition of the Punjab and Bengal. It was they who selected the personnel of the Boundary Commissions including the Chairman; it was they who drew up the terms of reference, it is they who shoulder the responsibility for implementing the award. You will appreciate that had they not done this, I would have been placed in an impossible position.

Let me now pass to the Indian States. The plan of June 3rd dealt almost exclusively with the 'problem of the transfer of power in British India; and the only reference to the States was a paragraph which recognised that on the transfer of power, all the Indian States—565 of them—would become independent. Here then was another gigantic problem and there was apprehension on all sides. But after the formation of the States Department it was possible for me as Crown Representative to tackle this great question. Thanks to that farsighted statesman Sardar Vallabhbhai Patel, Member in charge of States Department, a scheme produced which appeared to me to be equally in the interests of the

States as of the Dominion of India. The overwhelming majority of States are geographically linked with India, and therefore this Dominion had by far the bigger stake in the solution of this problem. It is a great triumph for the realism and sense of responsibility of the Rulers and the Governments of the States, as well as for the Government of India, that it was possible to produce an Instrument of Accession which was equally acceptable to both sides; and one, moreover, so simple and so straight forward that within less than three weeks practically all the States concerned had signed the Instrument of Accession and the Standstill Agreement. There is thus established a unified political structure covering over 300 million people and the major part of this great sub-continent.

The only State of the first importance that has not yet acceded is the premier State, Hyderabad.

Hyderabad occupies a unique position in view of its size, population and resources, and it has its special problems. The Nizam, while he does not propose to accede to the Dominion of Pakistan, has not up to the present felt able to accede to the Dominion of India. His Exalted Highness has, however, assured me of his wish to co-operate in the three essential subjects of External Affairs, Defence and Communications with that Dominion whose territories surround his State. With the assent of the Government, negotiations will be continued with the Nizam and I am hopeful that we shall reach a solution satisfactory to all.

From today I am your constitutional Governor-General and I would ask you to regard me as one of yourselves, devoted wholly to the furtherance of India's interests. I am honoured that you have endorsed the invitation originally made to me by your leaders to remain as your Governor-General. The only consideration I had in mind in accepting was that I might continue to be of some help to you in difficult days which lie immediately ahead. When discussing the Draft of the India Independence Act your leaders selected the 31st March 1948 as the end of what may be called the interim period. I propose to ask to be released in April. It is not that I fail to appreciate the honour of being invited to stay on in your service, but I feel that as soon as possible India should be at liberty, if you so wish, to have one of her own people as her Governor-General. Until then my wife and I will consider it a privilege to continue to work with and amongst you. No words can express our gratitude for the understanding and co-operation as well as the true sympathy and generosity of spirit which have been shown to us at all times.

I am glad to announce that "my" Government (as I am now constitutionally entitled and most proud to call them) have decided to mark this historic occasion by a generous programme of amnesty. The categories are as wide as could be consistent with the over-riding consideration of public morality and safety, and special account has been taken of political motives. This policy will also govern the release of military prisoners undergoing sentences as a result of trial by courtmartial.

The tasks before you are heavy. The war ended two years ago. In fact, it was, on this very day two years ago that I was with that great friend of India. Mr. Attlee in his Cabinet Room when the news came through that Japan had surrendered. That was a moment for thankfulness and rejoicing, for it marked the end of six bitter years of destruction

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and slaughter. But in India we have achieved something greater—what has been well described as “A treaty of Peace without a War”. Nevertheless, the ravages of the war are still apparent all over the world. India, which played such a valiant part, as I can personally testify from my experience in South-East Asia, has also had to pay her price in the dislocation of her economy and the casualties to her gallant fighting men with whom I was so proud to be associated. Preoccupations with the political problem retarded recovery. It is for you to ensure the happiness and ever-increasing prosperity of the people, to provide against future scarcities of food, cloth and essential commodities and to build up a balanced economy. The solution of these problems requires immediate and wholehearted effort and far-sighted planning, but I feel confident that with your resources in men, material and leadership you will prove equal to the task.

What is happening in India is of far more than purely national interest. The emergence of a stable and prosperous state will be a factor of the greatest international importance for the peace of the world. Its social and economic development, as well as its strategic situation and its wealth of resources, invest with great significance the events that take place here. It is for this reason that not only Great Britain and the sister Dominions but all the great nations of the world will watch with sympathetic expectancy the fortunes of this country and will wish to it all prosperity and success.

At this historic moment, let us not forget all that India owes to Mahatma Gandhi the architect of her freedom through non-violence. We miss his presence here today, and would have known how much he is in our thoughts.

Mr. President, I would like you and our other colleagues of the late-Interim Government to know how deeply I have appreciated your unfailing support and co-operation.

In your first Prime Minister Pandit Jawaharlal Nehru, you have a world-renowned leader of courage and vision. (*Cheers.*) His trust and friendship have helped me beyond measure in my task. Under his able guidance, assisted by the colleagues whom he has selected, and with the loyal Co-operation of the people, India will now attain a position of strength and influence and take her rightful place in the comity of nations. (*Loud and prolonged cheers.*)

Mr. President: *[Your Excellency and members of the Assembly. I request you to communicate to His Majesty the gratitude of this Assembly for the message he has very kindly sent to us today. With the knowledge that we will have his sympathy and kindness in the task that we are going to take in our hands today, we are confident that we will be able to accomplish it in a proper way.]*

[Mr. President then delivered his speech in Hindustani, the full text of which is published in the Hindustani Edition of the Debates.]

[] English translation of Hindustani speech.

ADDITIONAL MESSAGES

Mr. President: I have to announce that a message of greetings and goodwill has also been received from the French Minister of Foreign Affairs. M. Giraud on behalf of the Government of France and on his own behalf. It is regretted that I do not have the text of the message with me, but it will be inscribed in the records of the Assembly along with the other messages which I have read today.

Your Excellency, may I request you to convey to His Majesty a message of loyal greetings from this House and of thanks for the gracious message which he has been good enough to send us? That message will serve as an inspiration in the great work on which we launch today and I have no doubt that we anticipate with great pleasure association with Great Britain of a different kind. I hope and trust that the interest and the sympathy and the kindness which have always inspired His Majesty will continue in favour of India and we shall be worthy of them.

10. Message from the French Minister of Foreign Affairs

From: Mons. Georges Bidault,
Minister for Foreign Affairs,
Paris.

To Pandit Jawaharlal Nehru.

In the name of my Government and in my own I salute the historic date which marks the final accession of India to the ranks of the World's great free nations devoted to the cause of peace and earnestly desirous of the prosperity of all the peoples of the world. I request your Excellency to accept, on this occasion, the renewed assurances of my very high consideration and of my entire devotion to the cause of friendship between our two countries.

11. Message from the President of the United States of America

AMERICAN EMBASSY,
NEW DELHI, INDIA
August, 15, 1947.

YOUR EXCELLENCY,

I have the honour to transmit to you the following message* from the President of the United States.

On this memorable occasion I extend to you, to Prime Minister Jawaharlal Nehru and to the people of the Dominion of India the sincere best wishes of the Government and the people of the United States of America. We welcome India's new and enhanced status in the world community of sovereign independent nations, assure the new Dominion of our continued friendship and goodwill, and reaffirm our confidence that India, dedicated to the cause of peace and to the advancement of all peoples, will take its place at the forefront of the nations of the world in the struggle to fashion a world Society founded in mutual trust and respect. India faces many grave problems, but its resources are vast, and I am confident that its people and leadership are equal to the tasks ahead. In the years to come the people of this great new nation will find

*English translation of Hindustani speech.

[Mr. President]

the United States a constant friend. I earnestly hope that our friendship will in the future, as in the past, continue to be expressed in close and fruitful co-operation in international undertakings and in cordiality in our relations one with the other.

I wish to avail myself of this opportunity of extending my personal congratulations to Your Excellency on your assumption of the post of Governor-General of the Dominion of India and at the same time to convey assurance of my highest consideration.

HENRY T. GRADY.

His Excellency,
Governor-General of the Dominion of India.

Mr. President: Let us in this momentous hour of our history, when we are assuming power for the governance of our country, recall in grateful remembrance the services and sacrifices of all those who laboured and suffered for the achievement of the independence we are attaining today. Let us on this historic occasion pay our homage to the maker of our modern history, Mahatma Gandhi, who has inspired and guided us through all these years of trial and travail and who in spite of the weight of years is still working in his own way to complete what is left yet unaccomplished.

Let us gratefully acknowledge that while our achievement is in no small measure due to our own sufferings, and sacrifices, it is also the result of world forces and events and last though not least it is the consummation and fulfilment of the historic traditions and democratic ideals of the British race whose farsighted leaders and statesmen saw the vision and gave the pledges which are being redeemed today. We are happy to have in our midst as a representative of that race Viscount Mountbatten of Burma and his consort who have worked hard and played such an important part in bringing this about during the closing scenes of this drama. The period of domination by Britain over India ends today and our relationship with Britain is henceforward going to rest on a basis of equality, of mutual goodwill and mutual profit.

It is undoubtedly a day of rejoicing. But there is only one thought which mars and detracts from the fulness of this happy event. India, which was made by God and Nature to be one, which culture and tradition and history of millenniums have made one, is divided today and many there are on the other side of the boundary who would much rather be on this side. To them we send a word of cheer and assurance and ask them not to give way to panic or despair but to live with faith and courage in peace with their neighbours and fulfil the duties of loyal citizenship and thus win their rightful place. We send our greetings to the new Dominion which is being established today there and wish it the best luck in its great work of governing that region and making all its citizens happy and prosperous. We feel assured that they all will be treated fairly and justly without any distinction or discrimination. Let us hope and pray that the day will come when even those who have insisted upon and brought about this division will realise India's essential oneness and we shall be united once again. We must realise however that this can be brought about not by force but by large heartedness and co-operation and by so managing our affairs on this side as to attract those who have parted. It may appear to be a dream but it is no more fantastic a dream than that of those who wanted a division and may well be realised even sooner than we dare hope for today.

More than a day of rejoicing it is a day of dedication for all of us to build the India of our dreams. Let us turn our eyes away from the past and fix our gaze on the future. We have no quarrel with other nations and countries and let us hope no one will pick a quarrel with us. By history and tradition we are a peaceful people and India wants to be at peace with the world. India's Empire outside her own borders has been of a different kind from all other Empires. India's conquests have been the conquests of spirit which did not impose heavy chains of slavery, whether of iron or of gold, on others but tied other lands and other peoples to her with the more enduring ties of golden silk—of culture and civilisation, of religion and knowledge (*gyan*). We shall follow that same tradition and shall have no ambition save that of contributing our little mite to the building of peace and freedom in a war-distracted world by holding aloft the banner under which we have marched to victory and placing in a practical manner in the hands of the world the great weapon of Non-violence which has achieved this unique result. India has a great part to play. There is something in her life and culture which has enabled her to survive the onslaughts of time and today we witness a new birth full of promise, if only we prove ourselves true to our deals.

Let us resolve to create conditions in this country when every individual will be free and provided with the wherewithal to develop and rise to his fullest stature, when poverty and squalor and ignorance and ill-health will have vanished, when the distinction between high and low, between rich and poor, will have disappeared, when religion will not only be professed and preached and practised freely but will have become a cementing force for binding man to man and not serve as a disturbing and disrupting force dividing and separating, when untouchability will have been forgotten like an unpleasant night dream, when exploitation of man by man will have ceased, when facilities and special arrangements will have been provided for the *adimjatis* of India and for all others who are backward, to enable them to catch up to others and when this land will have not only enough food to feed its teeming millions but will once again have become a land flowing with rivers of milk, when men and women will be laughing and working for all they are worth in fields and factories, when every cottage and hamlet will be humming with the sweet music of village handicrafts and maids will be busy with them and singing to their tune—when the sun and the moon will be shining on happy homes and loving faces.

To bring all this about we need all the idealism and sacrifice, all the intelligence and diligence, all the determination and the power of organisation that we can muster. We have many parties and groups with differing ideals and ideologies. They are all trying to convert the country to their own ideologies and to mould the constitution and the administration to suit their own view point. While they have the right to do so, the country and the nation have the right to demand loyalty from them. All must realise that what is needed most today is a great constructive effort—not strife, hard solid work—not argumentation, and let us hope that all will be prepared to make their contribution we want the peasant to grow more food, we want the workers to produce more goods, we want our industrialists to use their intelligence, tact and resourcefulness for the common good. To all we must assure conditions

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of decent and healthy life and opportunities for self-improvement and self-realisation.

Not only have the people to dedicate themselves to this great task that lies ahead but those who have so far been playing the role of rulers and regulators of the lives of our men and women have to assume the role of servants. Our army has won undying glory in distant lands for its bravery and great fighting qualities. Our soldiers, sailors and airmen have to realise that they now form a national army on whom devolves the duty not only of defending the freedom which we have won but also to help in a constructive way in building up a new life. There is no place in the armed forces of our country which is not open to our people, and what is more they are required to take the highest places as soon as they can so that they may take full charge of our defences. Our public servants in various departments of Government have to shed their role as rulers and have to become true servants of the people that their compeens are in all free countries. The people and the Government on their side have to give them their trust and assure them conditions of service in keeping with the lives of the people in whose midst they have to live and serve.

We welcome the Indian States which have acceded to India and to their people we offer our hands of comradeship. To the princes and the rulers of the States we say that we have no designs against them. We trust they will follow the example of the King of England and become Constitutional rulers. They would do well to take as their model the British monarchical system which has stood the shock of two successive world wars when so many other monarchies in Europe have toppled down.

To Indians settled abroad in British Colonies and elsewhere we send our good wishes and assurance of our abiding interest in their welfare. To our minorities we give the assurance that they will receive fair and just treatment and their rights will be respected and protected.

One of the great tasks which we have in hand is to complete the constitution under which not only will freedom and liberty be assured to each and all but which will enable us to achieve and attain and enjoy its fulfilment and its fruits. We must accomplish this task as soon as possible so that we may begin to live and work under a constitution of our own making, of which we may all be proud, and which it may become our pride and privilege to defend and to preserve to the lasting good of our people and for the service of mankind. In framing that constitution we shall naturally draw upon the experience and knowledge of other countries and nations no less than on our own traditions and surroundings and may have at times to disregard the lines drawn by recent history and lay down new boundary lines not only of Provinces but also of distribution of powers and functions. Our ideal is to have a constitution that will enable the people's will to be expressed and enforced and that will not only secure liberty to the individual but also reconcile and make that liberty subservient to the common good.

We have up to now been taking a pledge to achieve freedom and to undergo all sufferings and sacrifices for it. Time has come when we have to take a pledge of another kind. Let no one imagine that the time for work and sacrifice is gone and the time for enjoying the fruits thereof has come. Let us realise that the demand on our enthusiasm

and capacity for unselfish work in the future will be as great as, if not greater than, what it has ever been before. We have, therefore, to dedicate ourselves once again to the great cause that beckons us. The task is great, the times are propitious. Let us pray that we may have the strength, the wisdom and the courage to fulfil it.

HOISTING OF THE NATIONAL FLAG

Mr. President: His Excellency will now give the signal for hoisting the Flag.

(The sound of a gun being fired was heard.)

H. E. The Governor-General: That is the signal for hoisting the flag over this roof.

Mr. President: The House now stands adjourned till 10 of the Clock on the 20th.

Honourable Members: *Mahatma Gandhi ki jai.*
Mahatma Gandhi ki jai.
Pandit Jawaharlal Nehru ki jai.
Lord Mountbatten ki jai.

The Assembly then adjourned till 10 of the Clock on Wednesday, the 20th August 1947.

BLANK

CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 20th August 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The following members presented their credentials and signed their names in the Register.

- (1) The Honourable Srijut Gopinath Bardoloi (Assam: General).
- (2) The Honourable Rev. J. J. M. Nichols-Roy (Assam: General).
- (3) Prof. Nibaran Chandra Laskar (Assam: General).
- (4) Shri A. B. Latthe (Kolhapur State).
- (5) Chaudhri Nihal Singh Taxak (Punjab States Group 3).

Srijut Rohini Kumar Chaudhury (Assam: General): There are members here who were absent on the 14th night and therefore did not take the oath on that day.

Mr. President: We will come to that.

Members will recollect that on the night of the 14th the Assembly passed a resolution requiring that the Members of the Assembly should take the pledge in the prescribed form. Those members who were present that night took the pledge but I take it that there were some absentees that night. Certainly there are some members who have joined the Assembly today. All such members who have not yet taken the pledge may do so now at this stage.

TAKING THE PLEDGE

Mr. President: Those who have not taken the pledge will kindly stand up in their places.

(Those who did not take the pledge before stood up in their seats.)

Mr. President: I will read the pledge and I will ask the Members to repeat the pledge as I read.

(The President then read the pledge in English and in Hindustani and the Members who had not already done so, took the pledge as follows.

“Now that the people of India, through suffering and sacrifice have secured freedom, I, _____, a member of the Constituent Assembly of India, do dedicate myself in all humility to the service of India and her people to the end that this ancient land attain her rightful and honoured place in the world and make her full and willing contribution to the promotion of world peace and the welfare of mankind.”)

INCIDENTS CONNECTED WITH THE FLAG HOISTING CEREMONY
IN CERTAIN PARTS OF INDIA

Mr. R. K. Sidhwa (C. P. & Berar: General): Before we begin with the proceedings of the day, I would like to draw your attention to a very important subject of urgent public importance and that is this. On the Independence day, it has been reported that at the Agra Fort lakhs and lakhs of people had collected to witness the Flag Hoisting Ceremony. It is further reported that at the instance of some British Command a British officer stated that he would not allow any troops to participate in the ceremony if the Union Jack is to be hauled down and the new flag is to be hoisted. All the people were very much disappointed, but one of the Members of the Indian troop hoisted our Indian Union Flag and pacified the audience. I would like to know from the Honourable the Leader of the House as to how far this is correct and if it is correct what steps he intends to take in this very important matter i.e., wherever the National Flag has been insulted by a British officer. I would also cite one more instance. It has also been reported that in the Indian Post Office, in the Hyderabad State our Flag was hoisted and the Hyderabad authorities pulled it down. I would like to know also from the Honourable the Leader of the House as to how far that is correct and if it is correct what steps he intends to take to protect and to preserve our National Flag which was hoisted on the property of the Government of India. Whatever the mighty Independent Nizam's Government may be—what steps is this Central Government going to take in this matter? We cannot tolerate any kind of insult to our National Flag by anybody. I would therefore request you kindly to request the Honourable the Leader of the House to make a statement.

Shri Balkrishna Sharma (United Provinces: General): Sir before you call upon the Leader of the House to explain the conduct of certain of the officials, I would also like to bring to your notice that about three or four days before the actual ceremony was to take place, I brought to the notice of the Honourable Sardar Baldev Singh, the Honourable Pandit Jawaharlal Nehru and the Honourable Sardar Vallabhbhai Patel two orders from two Military officers which were issued in Cawnpore; one was from Col. Hilman who is in charge of the C. O. D. at Cawnpore; and another was from another Military officer in charge of the Technical Branch, in which it was stated definitely that should orders be received to haul down the Union Jack and to replace it by any other flag then no ceremony will take place. Further, it was stated that if the Military personnel are invited by the Civil authorities to participate in any such functions, none of them shall do so and this order was at the instance of the U. P. Area Command. I do not know what that means; perhaps the U. P. Command which governs all the Military movements and the Military forces in the United Provinces. Now the Indian personnel of the C. O. D. and the technical staff approached us, the Congress Committee people in Cawnpore, and they brought to our notice these orders. I requested the Honourable the Prime Minister of India and also the Honourable the Prime Minister of the United Provinces to take note of it. I am further informed by my Honourable friend Shri Krishna Dutt Paliwal that in Agra also no flag was hoisted and only the Indian personnel tried to hoist the flag even in spite of these orders but I do not know whether

they succeeded or not. In Jhansi, Cawnpore and Agra, in all the military stations, at least in my province such orders were issued and I would naturally like to know whether these orders were brought to the notice of the Central Government.

Mr. President: May I point out that we have met here today for the purpose of proceeding with the framing of the Constitution, We are not yet sitting here as the Legislative Assembly of India, where questions like this and many other important questions could properly be raised. So I would request Members to reserve them till the time when we meet as the Legislative Assembly and not to raise them in the Constituent Assembly because here we are concerned only with the framing of the Constitution and not with the actual administration from day to day. Of course, I am not quite clear in my own mind as yet as to the distinction between the Legislative Assembly and the Constituent Assembly and where the line has to be drawn, but this meeting has been convened especially for the purpose of dealing with the constitution making aspect of it and so we are now carrying on that function.

Shri Balkrishna Sharma: While fully bound by your ruling, may I point out that it is the Constituent Assembly of India which has taken over the reins of the Government. It is we as Constituent Assembly who have taken over from the British Government the governance of our country and therefore I think, Sir, that we are entitled to raise such questions from time to time even in the Constituent Assembly, even though we may not be meeting as the Central Legislature of the Union of India.

Mr. President: The Leader of the House was not aware that questions like this would be raised at this stage and so he is not here just at the present moment.

An Honourable Member: He is here.

Mr. President: I am sorry. He was not in his place here. I used to see him in another part of the House. I do not know if he would like to say anything on these matters at this stage.

Seth Govindas (C. P. & Berar: General): *[Mr. President, before the Prime Minister says anything, I would like to bring to your notice an occurrence at Jubbulpore.

Jubbulpore is an important military centre. There was a military parade and the flag was also hoisted over all public buildings and other prominent private ones. The flag was hoisted over military buildings without any celebrations as were made on non-military public buildings. A report was current that orders had been received from the Central Government that the flag should be hoisted over military buildings without any celebrations, pomp or show. There were some offices in the military area where the employees were told that the flags could not be hoisted over their buildings.

In this connection, I would like to know if there were different orders for military and non-military offices or if the orders were the same, and that whatever was done in Jubbulpore was done by the military officers at their own discretion]*

[] English translation of Hindustani speech.

Mr. Hussain Imam (Bihar: Muslim): Mr. President, may I just intervene for a moment. The question that has been raised is of great importance, as to whether this Assembly is functioning only as the Constituent Assembly or also as the legislative authority. Up to the 14th, we were debarred from discussing anything which could be called as Legislative functions. But, since that midnight, having assumed the whole power of governance of India, it is right and proper that some opportunity should be given to the members of this House to move adjournment motions and to discuss matters of urgent public importance. I do not think that we should embark on the full scope of the legislative body, having one hour for questions and the rest for other legislative functions. That would be really taking away too much of the time from constitution making and delaying the work which is in hand. But the right to move an adjournment motion is a very important and fundamental right which is a safeguard for democracy which we must preserve, and very much like to have in these days.. I therefore suggest that the Honourable the President may adopt the rules of the Legislative Assembly regarding adjournment motions so that if and when necessary matters of urgent public importance may be ventilated before this House.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Mr. President, Sir, the point raised by my honourable friends Mr. Sidhwa and Mr. Balkrishna Sharma cannot be lightly brushed aside: I quite appreciate the observations that have fallen from the Chair. It is indeed difficult to say just now whether we are functioning here in a dual capacity 'as members of the Indian Constituent Assembly and also as members of the Parliament of the Indian Dominion. Whatever it may be, the fact remains that while sitting as members of the Indian Constituent Assembly, there are bound to raise questions from time to time which are of such pressing importance and they cannot possibly be deferred for consideration to a time when we will assume the functions of the Dominion Parliament. As a matter of fact, we do not know even now when the time is going to come when we will be functioning as a purely Dominion Parliament and not as the Constituent Assembly. No rules have been framed and we have not been given any indication whether before we finish constitution making we can at all function as the Legislative Assembly or Dominion Parliament. Therefore, so long as we do not know when we shall be able to function as the legislative body, certainly opportunities ought to be afforded to us for ventilation of such important matters as have been brought before the House.

With regard to the merits of the matter, Sir, though it relates to purely executive function, the House will bear in mind that the Flag Hoisting ceremony, the adoption of the Indian National Flag, were made with unanimous approval on the floor of this House, and that the Flag Hoisting ceremony was a public ceremony made under the auspices of the Indian Dominion Government. Therefore the question of infringement or violation of such orders of the Indian Government as reported by my honourable friends Mr. Sidhwa and Mr. Balkrishna Sharma and as reported in the Press is certainly a matter which must be ventilated. Sir, though it may not be possible just now to raise an adjournment motion as, it is definitely barred by the rules of procedure of the Constituent Assembly, certainly some rules may be made or some convention created till the time we function as the legislative body, for the ventilation and discussion of such matters as have been brought before the House. I quite share your feeling, Sir, that we are still hazy and not definite and clear as to the exact line of demarcation, the line that has to be drawn between us as members of the Constituent Assembly and as members of the

Indian Dominion Parliament. But before such time, before that can be done by rules, at least it is necessary to create some convention for this period.

The Honourable the Premier of India may be requested to make a statement and explain the facts and also the nature of the action he contemplates to take. For the time being, if he makes a statement, we would be satisfied. We do not think that a full-fledged adjournment motion need be raised and debated. But, apart from that, we are definitely of opinion that on such an important matter, the honourable the Premier of India should make a statement which would satisfy us. That is all, I have to say on this important point.

Shri Mahavir Tyagi (United Provinces : General): On a point of order, Sir.

Mr. H. V. Kamath (C. P. Berar: General): Sir, will you be so good as to tell us when we shall assemble here purely and solely as the Dominion Legislature?

Shri Mahavir Tyagi: Sir, the point of order which I wish to raise is that we cannot work both as the Constituent Assembly and the Legislature of the country together. It will be very anomalous, Sir, because, in all matters of parliamentary routine, we may have to discuss Government policy and naturally when the Government policy is discussed, a Speaker is needed who is neutral and who is not a member of the Government. In the Constituent Assembly, we do not sit as Government, or officials or non-officials; but we sit all as individuals contributing, their best towards the making of the constitution and you preside over our deliberations. If we begin to discuss censure motions and adjournment motions as my honourable friend on the other side has just suggested, we shall have to sit separately in blocks or parties and so many difficulties will arise. We shall have to vote with our parties, and naturally we shall have to divide ourselves into so many disciplined parties. So, the regular routine will all be upset. My suggestion therefore is, if we have to perform both the functions simultaneously, we cannot do all that on the same day, on one fixed day or in one fixed place. We shall have to divide the time and have a timetable. We shall have to announce that on such and such a day we sit as the Constituent Assembly so that we can sit under your Presidentship and carry on business as we have been doing till now. Similarly if we sit as a Dominion Parliament, we should announce our intention, and sit in party blocks and remain loyal to our parties and support the party motions or oppose the opposite ones, while in this case, it is not necessary for us to support motions proposed by the Ministers or others. My submission, therefore, is that we cannot work in the same House under the same Presidentship both as the Constituent Assembly and also as the Parliament of the country.

Mr. President: Mr. Santhanam.

Pandit Hirday Nath Kunzru (United Provinces: General): Mr. President, an honourable member of this House has raised a point of order.

Shri K. Santhanam (Madras: General): I am speaking on the point of order.

Pandit Hirday Nath Kunzru: I submit that that point must be decided before any member is allowed to speak.

Shri K. Santhanam: I am speaking on the point of order. There are two issues on this point. What is the status of this Assembly? Having defined the status, it has to be determined as to how it should function.

[Shri K. Santhanam]

Now, it is argued that it has got a double status, one as the Constituent Assembly and the other as the legislature. My own view is that it has got only one status. This is the Constituent Assembly. According to the Indian Independence Act, it is stated that the powers of the legislature of the Dominion shall be exercisable in the first instance by the Constituent Assembly of the Dominion. It is this Assembly, one indivisible integral body which has to exercise the powers of the Dominion legislature. Therefore, there is no purpose, there is no meaning in dividing this House into two, consisting of the same members. I think it is illegal to say that this is a Constituent Assembly today and this is a legislature tomorrow. It is one body. For the sake of convenience, we may devote some time to one work and some to the other and we may, if necessary have two sets of rules. I do not think it is legitimate for anyone to raise the point that today this is not a legislature and therefore it cannot raise an issue and tomorrow it is only the legislature and therefore another issue cannot be raised. We must treat it as one body. A Committee may be set up to frame rules of procedure as to how to regulate both these functions. Therefore, I suggest that no premature decision or ruling should be given today as to the status of this body. It should be carefully considered by lawyers and we should not commit ourselves to anything which may lead to all kinds of difficulties.

Mr. Tajamul Husain (Bihar: Muslim): Now, Sir, we are here as members of the Constituent Assembly. No doubt we assumed powers as members of the Union Parliament on 15th August; but we to-day were summoned by you to attend the session of the Constituent Assembly and not of the Union Parliament. We, Sir, are governed here by the Rules of Procedure and Standing Orders which were framed in this House. There is no other rule under which we are governed, and we are bound by these Rules. To-day we are meeting as members of the Constituent Assembly and not as members of Parliament—because if we had been meeting as Parliament, all the members of Indian Government should have been present here to-day—now supposing, Sir, a very urgent and important matter connected with public education is taken up, you would require the presence of the Member in charge of Education, but he cannot be here as he is not a member of the Constituent Assembly. Therefore I submit that though the matter under discussion is undoubtedly very important and some serious action has to be taken by the Honourable the Prime Minister of India, we are absolutely powerless under our Rules to discuss this matter. Therefore my point of order is that we are meeting today as members of the Constituent Assembly and as such we are bound by our own Rules and we cannot discuss the matter which has been raised.

Shri R. V. Dhulekar (United Provinces: General): *[Mr. President, I do not agree with the point of order that has been raised. Since August 15, this Constituent Assembly has assumed full powers. It has no longer a dual aspect. Before August 15, this body was a Constituent Assembly and at that time, it could be said that it had no power of legislation or of making changes in the country's administrative functions. Since August 15, it has assumed full powers of administration including the power of framing the Constitution and we can perform those functions while sitting here at one place.

[] English translation of Hindustani speech.

Another question has been raised and it is that on August 15, it was said that the next session of the Constituent Assembly would begin on the 20th. I would like to add that all powers have been vested in the Constituent Assembly. There is nothing outside it when we are in session, we can do anything and at any time. It is a different thing that for our convenience we may hold discussions on constitution from ten to one. After that, from three to five we may discuss administrative matters. We have full authority for both and legally there is nothing to prevent us from doing so. I think that the persons who say that there are legal restrictions in our way, go against the law. They should study the Act of Independence and should know that the administration is in our hands. We can also adjourn and leave Delhi for the present and may be reached later after a month or two to function as a legislature. Therefore, the point of order that has been moved is not right. There is only one comprehensive aspect of this Assembly and it includes framing of the constitution as well as the carrying on of the administration.]*

Shri T. Prakasam (Madras : General): Sir, it is wrong to say that the status of this Sovereign body of the Constituent Assembly is one and indivisible. After 15th August this body became the Sovereign Body not only in regard to the framing of the Constitution but also with regard to doing the work necessary as the Sovereign Legislature. Now, Sir, I have got a certain matter to be placed before the Sovereign Legislature which is closely connected with the framing of the Constitution. According to me until those matters are settled in the Legislature, this constitution-making also cannot be proceeded with. Therefore this House must have a dual capacity and whenever it is necessary, this House can convert itself into a Sovereign Legislature to consider one or two important questions without wasting time relating to framing the Constitution itself and then again converting itself into a Constituent Assembly for framing the Constitution. That is the correct position and the constitutional position. Therefore it should not be considered as having an exclusive status, indivisible, and it should not continue framing the Constitution without caring for the other matters that may come here.

Mr. President: I think we have had enough discussion on this point. There are two questions which have actually been raised, one with regard to the status of the Assembly as it is today and the other regarding the incidents which have taken place on the 14th/15th. I would now ask the Leader of the House to make any statement which he wishes to make on both the points or any of the points.

The Honourable Pandit Jawaharlal Nehru (United Provinces : General): Mr. President, Sir, I am not quite sure which of these two questions I am supposed to take first. I am suffering under a disadvantage. I have been trying to follow what has been said in this House very closely; but roughly speaking I have heard about one-fourth of what has been said. I do not know whether the acoustics of this hall has changed or owing to our experiences of the last few days our voices have changed or something has happened. It is either a roar or whisper. I found it difficult to follow either the roar or the whisper.

If I may deal with the constitutional point that has been raised more or less as a layman than as an expert, it seems to me perfectly clear that this House is obviously a Sovereign body and can do just what it likes, admitting that the House does only things which it has itself decided to do. It can change its own decisions. It can change its own Rules

*[English translation of Hindustani Speech.

[The Honourable Pandit Jawaharlal Nehru].

but so long as the rules subsist, it follows its own rules. If it wants, it can change them. Therefore there is no doubt that this House has the right to carry on as a Legislative Assembly if it wants to from tomorrow or any time it likes but before doing so, it should come to that decision and frame its rules accordingly. I would therefore submit that the proper course for us to take is for the President to appoint a small committee which can report to us in two or three days time as to what rules we should have for this interim period. There is an obvious difficulty in our functioning as the Legislative Assembly as we are. For instance, questions may be asked and members of Government in charge of those portfolios will have to answer. Well Sir, you are yourself a Member of Government and if a question is asked in regard to the Department of Food or Agriculture, is the President supposed to reply or who is supposed to reply.

A difficulty arises. A number of Ministers are not members of this House. They may, I think, even under the existing rules attend the House and speak without voting, but all these things will have to be gone into and clarified before we can really function as a Legislative Assembly. There is no doubt that we can make any rules we like. We can ask the Ministers to come and function as members of the House if we so choose. Therefore I beg to suggest that the President do appoint a Committee to report to us, say, within 3 days as to how we should function during this intervening period. We are meeting now obviously as the Constituent Assembly, though we can meet otherwise also. It is clear that if this Constituent Assembly as such had no work to do, supposing we had finished our preliminary work of laying down the principles of the Union Constitution a fortnight or three weeks ago, we would not be meeting today. We would have met on the 14th night and 15th morning for that particular purpose and adjourned till September or October for the next session of the Constituent Assembly. We are meeting, therefore, because we had not finished our work a fortnight ago and we want to complete it in the next week or whatever time it may take, so that the real detailed Constitution may complete and then we may meet sometime in October, possibly, finally to pass that Constitution; so that at the present moment rather casually treating this as a Legislative Assembly will lead us into all manner of difficulties, but if the House so chooses *i.e.*, in regard to information being supplied by Members of Government or anything else, naturally the Members of Government will be happy to supply it. The point is that everything should be done in a methodical way. So I submit, Sir, that the best course would be for you to appoint a Committee to report in two or three days as to what procedure we should follow and if necessary we can change our rules to that end.

Now, in regard to the questions put by some of the members, some of them I could not follow at all. Seth Govind Das said something and except for the fact that he said something about Jubbulpore, I did not at all follow what happened in Jubbulpore. I tried to follow him, but I am sorry, due probably to my own hearing I could not. So also another Member whom I could not easily follow. But briefly, I would say this, that obviously the Government in common with the House attaches the very greatest importance to the fact that the national flag should be honoured and that any dishonour to the flag anywhere must be enquired into and necessary steps taken. Two or three instances that were brought to notice regarding something that happened at Agra Fort are being enquired into. I believe the U. P. Government

Shri Balkrishna Sharma: May I know if the Hon'ble the Leader of the House received my telegrams about these very incidents?

The Honourable Pandit Jawaharlal Nehru: I cannot say off-hand, because I have received 7,000 telegrams in the last four or five days and it is a little difficult immediately to say whether I received the particular telegrams. It is physically impossible for an individual or for a group of individuals to analyse them or even to read them quickly. We are doing it with all possible speed.

Now, we are enquiring from the U. P. Government regarding those incidents and I am sure our Defence Department is also enquiring and we shall take necessary steps.

As regards Jubbulpore, I know nothing. I shall be very happy if Seth Govind Das will supply me with the facts separately and we shall enquire into the matter and take the necessary steps.

An Honourable Member: What about Hyderabad?

The Honourable Pandit Jawaharlal Nehru: About Hyderabad I understand that our States Department immediately enquired into this and the Hyderabad Government categorically denied any insult to the National Flag and they said that they had allowed it to be flown everywhere and certainly to their knowledge any such thing did not take place.

Mr. President: I think the question about the status and functioning of the Assembly is an important one and we have to take into consideration the rules which we have framed for the conduct of our business here as also the adaptations of the Government of India Act which have been made and the Independence Act. Taking all these things into consideration, we have to find out whether we can function either compartmentally in two compartments or we should function as one body. These are questions which require consideration and I think the suggestion which has been made by the Leader of the House that a small Sub-Committee should be appointed for the purpose of going into them and for making suggestions in regard to the rules which would guide us, is a suggestion which should be acceptable to the House and I would like to know if the House would like to have that done.

Honourable Members: Yes.

Mr. President: Since the House agrees, I shall announce the names of the members of the Sub-Committee in the course of the day and we shall ask the Committee to make a report as soon as possible.

Now, we shall proceed with our function as Constituent Assembly for which we have met this morning. I shall ask Mr. Gopaldaswami Ayyangar to move his Resolution.

Shri Biswanath Das (Orissa: General): Arising out of this statement made by the Leader of the House, I rise to say just one thing, namely, regarding the terms of reference of the Committee which he has suggested. He was good enough to suggest that the reference to the Committee should be confined to matters of procedure. I feel that there are certain other questions which should also be referred to the Sub-Committee, namely, we have in this Constituent Assembly representatives of Moghalbandi (Provinces) as also of the States. Therefore, representative of both these function side by side. Now, Sir, if only the question of

[Shri Biswanath Das].

procedure is to be referred to this Committee, there are certain difficulties regarding the functioning of the States representatives as also their voting. I will just, illustrate this point. For instance, we have to pass the Budget. So far as is known, the States have only conceded three subjects; I don't know if more subjects have been conceded to the Federation. If that is so, it is welcome, but as far as newspaper information goes,—we have had nothing from our leaders—they have conceded only three subjects. In regard to legislation relating to other subjects have the a right to discuss and vote? Now what is going to be the position of the States representatives in regard to other subjects which are beyond the scope of these three subjects?

In these circumstances, I would suggest to you and also to the Honourable Leader of the House to expand the reference—the terms of reference of this committee, so that the committee could put forward recommendations not only regarding procedure but also regarding the functions and other allied matters so that we may have the whole picture before us.

Mr. President: I will keep that in mind in stating the terms reference of this committee.

Mr. H. V. Kamath: Sir, permit me to refer to a minor point. I would like to draw your attention to the fact that copies of neither your address on the 14th night nor the Governor General's on the 15th morning, nor of your reply thereto, were placed on the Members' tables, and they have not been supplied to us even to this day. Will you please take action in this matter?

Mr. President: Now, I think we shall proceed with the Report of the Union Powers Committee.

Shri Santanu Kumar Das (Orissa: General): Sir, May I know through you and from the Leader of the House what steps have been taken by the Pakistan Government against those who have insulted the National Flag there in Pakistan.

Mr. President: We shall now proceed with the Agenda. I think if there are any other questions, they may be considered at the proper time. Shri Gopaldaswami Ayyangar.

REPORT OF THE UNION POWERS COMMITTEE—*contd.*

Mr. N. Gopaldaswami Ayyangar (Madras: General): Sir, I beg to move—

That it be resolved that the Constituent Assembly do proceed to take into, consideration the Second Report* on the scope of Union Powers submitted by the Committee appointed in pursuance of the resolution of the Assembly of the 25th January, 1947.

Sir, copies of this Report have already been circulated to Hon'ble Members; but, in placing this Report before the House, I would like to say a few words, first as to how this Report has come to be presented to the House.

*Appendix A.

The House will remember that as long ago as the 25th January, 1947, this Committee was brought into being by a motion moved by Mr. Rajagopalachari whom we are all proud to find now as the Governor of one of the most important provinces of this Dominion. Well, in that resolution—

Maulana Hasrat Mohani (United Provinces: Moslem): Sir, on a point of order, I have given notice of an amendment that this Report may not be taken up for consideration.

Mr. President: Let the Resolution be moved first.

Mr. N. Gopaldaswami Ayyangar: Sir, at the time this Resolution was adopted, what we were attempting to do was to implement the scheme in the Cabinet Mission Plan. That Plan, as the House will remember, provided for a federation of Provinces and States and the assignment of a certain limited number of subjects, broadly described, to the Federation and for various other details as regards both the substance and the procedure which the leaders of the two great parties in the country had already accepted. Now, one of the important matters that had to be tackled by this House in connection with that plan was the scope of the subjects that were assigned to the Centre in that Plan. Those subjects were very broadly described, as I said. They consisted of Defence External Affairs and Communications, and the finance necessary for these subjects. Well, one of the items in that Plan which had been accepted was that constitutions had to be framed both for the Provinces and the Centre, the Federation, as also for any Groups, if the decision of the House was in favour of setting up such Groups. The constitutions for the provinces Groups were proposed to be made in the Sections into which this Assembly was to be divided after its preliminary meeting. Before the work of framing those constitutions was taken up it was considered necessary that some indication should be given as to the orbit,—if I may use the word—of the jurisdiction of the Centre, that is to say, the subjects which would be within the sphere of the Federation, so that the remaining subjects might be catered for in the Constitutions of the Provinces or of the Provinces and Groups, if Groups came to be decided on. It was for the purpose of implementing this object that it was decided that we should first undertake an investigation of the individual subjects which would fall within these four broad categories, and for that purpose we appointed a Committee to make this investigation and submit a report to the House. That Committee met, and on the 17th of April, I think, it made a report. That Report was presented to the House by me on the 28th April. In presenting it, I said I was not placing before the House any motion for the consideration of the Report because the conditions at that time were so fluid that we would only have wasted a considerable amount of the time of this House in considering that Report which was bound to become out-of-date within a few weeks. As a matter of fact, a very fateful political decision was impending at that time and we did not know what the nature of that decision was going to be, whether India was going to remain united or whether it was going to be divided and if so, what other details would have to be filled in. In those circumstances, I suggested that the House need not consider that first Report of this Committee at that time. I also pointed out that it would be necessary for the Committee to meet again and review the recommendations it had embodied in its first report in the light of political decisions that might be taken very soon after. As the House is aware, that decision was taken on the 3rd June and that decision started being implemented from almost that date; since then we have had the Indian Independence Act enacted by Parliament. Well, Sir, that Act has given us two Dominions in what was India, before the 15th of August.

[Mr. N. Gopaldaswami Ayyangar]

We are now a Dominion. We have walked into independence. I deliberately say 'walked into independence' because I do not think we went and seized it. It was there. We walked in and said we had taken our power, and we have now in working order a Constitution which is, if I may say so, a combination of the provisions of the Indian Independence Act and the provisions of the Government of India Act, 1935, as adapted under the provisions of the Indian Independence Act.

Sir, that is the present state of things. The Union Powers Committee met again after the 28th of April at a time when even the Indian Independence Bill had not been introduced in Parliament. We knew of course that such a Bill was going to be introduced, but we were not quite sure at the time we settled our second report what the provisions of that Act would finally look like. Well, we did make that report. We have since had this Independence Act. What we have now is a Dominion and a Dominion if I may describe it—possibly it has been described so in the adaptations of the Government of India Act—I am not sure of it because we are yet to be supplied with copies of the *Gazette Extraordinary* which is supposed to have been issued on the 14th night or the 15th morning: but I take it, Sir, that that adaptation describes this Dominion as a Union comprising those Provinces of what was British India as have not seconded into the new Dominion of Pakistan. It comprises also those Indian States which have acceded to the Dominion. When I said Provinces, I should have referred to two kinds of provinces that we have in this country, namely, the Governors Provinces and the Chief Commissioners, Provinces. In addition to that, there may be other areas which may be included in the Dominion. Thus we have really a Federal Union now in this country, and that Federal Union will have to be administered in accordance with the provisions of the Indian Independence Act and the Government of India Act as modified. Now, Sir, we, in this report of the Union Powers Committee, have nothing to do with the Federal Union which now exists. What we are attempting to establish is a Federation in the future, and, in considering what that Federation should be, we have got to take note of the essentials that any Federal Constitution has to provide for, and one of the essential principles of a Federal Constitution is that it must provide for a method of dividing sovereign powers so that the Government at the Centre and the Governments in the Units are each within a defined sphere, co-ordinate and independent. Perhaps I may quote for the information of the House the definition in orthodox terms of what a Federation should be as visualized by thinkers on political science, by people who have engaged themselves in the framing of Federal constitutions. Here, for instance, is a description which I take from the Report of the Royal Commission on the Australian Constitution in 1929. For this definition the person responsible was Sir Robert Garran, a name very well known in the history of Federal Constitutions. He describes Federation as "a form of government in which sovereignty or political power is divided between the central and local governments so that each of them, within its own sphere, is independent of the other". I call this, Sir, an orthodox definition because, if we look round the world and look at the Federal constitutions that are actually in being, I am almost sure that not one of them will be found to conform rigidly to the actual terms of this definition. The line between the Centre and the Units is not so definitely fixed as this definition would assume. There are relations between the Centre and the Units. There are cases where the Units have to depend upon the Centre. There are controlling powers vested in the Federation in emergencies, when the Federation could override the jurisdiction of the Units and take over

things into its own hands: so that this absolute independence of functioning, which is contemplated in the definition, has not been realised in practice. But there is one fact which stands out in the history of Federations, and that is this: it is necessary for us to demarcate the sphere within which the Centre on the one hand and the Units on the other could exercise sovereign powers, and that is really at the back of all the attempts that have been made in the various Federations to demarcate the subjects which should be assigned to the Centre and the subjects which should be assigned to the Units or retained by the Units, or retained by the Units, according to the view that is taken as to where residuary power should finally be lodged.

Now, Sir, with regard to our country, we are confronted with problems which have not confronted other Federations in history. We have decided to bring into a Federation areas which were under British sovereignty before the 15th of August, as also areas which were in theory independent but which were under the suzerainty of the British Crown. Now, to bring these two areas under one Federation confronts us with problems which the framers of Federal Constitutions elsewhere have not had to tackle; and there is this further fact. Provinces have to be provided for under a scheme of government which is not monarchical. Indian States have to come into the Federation and to remain there under a monarchical form of government. But I am one of those who think that the substance of democratic government is not affected by a difference such as the one I have referred to, whether it is a monarchical form of government or it is a republican form of government.

What we are all wedded to in this House, so far as I can gauge the opinion of this House, is a Government which is responsible to the Legislature. That responsible government you can achieve under a monarchical system, as well as under a republican system. That being so, in essence, we can easily get over the superficial difficulties that are posed by the existence of these two systems in the two areas of this country and develop a Federal Constitution which would bring about a harmonious co-ordination of governmental activities in these two sets of areas.

Well Sir, in framing our Constitution we have kept this constantly in view. On this Committee connected with Union Powers we have kept the same principle constantly in view.

Now let me draw the attention of the House to one or two more peculiarities in the work that we are called upon to do. There is a certain amount of recognition which has been accorded to the principle of our making a difference between what were British Indian Provinces in the past and the Indian States, as regards the quantum of jurisdiction which we shall assign to the Centre. It has been taken as conceded that the States have to cede jurisdiction, have to accede to the Federation; and while it is recognised that that accession should at least be in respect of a certain minimum number of subjects, accession with regard to the other Federal subjects has to be with their consent. I am glad to be able to say that the accredited Constitutional Advisers in Indian States have generally recognised, and also I think the representatives of the people of the Indian States have generally recognised the wisdom of agreeing, if possible, to a wider range of subjects to be assigned to the Centre than the subjects which could come within the four corners of

[Mr. N. Gopaldaswami Ayyangar]

Defence, External Affairs and Communications. But the only thing I would appeal to the House to do is to carry our persuasion of these Advisers to the point of their recognising that there is nothing in the Constitution that we shall be framing which could act as a discouragement to their implementing what I know they would be only too glad to implement if they were satisfied on the point I have mentioned.

Now, Sir, the fact that we have to make this distinction between the quantum of jurisdiction that is assigned to the Centre by the States on the one hand and to what were British Indian Provinces on the other, has materially affected the nature of the Report that this Committee has decided to present to this House. You will notice that there are three lists of subjects attached to the report and they are described as the Federal List, the Provincial List and the Concurrent List. The Federal List is the only one with which the States are immediately concerned.

Now, there is another point of distinction to which I should draw attention. When we were merely trying to implement the Cabinet Mission Plan, we accepted the proposal of the Cabinet Mission that subjects not assigned to the Centre would be deemed to be assigned to the Provinces, and, in the case of the States, the language used was "Subjects not ceded by the States to the Federation would be retained by them". Now, in substance, it more or less amounted to the same thing, *viz.*, having listed out Federal subjects, what remained, *viz.*, the residuary subjects, would be with the Provinces in the one case and with the States in the other.

Now, Sir, When this Committee met after its first report had been presented, we were relieved of the shackles which we had imposed on ourselves on account of the acceptance of the Cabinet Mission Plan and the Committee came to the conclusion that we should make the Centre in this country as strong as possible consistent with leaving a fairly wide range of subjects to the Provinces in which they would have the utmost freedom to order things as they liked. In accordance with this view, a decision was taken that we should make three exhaustive Lists, one of the Federal subjects, another of the Provincial subjects and the third of the Concurrent subjects and that, if there was any residue left at all, if in the future any subject cropped up which could not be accommodated in one of these three Lists, then that subject should be deemed to remain with the Centre so far as the Provinces are concerned.

This decision, however, is not one which the Committee has applied to the States. You will find a reference to this in the Report. What is said there is that these residuary subjects will remain with the States unless the States are willing to cede them to the Centre. Well, I do not know if those who represent the States in this House will take any decision of the kind which perhaps the Committee hoped for when it said so; but we have got to take things as they are.

There is another matter which it is important that we should recognise. Residuary subjects in the case of provinces are subjects which are not accommodated in any of the three long Lists that we have appended to the Report. Residuary subjects in the case of the States would really mean all subjects which are not included in the Federal List. I want to draw attention to this, because I know my Hon'ble friend Dr. Ambedkar would rather see that the States accede also on certain items which are included in the Concurrent List, if not the whole of that

list. There is a school of opinion in favour, of that. But, as things stand now, the report stands today, all the subjects included in the Provincial List, all the subjects included in the Concurrent List, and whatever subjects may not be included in the federal list are with the States. That is a distinction which I think it is necessary for the House to remember in considering this report. Sir, so far as this report is concerned, there is one matter to which I should like to draw attention if only for the purpose of avoiding possible apprehensions as to whether certain things are included in it or excluded from it. The first report gave a list of subjects under each of these four heads. It also made certain recommendations as regards the inclusion of certain other provisions in the Constitution which may not be included in the lists themselves, for instance the last sentence of paragraph 2 (a) of the first report which referred to our making some provision so far as defence matters were concerned similar to the provisions contained in sections 102 and 106 (a) of the Government of India Act. Then, Sir, there is the penultimate sub-paragraph of para 2 (d) in which in defence to the wishes of the representatives of States, it was decided by the Committee that the States should have a certain amount of time within which they could re-order their financial systems in such a way that they could be brought up to the standard of the rest of India and that provision is there and the second report does not cancel it.

Then, Sir, the second report itself draws attention to certain other matters, specific matters.....

Mr. H. V. Kamath: Mr. President, I submit that the loud speaker system is not behaving as well as it used to till the 15th.

Mr. President: It has caught the infection of being independent, we are going to have it checked up and put right.

Mr. N. Gopaldaswami Ayyangar: Sir, what I wish to say is that though the motion is that the second report of this Committee be taken into consideration, I think, the House is entitled to take into consideration also those portions of the first report which are not in conflict with what is said in the second one. Sir, with regard to these lists themselves, any person who superficially glances through these lists might probably get the impression that they are too long, particularly the federal list which consist of 87 items. People have run away with the impression that this Committee has stolen a number of items from the provincial and concurrent lists and put them in the federal list and made it unduly long. I think if honourable members would scrutinise these lists and compare them with the lists in the Act of 1935 it would be difficult for them to find—perhaps with one or two stray exceptions any cases where we have encroached upon the sphere assigned to the provinces by that Act. There is also one other point that I wish to make so far as the federal list is concerned. We have cut up a number of items in the federal list into separate items and that is one reason why the number has increased so much. In other cases we have adopted certain items from other constitutions which we did not find in the Government of India Act, but none of are in the opinion of the Committee of such a character that they should necessarily go either in the provincial or concurrent list.

There is another matter in this connection to which perhaps, I may refer. One of the headaches of the Indian Independence Act, I mean the headaches caused in this country by the Indian Independence Act,

[Mr. N. Gopalaswami Ayyangar]

was the manner in which practically it encouraged the cutting of the political connection between the Government of India and the Governments of the Indian States. If that Act, or rather if that Bill had become law in the form in which it was originally framed, perhaps the disconnection would "have been complete, but certain steps were taken in order to introduce into that Bill provisions which were intended to avert that calamity. But even so what was put into the Act as enacted by Parliament, was not half of what was demanded from here with the full support of the statesman who is now the Governor-General of the Dominion. What we got was only a partial recognition of the point of view that was urged from here, and that only tried to maintain certain economic connections that exist between the Centre and the Indian States. It left the continuance of the political connection very much in the air. In fact, legally speaking it cut off that connection, unless some steps were taken to revise that connection by some means or other, and I may here say that happily for this country, this revival of the connection has been brought about, and the result is that today we are in the Dominion of India under the Indian Independence Act in a much better position as regards this political connection than we were under the Act of 1935.

The overwhelming body of States coming within the geographical boundaries of the Indian Dominion have acceded to the Dominion. They have accepted the position that the Dominion can make laws in respect of the subjects on which they have acceded, a state of things which did not exist before the 15th of August. They have, most of them, I believe, sent representatives to the Constituent Assembly and this Constituent Assembly is going to function also as the Legislature of our Dominion, so that the political and the constitutional connection that exists today between the States and the Centre is much closer than it ever was during the last 150 years. I only say political and constitutional connection. I do not refer to the effectiveness of the control that was exercised over Indian States in the past. That may have been perhaps a little more efficient than may be possible under the existing state of things, but what I wish to draw particular attention to is that we have erected an organic political and constitutional structure which has commenced to function from the 15th of August. The credit for this, I think, should primarily go to the great awakening of public opinion in the States. It should next go, I think, to the well considered policy of inviting the accession of Indian States to the Dominion which was announced by Sardar Vallabhbhai Patel who presides over the States Department today. But above all I should say that the actual accession of practically the overwhelming bulk of Indian States, the credit for that should go to the statesmanship and the genius for what he himself has called open diplomacy with which Lord Mountbatten has roped them in. I say this advisedly, because I think that but for the energy and the consummate skill which he has employed in this matter, we might not have reached the result which we are so happy to see today.

Now, Sir, I was mentioning this in order to point out that there are some rather hazy opinions as to what this accession means. It is said that the States have acceded only on three subjects. It is true there are three subjects, described in very broad terms but the actual Instrument of Accession which they have signed has detailed the items which come under each of these three heads and you will find that they really come to somewhere about 18 or 20. If we cut them up as in the

list attached to the Union Powers Committee's Report, the number will probably be larger. The reason why I point out this particular fact is that representatives of States who are in this House are very substantially interested in the business which has got to be transacted here whether it is by way of constitution making or it is by way of legislation or control over central administration. They are vitally interested in this matter and I should like all of them to feel that there is absolutely no distinction between them and other representatives of India who are in this House. Now, Sir, having said that, I should finally refer to these three lists themselves the first question I dare say which will exercise the minds of many Honourable Members here would be whether after all, this kind of distinction as regards the lodgement of the residuary powers should continue. There are two ways of removing that distinction. One is perhaps to go back to the Cabinet Mission Plan—in view of the fact that we have exhaustively described the subjects in the three lists—and lodge the residuary powers in the case of the Provinces also in those Provinces. The second proposition is one which the States might consider. Very eminent statesmen connected with the administration of Indian States have contended that what they wanted was a strong Centre and that if the Centre was made strong their hesitations about coming into the Constituent Assembly and participating in its labour would disappear. Well, if that view is concurred in by their colleagues here as also by the peoples' representatives from the Indian States, it is quite up to them to consider the alternative of modifying the report of this Committee and agreeing to the lodgement of residuary powers in the Centre itself. Well, Sir, that will be one of the things which this House will have very seriously to consider. The report of the Committee is, I must emphasize however in favour of residuary powers being with the States in the case of the States and with the Centre in the case of the Provinces. Sir, I do not wish to take up more of the time of the House. I move.

Maulana Hasrat Mohani: *[Mr. President. Before this, a mistake was committed by Sardar Patel, and I think, now, my friend Sir N. Gopalaswami is committing a greater blunder. He is an eminent jurist. But I would beg you to consider as to what course you are adopting now. At that time I asked Sardar Patel that he had not till then decided any principle about the centre nor had it been decided as to what type of Constitution the Union would have, whether it would be a Union of the dominion, or a republic? If it is a republic then would it be socialist or nationalist? In short, you have not decided as to what shall be its shape. You have simply said that all the powers shall vest in the Centre, and the Centre shall probably assume all Powers. I say that there cannot be any greater blunder than this. It means that you consider that all the members here are fools. That is why I have raised this objection after full consideration. Replying to it, Pandit Nehru said that in the Resolution on objectives the word 'republic' was present. Then I kept quiet but I wish to know what you are dreaming of now. Pandit Nehru should know that our British Imperialist friends have already bound you, and they will now keep you in their dominion and for that they have created a new device. And in creating it France, Holland, England, America and the last in the queue, Chiang-Kai-Shek—the worst of men—have combined together. It is this: They have invented a sort of a Republican Dominion. They are

[] Portions of this speech were made in English and portions in Hindustani.

[Maulana Hasrat Mohani]

thrusting this Republican Dominion on Indonesia. Holland is thrusting this Republican Dominion on Indonesia. France is thrusting this Republic Dominion on Indo-China, Viet-Nam. You have been made fools. They are going to thrust the same kind of Republican Indian Dominion on you and I am sure that you will have no escape from it. You will have to remain a dominion forever. They are pastmasters in the art of jugglery of words and double dealing. They say one thing and mean quite another thing. Our Governor-General, Lord Mountbatten, has said that we have compelled all the Indian States to join the Indian Union. This appears a fine performance, that we have brought all the Indian States under our thumb. I say that you have not brought them under your control, rather you have gone under their control. You will naturally ask, how? It is like this: when you frame a Union Constitution, then what will happen? Your reply will be that till now it is only Indian dominion. No doubt you have got it and also along with that the right of changing the constitution. Now you have to think as to how the constitution shall be altered. Nothing can be passed unless three-fourths of the members agree to it. Those States, which shall now always be in the dominion, are almost one-third of the Union's strength. I ask you whether the representatives of the States, who have acceded to the Union, will also agree to change the Indian dominion into Socialist Republic? If that is so, you are deceiving yourselves. You are deceiving your own conscience if you think that you can get out of this wretched Dominion Status. You have got one-third of your members belonging to the States and you have proposed that for changing the constitution, you will require a majority of three-fourths of the members of the Constituent Assembly. Don't you see that it will become impossible for you to change your constitution. You have condemned yourself to remain within the British Empire, in the British Commonwealth as a Dominion. Therefore, I say you have been made fools. I do not know how these friends of mine of the Congress High Command who are my friends and co-workers, have come to accept this, Besides this Pandit Nehru has said that the Resolution on objectives has been passed and now no one has got the right to say anything. I say that what he calls republic is not a real republic. It is that contemptible thing which the British Imperialists call by other names. Britishers have created the same thing in Indonesia. It is not hidden from anyone and therefore you should not commit the mistake, which Indonesians have committed.]*

Mr. M.S. Aney (Deccan States) : On a point of order, Sir, can a member make a bi-lingual speech?

Mr. President: I suppose that it is for the convenience of other members that he is interpreting himself partly in the English language.

Maulana Hasrat Mohani: *[Thank you Sir. In this connection, I think it necessary to point out to you that the independence, which you have got, was already, christened as Dominion Status but they openly call it as an independent status. They never meant full independence. Who will be bigger fools than us, who knowing that we are being cheated, are celebrating our independence and are illuminating our houses? I can't understand this! As I am not given to oppose

[] Portions of this speech were made in Hindustani and portions in English.

the opinion of the majority, I kept quiet then, but now, I say that real independence has not come to us. I have got eminent jurists and wisemen as my friends here but it seems that the vision of all is befogged and they seem to be in a dream. I was saying that members of the Congress High Command are my friends and have been my co-workers. I came here to this Constituent Assembly through the Muslim League, generally for the purpose of cooperating with my old friends. But now I find that they do not want my co-operation and they are rejecting my co-operation. There is no alternative left for me but to oppose them tooth and nail, and I oppose them on the ground that I have just explained that they have been made fools by these British Imperialists.

Another proof of the fact that you have been befooled is that even such an enemy of Indian freedom as Mr. Churchill is, went out of his way and congratulated the Labour Government for having this thing passed. He said. "I do not mind whether this is only for a short time. It is quite sufficient for me that they have accepted for the time being to remain a Dominion." Mr. Churchill is clever enough you know that. I am very sorry and it is very surprising that people of such keen intellect as my friend Mr. Rajagopalachari, Dr. Radhakrishnan and Dr. Ambedkar do not see this trick and this deception.

You have stated that you have agreed to take in these Indian States and you have taken one-third of your members from the States. You are going to make a provision that to change your constitution, to change from a Dominion to a socialist Republic you will require a majority of three-fourths. This is obviously impossible. So long as these representatives of the States are part of your Assembly of your Parliament, you cannot get out of this wretched thing—Dominion and commonwealth. I wish to know, what has happened to you? I could understand your demand for a strong Centre till Pakistan was not separated you apprehended trouble from the Muslim majority provinces, but not now when Pakistan has been separated.]*

Mr. Mohammad Sharif (Mysore State) : May I request you to ask the gentleman to come to the point?

Maulana Hasrat Mohani: *[Yes, I am speaking what objections I had to offer to Pandit Jawaharlal Nehru's previous Union Constitution Scheme the same objection applies to this scheme also because these are identical. I maintain that the more natural and better thing would be to hand over all powers to the units, and then they may give all or these three subjects, viz. Defence, Foreign Affairs and Communications to the Centre, rather than handing over all powers to the Centre first which in its turn would delegate whatever powers it chooses to the unit. I don't believe in any Empire, Kingdom, Dominions or Commonwealth. We have had enough of these things. Now we will have none of them neither Emperor nor dictator nor Commonwealth nor Dominion. We will have our Union only of Socialist Republics, nothing less than that.

[] Portions of this speech were made in English and portions in Hindustani.

[Maulana Hasrat Mohani]

This is my general objection, but since you have included the States also, my objection becomes ten times stronger. What powers have you given to our provinces? To my mind, you have curtailed their rights and powers which they had got even before independence. You have not increased them even by an iota. Rather you have curtailed them. But this depends on your sweet will as you have got the majority. It is but natural that all the members here are compelled to be bound by the Congress decisions. In fact, there should be no question of the Congress Party or the Muslim League Party as you have forsaken communalism. Justice demands that every member here should be told that they can live as members of political parties and not as Hindus & Muslims.

What is the necessity for your having a strong Centre vesting all powers in the Centre only? What is the ground and what is your objective?

Sir, you see I have said all this as you have given no powers to the provinces, and I point out this to you, for, you treat us as if all of us were fools.

Therefore I ask my friend Mr. Gopaldaswami Ayyangar not to befool himself by saying that you want a strong Centre. I don't recognize that Centre. The only Centre that I will recognize will be that of our Union of Socialist Republics.]*

Mr. Tajamul Husain: I would like to know whether the Maulana wants a weak Centre or a strong Centre.

Mr. President: *[Maulana Sahib, you are at liberty to have your say on the motion you are moving *i.e.*, whether this resolution should be taken into consideration or not.]*

Maulana Hasrat Mohani: *[I say you could have entertained this suspicion till Pakistan had not been separated.]*

Mr. President: Order, order. Maulana, you are really straying beyond the scope of the discussion. You have moved a Resolution that the consideration of the Report be adjourned. Now, you are going into the merits of the Report itself apart from that, you have brought in many other matters which have no relevance to your Resolution.

Maulana Hasrat Mohani: †[I would like to say that you have roped in the States with the bait that they would continue to exercise all powers of the Centre as before, except Defence, Foreign Affairs and Communications. I strongly object to this. He (Mr. Gopaldaswami Ayyangar) thinks he is the only clever lawyer and every body else is a fool.]†

Mr. President: Order, order. Maulana, I think you had better confine yourself to your own motion.

Maulana Hasrat Mohani: †[If this right has been given to them (the States) then at least similar or more rights should be given to the Provinces otherwise this is all a fraud. Hence, unless you clarify the whole thing, it is all nonsense and needs no consideration.]†

†Portions of this speech were made in English and the rest in Hindustani.

*[]*English translation of Hindustani speech.

Mr. President: The effect of the proposition which is now before the House is that the consideration of the report which has been moved by Mr. Gopaldaswami Ayyangar be adjourned until a particular time which is mentioned in it. Members are now free to express themselves on that. I would ask members not to go into the merits of the Report itself at this stage because it is only a question of postponing the consideration of the Report.

Shri Balkrishna Sharma: For my own information, Sir, I would like to know whether it is possible for any member to speak for or against a particular motion unless he tries to bring out the salient features of the Report and to say that in view of our not having completed the Union Constitution we should not proceed with it. That is my difficulty.

Mr. President: I think it is possible for members to confine themselves to the motion before the House. If they want to bring any ancillary points from the Report for arguing their case, I would not object to that, but I would not like the merits of the Report to be discussed at this stage.

Diwan Chaman Lall (East Punjab : General) : On a point of order, Sir. The motion before us is the one by Mr. Gopaldaswami Ayyangar that the report be taken into consideration, to which an amendment has been moved by the Maulana. Are we to confine ourselves to the terms of the amendment or are we going to discuss the original motion by Mr. Gopaldaswami Ayyangar?

Mr. President: I am taking only the amendment into consideration at the present moment, so that, when the amendment has been disposed of, we can go into the Resolution. If we go into the merits now, the discussion may get desultory; therefore I want to concentrate on the amendment for adjourning the discussion.

Shri Mahavir Tyagi: On a point of order, Sir.

Mr. President: Point of Order on what ?

Shri Mahavir Tyagi: On the amendment which has been moved by Maulana Hasrat Mohani.

Mr. President: I have already given my ruling on that. The question under discussion is a motion of adjournment.

Shri Mahavir Tyagi: But, Sir, I rise to ask for your ruling on this question, namely that I feel that this amendment itself is out of order.

Mr. President: How ?

Shri Mahavir Tyagi: It is simply a negation of the original question before the House. Therefore, I submit that this amendment is out of order.

Mr. President : I don't think it is out of order, because it is a motion for adjourning the discussion of the original motion.

Mr. Himmat Singh K. Maheshwari (Sikkim and Cooch Behar : Group) Sir, I support the amendment, though for reasons somewhat different from those adduced by the revered Maulana Hasrat Mohani, but before I

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proceed to express my views, I would like to share with the House a Persian couplet which has come to my mind as a result of hearing the speech of the venerable Maulana. The couplet runs as follows:—

With your permission, Sir, I shall translate this couplet.

“My beloved speaks Turkish. (In this case Hindustani interspersed with English, not Hindi interspersed with Urdu). It would be a good thing if his tongue had been within mine.”

I only plead guilty to being unable to speak the brilliant Turkish which he spoke.

Coming to the subject, the Report of July 1947 which is before the House is in my opinion, already out of date for two reasons. The first reason is that the Indian Independence Act was passed after the Report had been drawn up, and the second reason is that towards the end of July certain decisions were taken by the Government of India and the States which led to the accession of a large number of States and to the execution by them of Instruments of Accession and Standstill Agreements. The Report before the House, Sir, does not take into account fully the changes that have been brought about since it was first written. Even as regards the subjects to be dealt with in the Federal Legislative List, an obvious difference has to be observed between the Provinces and the States. The States have acceded in respect of three subjects only, while, as I understand it, the Provinces are willing to surrender to the Centre a number of other subjects for not only laying down the law or regulating the policy, but also for administration. The expenditure of the Centre on the three subjects in respect of which the Indian State acceded to the Dominion or are likely to accede to the Federation in the future, will cost, let us say, a certain amount. In addition the Centre will have to spend a large sum of money on other subjects for the benefit of the provinces alone. Therefore, Sir, the determination of the items of taxation which should be imposed in order to enable the Centre to meet its expenditure is a little premature. The States obviously are not to be made to pay for the expenditure on subjects in respect of which they do not get any benefit.

Shri Jaspal Roy Kapoor (United Provinces : General): Sir, I understand the Honourable Speaker is a member of the Union Powers Committee and as such is it open to him to object to the consideration of the Report of the Committee of which he is a member?

Mr. Himmat Singh K. Maheshwari: I am afraid I was not a member of that Committee.

Shri Jaspal Roy Kapoor: I am sorry.

Mr. Himmat Singh K. Maheshwari: The desire of this House, Sir, to create a strong Centre is a very legitimate desire; but I fear it is sometimes forgotten that a strong Centre does not necessarily mean a weak Province or a weak State. In any case the States have enjoyed a much larger measure of autonomy in the past than the Provinces have and this distinction will, I am afraid, have to be maintained whether we like it or

not. In para 3 of the Second Report now before us, it is stated that the application to States in general, of the Federal List of subjects in so far as it goes beyond the 16th May Statement may....

Mr. N. Gopalaswami Ayyangar: May I rise to a point of order? I thought you decided, Sir, that the present discussion should be confined to the adjournment motion.

Mr. Himmat Singh K. Maheshwari: I am only drawing the attention of the House to a very small point. The application to the States in general of the Federal List of subjects in so far as it goes beyond the 16th May Statement should be with their consent. It follows from this that in their case, the residuary powers would vest with them unless they consent to their vesting them with the Centre. In the Federal Legislative List before us, List I in the Appendix, there are included a number of items which do not strictly follow from the three subjects in respect of which the States intend accede. The more logical course then, Sir, would be to split up the Federal Legislative List into two lists.

Mr. N. Gopalaswami Ayyangar: Are we going into the merits Sir?

Mr. Himmat Singh K. Maheshwari: I am only stating the points, which will justify postponing consideration of the Report.

Mr. A. P. Pattani (Western India States): Sir, the constitution cannot be drawn up unless these powers are first decided upon. The motion asks that these powers may be considered after the constitution has been drawn up. I submit the constitution cannot be drawn up unless these powers are decided upon.

Mr. Himmat Singh K. Maheshwari: Since the Federal Legislative List is likely to undergo a drastic revision and overhauling into two sections, one applicable to the Union and the other applicable to the Provinces only, it would be only proper for this House to agree to a postponement of the consideration of this Report.

I venture to suggest, also Sir, that in order that the Report may be considered afresh in the context of the vital changes that have taken place during the last four weeks, a wider committee may be appointed by you, by the President, with a larger proportion of States, Representatives with a view to re-examine the Report and to submit a further report within as brief a time as possible.

We have at present one further difficulty in considering this Report. There is the original report of April 1947, and there is also the second Report of July 1947. Some portions of the April Report will hold good and some other portions will not. Members will find it very difficult to pick out the exact sentences which hold good in either Report. A comparison of the items given in the April and July Reports and those in the Federal Legislative List given in the Government of India Act, 1935, cost me six hours. I think, Sir, that the House will be handicapped very greatly in considering the Report at this stage.

With these few words I hope that the House will instead of attempting to rush through this important piece of work, agree to give more thought and more time so that the work we do may be of lasting benefit to the Provinces and the States.

Shri Gopikrishna Vijayavargiya (Gwalior State) : *[Mr. President under the prevalent conditions, we cannot afford to leave these matters undecided. The amendment of Maulana Hasrat Mohani which suggests postponement of these matters is improper. I think and I feel that the situation in the country is changing so fast that the work of constitution making should be concluded as soon as possible and we should take up the work of administration and planning and solve the problems of the people. The arguments advanced by Maulana Sahib are baseless. It is a surprising coincidence that the Maulana and a Prime Minister of an Indian State both demand postponement of the consideration of the Union Power Committee's Report on the ground that we need socialist republic. Both advance the same argument for its postponement. This is not the correct way to bring about socialism. The Socialist party can function even under this constitution. We desire to make our country United and great. For this, it is no argument that the Centre should be given no power and all power should vest with the provinces. So far as, I can follow the speech of Maulana Sahib, his contention is that no power should be given to the Centre and India should continue in fragments. It is necessary that India should be strong. Historically India has been divided for ages but at present it is imperatively necessary that we should have a strong Centre.

I come from a State and I insist that the Centre must be very strong. would appeal to the rulers, to their ministers and to the States representatives who are present here, that they all should make the Centre, very strong by conceding to it the maximum power so that India may become a very strong country. Therefore, the arguments advanced here or the postponement of the Report are wrong and postponement would be harmful to the country. We cannot afford delay. As Mr. Pattani has just now said, we cannot even outline the constitution unless the questions relating to the Union Powers are decided. Therefore, it is very necessary that we should proceed to take into consideration the matters relating to the Union Powers and not postpone them.]*

Mr. Naziruddin Ahmed (West Bengal : Muslim) : Sir, I desire to support this motion of adjournment but not to the extent proposed in the amendment itself or on the grounds on which it is supported. I wish to place before this House certain difficulties which confront Members who want to tackle the problem; and on that ground as well as on other grounds, I should ask the House to consider the suggestion that committee be appointed—with regard to the personnel of which I have nothing to say—to consolidate the two Reports, one dated the 28th April and the other which is under consideration, and then submit before the House a fresh Report, taking into account certain momentous constitutional changes which have taken place after the second report.

I do not desire to follow the alternate expressions of the learned Mover in Urdu and English, which seem to me akin to alternate currents in electricity. It has put some members to great disadvantage and certainly put some strain on the reporters, some of whom are experts in taking down only English speeches and others only Urdu speeches.

Sir, I submit that the report of the 28th April is entirely out of date but yet the Honourable Mover Mr. Ayyangar has said that those parts

[] English translation of Hindustani speech.

of the report which are not inconsistent with the report under consideration may also be considered. On behalf of the members who have been elected on the statement of June 3rd, I should say that the first report is not before us and the second report is also by the time largely out of date—as has been pointed out—on the ground that the Independence of India Act has come into being after its publication. A fresh report is thus clearly called for.

Then again another difficulty has crept in. We knew from newspaper reports that the States acceded with regard to three subjects—defence, external affairs and communications. But Mr. Ayyangar has pointed out that the actual Instruments of Accession really deal with subject under no less than 18 or 20 distinct heads.

Mr. Mahomed Sherrif: *[Mr. President, I listened attentively to the speech of Maulana Hasrat Mohani. He has adduced many reasons for the postponement of the resolution. I appreciate the sentiments which compelled Maulana Sahib to make his speech. Though I do not fully agree with the Socialist Republic about which he has spoken, to my mind the motion for the postponement of the resolution is indeed a good one. A perusal of the three lists attached to this report, pertaining to the Union Powers reveals that the Centre is to wield all powers as regards the States. You know that about a fortnight ago, the Viceroy had issued a statement saying that so far as the relations between the States and the Constituent Assembly are concerned, he does not want to interfere in the internal affairs of the States. But a perusal of the Union Powers' Committee's report makes painful reading; because the Centre, in addition to the three subjects mentioned above, wants to wield other powers as well. Our central Congress Party which is a very strong party, has announced that it would not like to interfere in the internal administration of a State; but the report before us is not so reassuring as it ought to have been. In this connection I want to state that the consideration of the report should be postponed for the time being. This has also been demanded by the Previous speaker. A Committee including the representatives of the States should be formed and this report should be presented before it for its consideration, and the decision reached by, should be placed before us for our reconsideration.]*

Mr. Naziruddin Ahmed: We are not, I believe, aware of the existence of any such documents I think that copies of those important documents should be supplied to us at once. It is very important in view of the fact that some subjects in the lists will deal with the States. In the absence of these important documents, we are not in a position to decide as to how far the Lists are applicable to the States.

Then again, it has been pointed out by a speaker this morning that a distinction should be drawn between the Lists applicable to the Provinces and those relating to the States. As the two are jumbled together, it is difficult to distinguish them and try to find out what amendments should be suggested.

There are also other difficulties. The Honourable Mover of the original motion has explained. I submit respectfully, in a very lucid speech, the whole subject in a masterly way. But the subject itself is extremely

[] English translation of Hindustani speech.

[Mr. Naziruddin Ahmed]

technical and involved. It therefore requires very careful consideration by the Members to enable them to fully appreciate the implications of the various lists and the subject under consideration. For all these reasons, I should submit that the consideration be postponed, not till Doomsday as has been suggested, but for sometime. I should suggest that the Honourable Mover of the original motion should agree to the appointment of a small committee to sit and consider the whole thing in the light of the changes and give us a consolidated Report making clear the distinction between the Lists applicable to the Provinces, to the States and to the Centre. I think this is a reasonable request. It is not meant to delay matters. We are as anxious to expedite matters as others and so I think that things should be facilitated by adopting the course which I suggest. With these few words I submit that a little time should be given to us and a more comprehensive Report should be made to enable us to easily follow the subject.

Mr. President: Diwan Chaman Lal will now speak.

Shri Algu Rai Shastri (United Provinces: General) : *[Mr. President, This amendment should be put to vote now. Much time has been devoted to it and no further discussion is necessary.]*

Mr. President: I have already called upon Diwan Chaman Lal to speak. After his speech I will apply the closure.

Diwan Chaman Lal: Sir, as I listened to the debate I was surprised to find that very able and intelligent leaders of our country were obviously under some; misapprehension in regard to the Motion that has been moved by Shri N. Gopaldaswami Ayyangar, It struck me that they have perhaps not even read the Report before moving the motion for adjournment of consideration.

The main proposition before the House is this; The Report has been presented to this house in two parts, one in the month of April and the other, in August, one, in other words, before the announcement of 3rd June and the other after that announcement. It has been moved that the two parts of this Report be taken into consideration.

Now, Maulana Hasrat Mohani raised the point that it should not be taken into consideration unless and until the final report of the Union Constitution Committee has been placed before the House. You must realise—it is a matter of pure and simple commonsense—that the final report of the Union Constitution Committee cannot be presented to this House unless you tell those concerned what powers the Union Constitution is going to have and unless and until you allocate the powers between the Provinces and the Centre and so on. Unless and until you are sure of your own ground as to what powers you are going to have and what powers the provinces are going to have and what the subjects in the Concurrent List are going to be you cannot present any final report. Therefore I submit that there is a logical fault in the very arguments used by Maulana Hasrat Mohani.

The other speaker who supported the motion for the adjournment of consideration of the Report is I believe a representative of the State of Cooch Behar. He is the Dewan of that State. He is a statesman who

[] English translation of Hindustani speech.

is supposed to have the destinies of the people of that State in his hand. He raised the extraordinary objection: You have given us one report; you have given us a second report. We are unable to understand the two reports. Therefore if a third report is given to us that would help us to understand the first two reports. (*Laughter*). I do submit that the proposition of Shri Gopaldaswami Ayyangar is a simple one. This House has agreed to have some sort of Federation and all that Shri Gopaldaswami Ayyangar asks us to decide is what powers this Federation is to have. You have the right at this stage to discuss the quality and the quantity of the powers you want. You can point out, as some have pointed out, that the Federal authority of the Union should be confined to the three subjects enumerated. The first report gives you details of the three subjects enumerated. The first report gives you details of the three subjects, the powers that will vest with the Centre, the Provinces, etc. The report goes on to say that, in their opinion, there are certain residuary powers which may also be handed over to the Union and that there are certain other powers, which did not arise under the terms of the May, 16 Plan, which may be taken possession of by the Centre. That is what the first report says. There is no ambiguity about it. The details also have been given.

The second report came after the statement of June 3 when the House decided that the Centre should be strong. This deals with the allocation of powers between the Centre and the Provinces and the three Lists are before us, the Federal List, the Provincial List, and the Concurrent List. Now, is there anything in these Lists to which anybody objects? This is the time for raising such objections, If you do not want certain powers to be allocated to the Centre by the States or by the Provinces this is the time to discuss the matter. I cannot see either reason or logic behind the demand for the postponement of this issue, I submit that this is merely a dilatory motion which cannot be supported by any reasonable argument. We should proceed to the discussion of the various subjects dealt with in the Report.

Mr. President: Closure has been moved. I will put the closure motion to the House. The Question is:

“That the question be now put.”

The motion was adopted.

Mr. N. Gopaldaswami Ayyangar: I owe the courtesy to the House to make a reply to the debate that, has taken place on this motion for adjournment. Otherwise I should have thought any elaborate reply, from me was unnecessary. I only wish to say that the speech made by Dewan Chaman Lal is a complete answer to the arguments advanced in favour of the motion for adjournment. I adopt the points that Dewan Chaman Lal made and I wish to say nothing more. I request you, Sir, to put this motion to the vote.

Mr. President: I will now put the motion for adjournment moved by Maulana Hasrat Mohani to the vote. It runs thus:

“That the Report of the Union Powers Committee be not taken into consideration before the revised and final report of the Union Constitution as well as of the modified Objectives Resolution, as suggested by Pandit Jawaharlal Nehru himself, are considered in the next Session of the Constituent Assembly.”

The motion was negatived.

Mr. President : Now, we shall take up the amendments of which I have received notice. The first amendment is by Mr. D. P. Khaitan No. 1 in List II.

Shri D. P. Khaitan (West Bengal: General) : Mr. President, Sir, in as much as in the motion moved by Shri Gopaldaswami Ayyangar only the second report was mentioned, I gave notice of an amendment.

Mr. Tajamul Husain: I rise on a point of order. The original motion moved by Mr. Gopaldaswami Ayyangar has not been debated. We have only discussed the motion for adjournment and it is lost. Now, we should take up the original motion.

Mr. President: In discussing the original motion, these amendments arise. Now, this is an amendment to the original motion moved by Mr. Gopaldaswami Ayyangar.

Mr. N. Gopaldaswami Ayyangar: Perhaps, it would be correct Parliamentary procedure to put the motion to take the report into consideration, to the vote, and, after that is carried, the amendments may be taken up one by one. I think the Honourable Member is correct.

Mr. President: Then I will Put the original motion that the report be taken into consideration to the vote. Does any member wish to speak on that motion?

Mr. Hussain Imam: Mr. President, I believe that we are taking a very important decision on this most important subject. It is necessary therefore, that we should consider calmly and quietly all the implications of this report. I am, Sir, speaking not on behalf of the Muslim League Party but as a citizen of India. I think that it is necessary that the approach of this Constituent Assembly should be different from that of Mr. Gopaldaswami Ayyangar. I feel that those who are rich should not be allowed to get richer and those who are poor should not be reduced to further poverty. I mean that those of us who have the good fortune or the bad fortune to live in Indian States, where they have no voice in the administration of the State where they have no say in the Legislative matters, should not be left worse off than they were formerly. The position today is that in what was formerly British India, you have legislatures, democracy and popular representatives to administer them. In the States you have none of these three. Yet in paragraph 3 it is stated that the Indian States will be subject to control only in so far as they care to cede to the Centre. Now, who are these people who will make this decision. The Rulers of the States have been given autonomy to rule as they like. I have great respect for some of our modern States. There are a few States which are administered better than British India, who in matters of social justice and social equality can give a lead to British India. There are certain States which are comparable in size to the smaller provinces and the Chief Commissioners' areas, but the majority of the five hundred odd States are called States because of the courtesy and pleasure of the Political Department of the old Government of India. In the first-place, Sir, I want that these rights and privileges which are being given to Indian States should not be handed over to the 562 States. At the most there are two dozen or three dozen States which can economically speaking have even a semblance of provincial autonomy. Provincial autonomy we should give to some of the States but the vast majority of the State that exist in India must either join up with other States and form themselves into

units or they must be linked up with British India. It is wrong on our part to allow these autocratic Rulers to exercise more power than what the Bombay legislature can do or the C.P. Ministry can do. These are representatives of the people. Yet they cannot exercise those powers which are exercised by these autocratic Rulers of the States.

The Central Government has to defray the expenses for the defence of the country. What contribution are the Indian States going to make towards defence costs either on a per capita basis or an income basis? They say that the provinces are making no contribution. But these provinces pay federal taxes which the States want to realise for themselves. The rights of the Indian States to impose federal taxes must be taken away. This is my first and fundamental difference with this report. No one other than the Federal authority should impose federal taxes, whether it is British or Indian States. I would not except from, this sweeping remark even the most modern State of India, but I would concede this far that. I am prepared to allow the Indian States the same amount of powers which you have given under list II to the province. No excess over that should be allowed to any Indian State. The concurrent list should also apply equally to old British India and the Indian States both. British India does not exist today but we are inheriting all the evils thereof. The evils that were brought about by giving wide powers to nonentities should not be sanctified by the approval of this House. We shall have to amend para. 3 so as to bring under its scope the over-riding authority of the Centre to impose federal taxes on all Units.

I may also mention, Sir, one important factor in this connection. Stress has been laid in the Instrument of Accession that so far it goes beyond the Statement of May 16th, it should be with the consent of the States. The May 16th Statement is scrapped. It no longer exists. It was one of the points why there was the break-up, why the June 3rd Statement was made. For every other purpose you have scrapped the May 16th Statement; for the purpose of the Indian States alone you are keeping it alive. Groups have been scrapped, the division of the Central powers into Central and group has been scrapped. The number of units have been scrapped. Everything has been scrapped and as a Sovereign Body we are not bound by the 16th May Statement. It is wrong to take shelter behind the plea that the 16th May Statement provided this and that whatever you had provided has been erased by the functions of the midnight of the 14th. Now you have got no drawbacks. Even the Independence Act which has been passed by the British House of Commons is now before us and we can amend it. That right has been given to you. So, I claim, Sir, that it is wrong to take shelter behind the 16th May Statement. If the States are not prepared to come in, I think, then it is better that they should remain out and by economic pressures and other strong persuasive measures which the Central Government can apply we can bring them round. But what do we want them to do? We do not want in any way to usurp their powers. We want to make them what they really are units of a Federation. We have never heard of units exercising different powers, functions and taxation. It is something which will be quite approaching to the principles of democracy as well and it is as such that I do request my friends of the Constituent Assembly to consider this matter calmly and come to a decision not actuated by any malice or by any ill-will toward the Indian States. We must do it frankly and honestly and let the Indian States also be honest. Why should they claim a right which my friend Pandit Shukla does not claim for this C.P.? If he is content with that power why should Rewa and other States lying in the C. P. claim a higher right? It is only equity and justice. It means that there should be uniformity in these

[Mr. Hussain Imam]

two respects. The Indian States must not have any more power than the units either in taxation or legislation.

Mr. President : It seems there is no other speaker willing to speak. So I shall put the motion to vote. It is really five minutes to one.

An Honourable Member: Closure.

Another Honourable Member: No, Sir, it will be very unfair.

Mr. President: One speaker has spoken about it. Is it the wish of the House that there should be further discussion?

Many Honourable Members: Yes, Sir.

Mr. President: Any one who wishes to speak may do so for five minutes. There are still five minutes left.

Shri K. Santhanam: Mr. President, I do not want to go into any details of the distribution of powers as presented to us by the Union Powers Committee. I will have my own say on each item when it comes up for discussion, but there are certain general considerations which we have to keep in mind when we come to the discussions of these items. It is a great pity that our politics have been subject to violent oscillations during the last six months with the result that the minds of our own leaders also have had to go from one extreme to the other. In the Cabinet Mission Plan the idea was that the Units should be absolutely autonomous and even sovereign, and that they should surrender a small modicum of power to the Centre. Of course, there was the complication of the Group Constitution, and the whole thing was left vague but so far as the Central Government was concerned it was to have very limited powers. And some of our leaders were put on a Committee to define those powers and they tried their best to stretch these powers to their maximum. I doubt, if the Cabinet Mission's Scheme had come into operation, whether that stretching would have stood any real scrutiny. But the position was suddenly altered by the June 3rd plan and the resulting Independence Act. Now the position is we have got almost a unitary Centre which is trying to hand over certain powers to the Provinces and the whole plan of the Union Powers Committee is based on that procedure. They have tried to take the Government of India Act as their basis and considered what items can be transferred from the Provincial List to the concurrent list and Provincial list to the Federal list. I am afraid they have made a wrong approach to this problem. I too am anxious to have a strong Government for this country but my conception of strength of Centre is rather different from that embodied in the Union Powers Committee Report. I do not want that the Central Government should be made responsible for everything. The initial responsibility for the well-being of the people of the provinces should rest with the Provincial Governments. It is only in strictly all-India matters that the Central Government should have responsibility and should come into play. Therefore, the strength of a Centre consists not only in adequate powers in all-India subjects but freedom from responsibility for those subjects which are not germane to all-India but which really should be in the Provincial field. It is in this positive as well as negative delimitation of powers that a real federal system rests and I think the federal powers as defined by the Committee report err on the wrong side. It tries to burden the Centre with all kinds of powers which it ought not to have. Take for instance, 'vagrancy'. I cannot understand why 'vagrancy' has been taken away from the Provincial list and put in the concurrent list. Do you want all India to be bothered about, vagrants? There is almost an obsession that by adding all kinds of powers, to the Centre, we can make it strong. There

is another subject, Sir, called "economic planning" which is put in the concurrent list. Now, I know that planning is the most important preoccupation of the Central and Provincial Governments and that we must make some attempt to co-ordinate Central and Provincial policy, but is this the proper way to make it concurrent, so that the Centre can assume any power and can prevent any unit from planning in its own way even in the field of Provincial subjects, even in agriculture? Even in the matter of dairies, the Centre can pass a bill and take powers to itself in its own discretion. I say this should have been dealt with as a separate part of the Union Constitution, as to what powers of planning the Union Government should have and what powers of planning the Provincial Government should have and how these powers should be coordinated by consultation and consent, and not by simply saying that we have this all important Planning as one of the items in the concurrent list.

Then, take the financial distribution. They have put all taxation except land revenue and one or two other diminishing items, like excise on intoxicating liquors, in the federal list. The report says that some provision for assignment should be made. But unless together with the items, method of allocating the shares of the proceeds is given, the provinces will be beggars at the door of the Centre. I do not want any constitution in which the Unit has to the Centre and say "I cannot educate my people; I cannot give sanitation; give me a dole for the improvement of roads, for industries, for primary education." Let us rather wipe out the federal system and let us have a Unitary system. Today our financial position is that, even if you give all the powers of taxation to the Centre, the Centre will not have enough money. Even if you give all powers of taxation to the provinces, the provinces will not have enough funds. Because even the single item of primary education requires, according to the Sargent Committee Report all the finances of the Centre and the Provinces put together. Similarly, if you take Public Health, according to the Bhoré Committee Report, it requires 300 crores which is the total of the provincial and central taxation. If you take Defence, how much money can we not spend on a single item as Navy or Air Force or the Army? Today, we have not got enough money for any one of these items. We must therefore make an equitable distribution, by statute and not be left to an evasive machinery to be determined in the future. Let us start with an equitable distribution of the existing finances as they are, and then try develop the resources. If this distribution of powers is adopted without further scrutiny, without further careful adjustment, in three years' time, all the provinces will revolt against the Centre and the Central Ministry will be in a most unenviable position. We must frame a constitution in which the Centre can say, "This is not my business, you have an elected Governor on the adult franchise, you have your ministers, go to them. We have given them elastic sources of revenue". What is happening in the United States? Both the Centre and the States can levy all kinds of tax. They can levy Income Tax. There is nothing to prevent them except the popular will. There, the Ministers or the Governor can go to the people and say, "we have got powers of taxation; pay the taxes, and we will give you entertainments, circuses, and whatever you want." Instead of that, here, they will have to say, "we shall give you entertainment; let the Centre give us money." That will be an unenviable position; that will be a weak position for the Centre. I should like to warn the leaders who are piloting this report to be careful and not to add all kinds of subjects to the Centre.

[Shri K. Santhanam]

Take the case of industries. Now, Defence Industries is one central item. Another item is, any industries which the Federal Legislature may declare to be a federal industry. In the provincial list, is included any other industry which the federal legislature has not taken unto itself, either under this item or under the defence item, or under the preparation for defence. What will the provinces do? They will say, that it comes under preparation for defence or defence industries or any other industry which has been declared by the federal law to be federal industries, and that they have no responsibility to develop industries. They will say, "go to the Centre". Is this the way that we want to do things? No, Sir. If you want to say coal, steel and such industries will be allotted to the Centre and the other industries like cottage industries, medium industries and food industries, will be allotted to the provinces, that will be acceptable.

Always comes the argument, "after all, who are in the Centre? They are your representatives. Why do you expect them to do anything which you do not like". I think this is often a mistake. As a member of the Central Legislature, I have always wanted more money for the Centre. If you put me in the provincial legislature, I would want more money for the provinces. The spirit of the corporation is something irresistible. It overpowers us and overcomes us. Therefore, we should see that the Centre is not allowed to infringe in the region or power of the unit and that the unit is not allowed to infringe upon the power of the Centre. It is only by making things precise and clear, by making things determinable by courts of law that you can preserve the federal system intact. All progress will be blocked by putting all kinds of industries in the hands of the Centre, defence industries, and industries which may be declared federal by federal law.

At the time of passing the Government of India Act of 1935 and in the 1921 Act, the Parliament always said, "we have given special powers and powers of discretion, but we do not think they will ever be called into operation". But have we known any single power which was not exercised and exercised to the utmost extent? Section 93 was considered to be an extreme section. No body will suspend the constitution, it was said in the Parliament. But on the very first day, on a mere technical ground, the Governor simply signed an order, and took the Government into his own hands.

Mr. N. Gopaldaswami Ayyangar: May I ask the honourable member whether any large industries have been taken over by the Centre in the last few years?

Shri K. Santhanam: In the last few years, the Central Government has been in a State of paralysis. The Policy Committee Reports recommended the taking over of all and sundry industries into Central Control. Legislation could not be introduced. This state of paralysis was responsible for any industries not being taken over by the Centre. I say, unless some such paralysis comes over the New Government. I shall be surprised if it does not take over many industries. One may say textiles of Bombay may be taken over and it will be taken over. Another will say, milk is adulterated and let us take the dairies. There is no limit to the power. Even in the United States, the Federal Government is going on taking more and more power.

Therefore, I say, Sir, let us be careful; let us not give all the power to the Centre. Let the Units also have some work, some responsibilities and some resources. Unless we do this, our constitution will not be on sure foundations. The whole thing will break down. This is the warning which I wish to utter here.

Mr. President: There will be further discussion tomorrow about this.

ANNOUNCEMENT *re.* PERSONNEL OF COMMITTEE TO CONSIDER
THE INDEPENDENCE ACT, ADAPTATION RULES, ETC.

Mr. President: There will be further discussion tomorrow about this.

Before we adjourn, I desire to make an announcement. A committee consisting of Mr. Mavalankar, Mr. Hussain Imam, Shri Purushottamdas Tandon, Dr. Ambedkar, Mr. Alladi Krishnaswami Ayyar, Mr. Gopaldaswami Ayyangar and Mr. B. L. Mitter is appointed to consider the Indian Independence Act, the adaptations of the Government of India Act, 1935, the Rules and Standing Orders of the Legislative Assembly, the Rules and Standing Orders in force in the Constituent Assembly, etc. and report on the following matters:—

(1) What are the precise functions of the Constituent Assembly under the Indian Independence Act?

(2) Is it possible to distinguish between the business of the Constituent Assembly as a constitution-making body and its other business and can the Constituent Assembly set apart certain days or periods solely for the former?

(3) Should the members representing the Indian States in the Constituent Assembly be given the right to take part in proceedings which do not relate to constitution-making or to the subjects in respect of which they have acceded?

(4) What new Rules or Standing orders, if any, and what amendments if any in the existing Rules or Standing Orders should be made by the Constituent Assembly or its Presidents?

I think this covers the points which were discussed in the earlier part of the day. I am appointing this Committee and expect the Committee will give us their Report very soon.

Dr. P. S. Deshmukh: Sir, there is one point which I would like to suggest, and that is the examination of the permissibility or otherwise of the same members being a member of two legislatures. Hereafter, we are going to be.....

Mr. President: I think that this is covered by the Adaptations.

The House stands adjourned till 10 A.M. tomorrow.

The Assembly then adjourned till Ten of the clock on Thursday, the 21st August 1947.

CONFIDENTIAL*APPENDIX 'A'*

No. CA/23/Com./47

CONSTITUENT ASSEMBLY OF INDIA**REPORT OF THE UNION POWERS COMMITTEE**

FROM

PANDIT JAWAHARLAL NEHRU,
CHAIRMAN, UNION POWERS COMMITTEE

To

THE PRESIDENT,
CONSTITUENT ASSEMBLY OF INDIA

SIR,

On the 28th April 1947, the Hon'ble Sir N. Gopaldaswamy Ayyangar on behalf of our Committee, presented our first report to the Constituent Assembly. In doing so, he referred to the changes that were developing in the political situation and were likely to affect the nature and scope of the Committee's recommendations, and sought permission to submit a supplementary report at a later date. The House was pleased to grant us leave to do so.

2. Momentous changes have since occurred. Some parts of the country are seceding to form a separate State, and the plan put forward in the Statement of the 16th May on the basis of which the Committee was working is, in many essentials, no longer operative. In particular we are not now bound by the limitations on the scope of Union Powers. The first point accordingly that we considered was whether, in the changed circumstances, the scope of these powers should not be widened. We had no difficulty in coming to a conclusion on this point. The severe limitation on the scope of central authority in the Cabinet mission's plan was a compromise accepted by the Assembly much, we think, against its judgement of the administrative needs of the country, in order to accommodate the Muslim League. Now that partition is a settled fact, we are unanimously of the view that it would be injurious to the interests of the country to provide for a weak central authority which would be incapable of ensuring peace, of coordinating vital matters of common concern and of speaking effectively for the whole country in the international sphere. At the same time, we are quite clear in our minds that there are many matters in which authority must lie solely with the Units and that to frame a constitution on the basis of a unitary State would be a retrograde step, both politically and administratively. We have accordingly come to the conclusion—a conclusion which was also reached by the Union Constitution Committee—that the soundest framework for our constitution is a federation, with a strong Centre. In the matter of distributing powers between the Centre and the Units, we think that the most satisfactory arrangement is to draw up three exhaustive lists on the lines followed in the Government of India Act of 1935, *viz.*, the federal, the provincial and the concurrent. We have prepared three such lists accordingly and these are shown in the Appendix.

We think that residuary powers should remain with the Centre. In view however of the exhaustive nature of the three lists drawn up by us, the residuary subjects could only relate to matters which, while they may claim recognition in the future, are not at present indentinable and cannot therefore be included now in the lists.

3. It is necessary to indicate the position of Indian States in the scheme proposed by us. The States which have joined the Constituent Assembly have done so on the basis of the 16th May Statement. Some of them have expressed themselves as willing to cede wider powers to the Centre than contemplated in that Statement. But we consider it necessary to point out that the application to States in general of the federal list of subjects, in so far as it goes beyond the 16th May Statement, should be with their consent. It follows from this that in their case residuary powers would vest with them unless they consent to their vesting in the Centre.

4. To enable States and, if they so think fit, Provinces also, to cede wider powers to the Centre, we recommend that the constitution should empower the Federal Government to exercise authority within the Federation on matters referred to them by one or more Units, it being understood that the law would extend only to the Units by whom the matter is referred or which afterwards adopt the law. This follows the Australian model as set out in section 51 (xxxvii) of the Australian Constitution Act.

5. We have included in the federal list the item "the strength, organisation and control of the armed forces raised and employed in Indian States". Our intention in doing so is to maintain all the existing powers of co-ordination and control exercise over such forces.

6. We recommend to the Assembly the proposals contained in para 2-D of our previous report on the subject of federal taxation. It is quite clear, however, that the retention by the Federation of the proceeds of all the taxes specified by us would disturb, in some cases violently, the financial stability of the Units and we recommend therefore that provision should be made for an assignment, or a sharing, of the proceeds of some of these taxes on a basis to be determined by the Federation from time to time.

NEW DELHI;
July 5, 1947.

I have the honour to be,
Sir,
Your most obedient servant,
JAWAHARLAL NEHRU,
Chairman.

APPENDIX

LIST I—FEDERAL LEGISLATIVE LIST

1. The defence of the territories of the Federation and of every part thereof and generally all preparation for defence, as well as all such acts as may be conducive in times of war to its successful prosecution and after its termination to effective demobilisation.
2. Requisitioning of lands for defence purposes including training and manoeuvres.
3. Central Intelligence Bureau.
4. Preventive detention, in the territories of the Federation for reasons of State.
5. The raising, training, maintenance and control of Naval, Military and Air Forces and employment thereof for the defence of the territories of the Federation and for the execution of the laws of the Federation and its Units; the strength, Organisation and control of the armed forces raised and employed in Indian States.
6. Defence industries.
7. Naval, Military and Air Force works.
8. Local self-government in cantonment areas, the constitution and powers within such areas of cantonment authorities, the regulation of house accommodation in such areas and the delimitation of such areas.
9. Arms, firearms, ammunition and explosives.
10. Atomic energy, and mineral resources essential to its production.
11. Foreign Affairs; all matters which bring the Federation into relation with any foreign country.
12. Diplomatic, consular and trade representation.
13. United Nations Organisation.
14. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.
15. War and Peace.
16. The entering into and implementing of treaties and agreements with foreign countries.
17. Trade and Commerce with foreign countries.
18. Foreign loans.
19. Citizenship, naturalization and aliens.
20. Extraditions.
21. Passports and visas.
22. Foreign jurisdiction.

23. Piracies, felonies committed on the high seas and offence committed in the air against the law of nations.
24. Admission into, and emigration and expulsion from, the territories of the Federation; pilgrimages to places beyond India.
25. Port quarantine; seamen's and marine hospitals, and hospitals connected with port quarantine.
26. Import and export across customs frontiers as defined by the Federal Government.
27. The institutions known on the 15th day of August, 1947, as the Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and any other institution declared by Federal law to be an institution of national importance.
28. The institutions known on the 15th day of August, 1947, as the Benares Hindu University and the Aligarh Muslim University.
29. Airways.
30. Highways and waterways declared by the Federal Government to be Federal highways and waterways.
31. Shipping and navigation on inland waterways, declared by the Federal Government to be Federal waterways, as regards mechanically propelled vessels, and the rule of the road on such waterways; carriage of passengers and goods on such waterways.
32. (a) Posts and telegraphs; provided that the rights existing in favour of any individual State Unit at the commencement of this Constitution shall be preserved to the Unit until they are modified or extinguished by agreement between the Federation and the Unit concerned or are acquired by the Federation, subject however, always to the power of the Federal Parliament to make laws for their regulation and control;
(b) Telephones, wireless, broadcasting, and other like forms of communication, whether owned by the Federation or not;
(c) Post Office Savings Bank.
33. Federal Railways; the regulation of all railways (other than minor railways) in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of good and passengers.
34. Maritime shipping and navigation, including shipping and navigation on tidal waters.
35. Admiralty jurisdiction.
36. Ports declared to be major ports by or under Federal Law or existing Indian Law including their delimitation.
37. Aircraft and air navigation : the provision of aerodromes, regulation and organisation of air traffic and of aerodromes.

38. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.
39. Carriage of passengers and goods by sea or by air.
40. The Survey of India, the Geological, Botanical and Zoological Surveys of India, Federal Meteorological organisations.
41. Inter-Unit quarantine.
42. Federal Judiciary.
43. Acquisition of property for the purposes of the Federation.
44. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.
45. Census.
46. Offences against laws with respect to any of the matters in this list.
47. Enquiries, surveys and statistics for the purposes of the Federation.
48. Federal services and Federal Public Service Commission.
49. Industrial disputes concerning Federal employees.
50. Reserve Bank of India.
51. Property of the Federation and the revenue therefrom, but as regards property situated in a Unit subject always to legislation by the Unit, save in so far as Federal Law otherwise provides.
52. Public debt of the Federation.
53. Currency, foreign exchange, coinage and legal tender.
54. Powers to deal with grave economic emergencies in any part of the territories of the Federation affecting the Federation.
55. Insurance.
56. Corporations, that is to say, the incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations, but not including corporations owned or controlled by a Federated State and carrying on business only within that State or co-operative societies, and of corporations, whether trading or not, with objects not confined to one Unit, but not including universities.
57. Banking.
58. Cheques, bills of exchange, promissory notes and other like instruments.
59. Patents, copyright, inventions, designs trademarks and merchandise marks.
60. Ancient and Historical Monuments: archaeological sites and remains.
61. Establishment of standards of weight and measure.

62. Opium, so far as regards cultivation and manufacture, or sale for export.
63. Petroleum and other liquids and substances declared by Federal Law to be dangerously inflammable, so far as regards possession, storage and transport.
64. Development of industries where development under Federal control is declared by Federal Law to be expedient in the public interest.
65. Regulation of labour and safety in mines and oilfields.
66. Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal Law to be expedient in the public Interest.
67. Extension of the powers and jurisdiction of members of a police force belonging to any part of a Governor's Province or Chief Commissioner's Province, to any area in another Governor's Province or Chief Commissioner's Province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner, as the case may be; extension of the powers and jurisdiction of members of a police force belonging to any Unit to railway areas outside that Unit.
68. All Federal elections; and Election Commission to superintend, direct and control all Federal and Provincial elections.
69. The salaries of the Federal Ministers and of the Chairman and Vice-Chairman of the Council of States and of the Speaker and Deputy Speaker of the House of the People; the salaries, allowances and privileges of the members of the Federal Parliament.
70. The enforcement of attendance of persons for giving evidence or Producing documents before committees of the Federal Parliament.
71. Duties of customs including export duties.
72. Duties of excise on tobacco and other goods manufactured or produced in India except—
- (a) alcoholic liquors for human consumption;
 - (b) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;
 - (c) medicinal and toilet preparations containing alcohol, or any substance included In sub-paragraph (b) of this entry.
73. Corporation tax.
74. State lotteries.
75. Migration from one Unit to another.
76. Jurisdiction and powers of all courts, with respect to any of the matters in this list.
77. Taxes on income other than agricultural income.
78. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of the companies.

79. Duties in respect of succession to property, other than agricultural land.

80. Estate duty in respect of property other than agricultural land.

81. The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.

82. Terminal taxes on goods or passengers, carried by railway or air; taxes on railway fares and freights.

83. The development of inter-Unit waterways for purposes of flood control, irrigation, navigation and hydro-electric power.

84. Inter-Unit trade and commerce.

85. Fishing and fisheries beyond territorial waters.

86. Federal manufacture and distribution of salt; regulation and control of manufacture and distribution of salt by other agencies.

Note.—A section should be incorporated in the constitution itself prohibiting the imposition of any duty or tax on salt.

87. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

LIST II- PROVINCIAL LEGISLATIVE LIST

1. Public order (but not including the use of naval, military or air forces in aid of the evil power); the administration to justice; constitution and organisation of all courts, except the Supreme Court, and fees taken therein; preventive detention for reasons connected with the maintenance of public order; persons subjected to each detention.

2. Jurisdiction and powers of all courts except the Supreme Court, with respect to any of the matters in this list; procedure in Rent and Revenue Courts.

3. Police, including railway and village police.

4. Prisons, reformatories, Borstal Institutions and other institutions of a like nature, and persons detained therein; arrangements with other Units for the use of prisons and other institutions,

5. Public debt of the Province.

6. Provincial Public Services and Provincial Public Service Commissions.

7. Works, lands and buildings vested in or in the possession of the Province.

8. Compulsory acquisition of land except for the purpose of the Federation.

9. Libraries, museums and other similar institutions controlled or financed by the Province.

10. Elections to the provincial Legislature and of the Governors of the provinces subjected to the provisions of paragraph 68 of list I.

11. The salaries of the Provincial Ministers, of the speaker and Deputy Speaker of the Legislative Assembly, and if there is a Legislative Council, of the Chairman and Deputy Chairman, thereof; the salaries, allowances and privileges of the members of the Provincial Legislature; and the enforcement of attendance of persons for giving evidence or producing documents before Committees of the Provincial Legislature.

12. Local Government, that is to say, the Constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

13. Public health and sanitation hospitals and dispensaries; registration of births and deaths.

14. Pilgrimages, other than pilgrimages to places beyond India.

15. Burials, and burial and burning grounds.

16. Education including Universities other than those specified in paragraph 28 of List I.

17. Communications, that is to say roads, bridges, ferries, and other means of communication not specified in List I; minor railways subject to the provisions of List I with respect to such railways; municipal tram ways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; ports, subject to the provisions in List I with regard to major ports; vehicles other than mechanically propelled vehicles.

18. Water, that is to say, water supplies, irrigation and canals-drainage and embankments, water storage and water power.

19. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases; improvement of stock and prevention of animal diseases; veterinary training and practice; pounds and the prevention of cattle trespass.

20. Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents; transfer, alienation and revolution of agricultural land; land improvement and agricultural loans; colonization; Courts of Wards: encumbered and attached estates, treasure trove.

21. Forests.

22. Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under Federal Control.

23. Fisheries.

24. Protection of wild birds and wild animals.

25. Gas and gasworks.

26. Trade and commerce within the Province; markets and fairs.

27. Money lending and money lenders.

28. Inns and innkeepers.

29. Production, supply and distribution of goods; development of industries, subject to the provisions in List I with respect to the development of certain industries under Federal control.

30. Adulteration of foodstuffs and other goods.

31. Weights and measures except establishment of standards.

32. Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of List I and, as respect poisons and dangerous drugs, to the provisions of List III.

33. Relief of the poor; unemployment.

34. The incorporation, regulation, and winding-up of corporations not being corporations specified in List I, or Universities; unincorporated trading literary, scientific, religious and other societies and associations, co-operative societies.

35. Charities and charitable institutions; charitable and religious endowments.

36. Theatres, dramatic performances and cinemas, but not including the sanction of cinematograph films for exhibition.

37. Betting and gambling.

38. Offences against laws with respect to any of the matters in this List.

39. Inquiries and statistics for the purpose of any of the matters in this List.

40. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenue.

41. Duties of excise on the following goods manufactured or produced in the Province and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in the territories of the Federation—

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;

(c) medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (B) of this entry.

42. Taxes on agricultural Income.

43. Taxes on lands and buildings, hearths and windows.

44. Duties in respect of succession to agricultural land.

45. Estate duty in respect of agricultural land.

46. Taxes on mineral rights, subject to any limitations imposed by any Act of the Federal Parliament relating to mineral development.

47. Capitation taxes.
48. Taxes on professions, trades, callings and employments.
49. Taxes on animals and boats.
50. Taxes on the sale of goods and on advertisements.
51. Taxes on vehicles suitable for use on roads, whether mechanically propelled or not, including tramcars.
52. Taxes on the consumption or sale of electricity.
53. Cesses on the entry of goods into a local area for consumption, use or sale therein.
54. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.
55. The rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.
56. Dues on passengers and goods carried on inland water-ways.
57. Tolls.
58. Fees in respect of any of the matters in this List, but not including fees taken in any Court.

LIST III—CONCURRENT LEGISLATIVE LIST

1. Criminal Law, including all matters included in the Indian Penal Code at the date of commencement of this Constitution, but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of the naval, military and air forces in aid of the civil power.
2. Criminal Procedure, including all matters included in the Code of Criminal Procedure at the date of commencement of this Constitution.
3. Removal of prisoners and accused persons from one Unit to another Unit.
4. Civil Procedure, including the law of Limitation and all matters included in the Code of Civil Procedure at the date of commencement of this Constitution; the recovery in a Governor's Province or a Chief Commissioner's Province of claims in respect of taxes; and other public demands, including arrears of land revenue and sums recoverable as such, arising outside that Province.
5. Evidence and oaths; recognition of laws, public acts and records and judicial proceedings.
6. Marriage and divorce; infants and minors; adoption.
7. Wills, intestacy, and succession, save as regards agricultural land.
8. Transfer of property other than agricultural land; registration of deeds and documents.
9. Trusts and Trustees.

10. Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.
11. Arbitration.
12. Bankruptcy and insolvency.
13. Administrators-general and official trustees.
14. Stamp duties other than duties or Fees collected by means of judicial stamps, but not including rates of Stamp duty.
15. Actionable wrongs, save in so far as included in laws with respect to any of the matters specified in List II.
16. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.
17. Legal, medical and other professions.
18. Newspapers, books and printing presses.
19. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficient.
20. Poisons and dangerous drugs.
21. Mechanically propelled vehicles.
22. Boilers.
23. Prevention of cruelty to animals.
24. Vagrancy; nomadic and migratory tribes.
25. Factories.
26. Welfare of labour; conditions of labour; provident funds; employers' liability and workmen's compensation; health insurance, including invalidity pensions; old age pensions.
27. Unemployment and social insurance.
28. Trade union; industrial and labour disputes.
29. The prevention of the extension from one unit to another of infectious or contagious diseases or pests affecting men, animals or plants.
30. Electricity.
31. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of List I with respect to Federal waterways.
32. The sanctioning of cinematograph films for exhibition.
33. Persons subjected to preventive detention under Federal authority.
34. Economic and social planning.
35. Inquiries and statistics for the purpose of any of the matters in this List.
36. Fees in respect of any of the matters in this List, but not including fees taken in any Court.

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 21st August, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The following member presented his credentials and signed his name in the Register—

H. H. Raja Anand Chand (of Bilaspur) (Punjab States).

The following members also took the oath:—

(1) H. H. Raja Anand Chand (of Bilaspur).

(2) Mr. Surendra Mohan Ghosh (West Bengal: General).

REPORT OF THE UNION POWERS COMMITTEE—(contd.)

Mr. President : We shall now proceed with the resolution which was under discussion yesterday.

Mr. H. V. Kamath (C. P. and Berar : General) : Mr. President, Sir, permit me to invite your attention to a matter of mere routine. As members of the Dominion Legislature, may we not reasonably expect to receive the *Gazette of India* and other official publications of Government to which the members of the former Central Legislature were entitled?

Mr. President : I will make enquiries about it.

Mr. Mahomed Sheriff (Mysore) : Mr. President, Sir, the Report of the Union Powers Committee that forms the subject matter of discussion today is a very important document as it vitally affects the privileges and the rights of the people living in the States as well as in the provinces. It is important, Sir, because it seems to me that only on a proper and appropriate allocation of the powers between the Centre on the one hand and the provinces and the States on the other that the future good government of the country will depend. It is necessary, therefore, that we should so allocate or distribute the powers as to retain effective control in the Centre, while not denuding the people living in the States and the provinces of their powers. You know, Sir, that in a federation there is a recognised division of loyalties and interests and in order to blend them a strong Centre is very necessary, but you also know, Sir, that too strong a Centre would result in the Centre becoming very oppressive and would result in the crushing, so to speak, of the

[Mr. Mohamed Sheriff]

liberties and privileges of the people living in the component units. Therefore we must be very circumspect and very careful in the matter of the distribution of the powers. We must be careful to see that the distribution is so made as to effect a happy compromise between strength on the one side and consideration of the rights and privileges of the people living in the States and in the provinces on the other side. I have gone through the lists which are appended to this Report very carefully and I have also heard with rapt attention the speech made so lucidly by Mr. Gopaldaswami Ayyangar. He has discussed threadbare the different aspects of the question. He has placed before us all the aspects of the question, all the pros and cons of the issue. He says, "Now that partition is a settled fact, we are unanimously of the view that it would be injurious to the interests of the country to provide for a weak central authority which would be incapable of ensuring peace, of co-ordinating vital matters of common concern and of speaking effectively for the whole country in the international sphere. At the same time, we are quite clear in our minds that there are many matters in which authority must lie solely with the Units and that to frame a constitution on the basis of a unitary State would be a retrograde step, both politically and administratively. We have accordingly come to the conclusion that the soundest framework for our constitution is a federation, with a strong Centre". Sir, with due deference to Mr. Gopaldaswami Ayyangar, I do not think that this report is a very satisfactory one inasmuch as it wants to assign to the Provinces and the States a very secondary part. After 150 years of turmoil, after 150 years of sacrifice undergone by the people of India, referred to so very lucidly by Pandit Jawaharlalji the other day, we have uprooted British imperialism. Let not that imperialism be perpetuated in another form. Why should the Centre be jealous of the component parts? After all, the people living in the States and Provinces are part of the whole. Their activities are counterparts to the activities of the Centre so that there should not be this suspicion. I submit, therefore, that the Centre should not arrogate to itself all the powers. Coming as I do from the State of Mysore, I feel that this report is very unsatisfactory. You know, Sir, that we have acceded to the Indian Dominion on three important questions, Foreign Affairs, Communications and Defence. These are the matters on which we have made a treaty and acceded to the Dominion. So far as the Federal Legislative List is concerned, you have tried to take away the powers from us. For example, you want to interfere with our trade. You want to retain for yourself trade and commerce with foreign countries. You want power to requisition land for defence purposes. All this savours of some force. So far as this report is concerned, you Sir, yesterday observed that we should deal with only salient points.

An Honourable Member : Not in this connection.

Mr. Mahomed Sheriff : I am sorry. In any case, I would request the House to see that the Centre does not arrogate to itself all the powers but that there is an equitable and happy compromise in the distribution of powers between the Centre and the units.

Shri Alladi Krishnaswami Ayyar (Madras : General) : Mr. President, after the very full exposition of the report by my Honourable friend Mr. Gopaldaswami Ayyangar I had not intended to take Part in the

debate on the Resolution now before the House, namely, the Report of the Committee on the Union Powers being taken into consideration. But I felt compelled to do so by reason of certain remarks of my Honourable friend Shri Santhanam (for whose opinion and remarks I always entertain a high regard) which suggest that the Committee did not seriously go about their business. The remarks of my Honourable friend fall under two heads: (1) Bearing on the subject of federal finance and the distribution of taxing power between the Federation and the units, (2) The general encroachment on provincial legislative power by the addition of certain items to the Federal List or to the Concurrent list. I shall deal with the two points *seriatim*.

There is no gain saying that the subject of federal finance and the distribution of the taxing power is a difficult and complicated problem in any federal scheme of Government and has to be approached with caution and discerning and at every stage when we are dealing with this subject we have to remember that, after all, it is an individual or a corporation that is taxed though there may be two taxing agencies, and that there is no unlimited scope for taxation. Secondly, the industrial, commercial and agricultural economy of the country is so closely knit together that the taxation in one sphere must necessarily have its repercussions on taxation in another sphere. Bearing these points in view, let us approach the consideration of the taxing system of other Federations and see if on the whole the system adopted in India is not an improvement on the system in other countries with due regard to the peculiar conditions, the poverty and the taxable capacity of the average citizen in this country. In Australia the Commonwealth has plenary powers of taxation with the only safeguard that it cannot discriminate between States or parts of States. I am mentioning Australia particularly because it is a Federation in which the residuary power is in the Union. The States have plenary powers of legislation and it is only in particular matters that powers are confined to the Centre. Even in that country with the growing needs of a modern state, it was felt that the Federation must have plenary powers of taxation. There is no limit at all to the power of taxation in Australia in the Centre excepting this, namely, that it shall not discriminate between State and State. In regard to excise and customs the power in the Commonwealth is exclusive though in regard to other subjects of taxation the Commonwealth has a Concurrent and coextensive power with that of the States. In the Constitution of the Dominion of Canada the power of the province in the matter of taxation is confined to direct taxation and to shop and other licenses for the raising of revenue and it is in the exercise of the power of direct taxation that Provinces in Canada have been raising Corporation taxes, income-tax and succession duty, where the succession has taken place within the limits of the province. So far as the Dominion is concerned it has plenary and unrestricted power. The Royal Commission appointed recently to investigate Dominion and Provincial relations was definitely in favour of the Provinces withdrawing from all Corporation tax except beneficial licence taxes, tax on real estate or consumption taxes applicable to corporations and other consumers. The differential taxes levied by different provinces in Canada have led to the crushing of enterprise, the lack of uniformity and efficiency from divided jurisdiction and double and treble taxation. The subject of succession duty by provinces has led to friction of jurisdiction and has been a source of friction and litigation before the Privy Council and double income-tax both by the Provinces and the Centre has been

[Shri Alladi Krishnaswami Ayyar]

the subject of adverse comment by the industries concerned. A through revision of the taxing system was recommended by the Committee with a view to secure uniformity, the main recommendation being that the taxing power should reside in the dominion and that an adjustment should be made between the Provinces in regard to the taxes levied. While on this subject I may point out I am in favour of a definite proportion being fixed between the provinces and the Centre though the tax-collecting medium may be the Centre in the interest of uniformity. I have no doubt that if a financial Commission or a Committee goes into this matter, they will be able to arrive at a satisfactory conclusion. so that the Provinces may get the necessary quota for the purpose of meeting the various social service expenditure in the provinces. In America again under Section 8, a general power of taxation is vested in the Congress, subject only to the restriction that the duties imposed including excise shall be uniform throughout the United States and that no tax or duty shall be levied on articles exported from any State. Under the scheme, of financial distribution in the Government of India Act and to some extent as envisaged in the present Report as far as possible the object is kept in view to prevent a double levy on the citizen from two different sources. That is why certain specific taxes have been assigned to the Centre and certain other taxes to the Provinces. Even in regard to taxes in respect of which the Centre is the collecting agency on grounds of convenience, provision is made for the distribution of the same to the provinces, subject only to collection charges or for division of all the proceeds between the Centre and the Provinces. In regard to certain taxes like corporation tax, customs and certain specific items of excise the Centre the both the collecting agency and the authority entitled to the proceeds thereof. In regard to other items like estate duty, succession duty and so on, in the interest of uniformity, speedy collection and administrative efficiency the Centre is constituted the collecting agency, the proceeds being distributed between the Provinces. In regard to income-tax the scheme is for the distribution between the Centre and the Provinces. The Provinces have the sole right of collection and exclusive beneficial interest in a few items of taxation. While I do not dispute the need for readjustment or even reallocation in regard to a few items of taxation in the light of the recommendations of any Committee appointed for the purpose, I venture to state, that the scheme of distribution in the Government of India and to some extent outlined in the First Committee's report is a sound one and in some respects an improvement upon the scheme of taxation in other countries.

Beyond making certain general observations, my honourable friend has not chosen to state in what respects the scheme of taxation and the distribution is unsound and in what respects the recommendations of the Committee are radically defective. So much for finance.

In regard to the scheme of distribution of powers, the House will realise that there is nothing to take exception to generally. While a good number of items in the Central list can be brought under the head of Defence, Foreign Affairs and Communications, the three main heads envisaged by the Cabinet Mission Scheme, the items such as Bills of Exchange, Banking, Corporation Law, Inter-unit trade bear upon the general welfare of the country. It is possible in regard to Banking, Corporation Law and Insurance, following the Australian and Canadian model to differentiate between Corporations having purely provincial

objects and Corporations whose objects extend beyond the limits of the Units. If so, it would be open to any Committee or to this House to take that into consideration and canvass that point whether it is possible to make any exception in regard to Corporations or Banks having purely provincial objects. We have been crying about a strong Centre. If you look at the provincial lists, very few if at all of the provincial list have been taken up and transferred to the federal list. It will be a much more useful purpose to take item after item in the provincial list. We ought to take item after item in the Central first and see which of them can be transferred to the provincial list instead of arguing abstractly, Centre *versus* Provinces, a strong Centre *versus* weak Centre, strong Provinces *versus* weak Provinces. This is of no assistance when we are dealing with the practical question of evolving a constitution for the future. We shall have to concentrate our attention in the next few days on particular items and see which of the items deserve to be modified. That would be a much more useful purpose than a general attack upon what might be called a strong Centre or a weak Centre. There may be very few items in the Centre and yet that Centre may be strong. Today it cannot be said that Australia has not a strong Centre; today it cannot be said that America has not a strong Centre. Therefore, having regard to the exigencies of the Indian situation, concentrating our attention upon the main topics of national interest in their relation to the subjects we have to see which of them can find a place in the Central list, which of them can find a place in the concurrent list and which of them can find a place in the provincial list. That would be a more useful mode of approach than a general attack upon the Centre, Provinces and so on. Very few if at all of the items of the provincial list have been taken over to the Centre, as I have already stated.

The existence of a concurrent list in matters like the general code of Indian law, or Hindu Law makes for a uniformity of law. Here again, it is a very useful feature in our constitution. For example, take a matter like the Transfer of Property Act, the Hindu Law, the Law of Succession and so on. There is nothing to prevent even the States from adopting most of the items in the concurrent list. I do not see any reason why the States for example in the interests of sovereignty must be really going on copying or making some small differentiations and passing their own acts in regard to matters of vital and common interest to the whole of India. The common practice that is now obtaining in most of the States is, after an Act is passed by the Indian legislature, for the same Act to be copied in the Indian States with some slight modifications which may add to the purse of the lawyer and not help the uniformity of the law in the different units of India.

Then, coming to the break-down provisions, if the breakdown provisions have been introduced, it was at the instance and on the insistence, if I may say so, of some of the provincial representatives who are occupying responsible positions of Ministers in the different provinces of India. Therefore, Sir, I venture to state that the labours of the Union Powers Committee deserve careful consideration at the hands of the Assembly, and I have no doubt that at the end of your labours and after searching criticism which I have no doubt will be coming from enlightened quarters of his House, you will find, it contains nothing that can be taken exception to. I therefore support the motion that the Report be taken into consideration by the House.

Shri Balkrishna Sharma (United Provinces: General) : Mr. President, Sir, I have come to support the motion that the Union Powers Committee's second Report be taken into consideration.

[Shri Balkrishna Sharma]

While we have a preliminary discussion of this report, we are generally called upon to express our views regarding the fundamentals on which this Union Powers Committee's Report is based. In the second paragraph of the Report, it has been said:

"The severe limitation on the scope of central authority, in the Cabinet Mission's plan was a compromise accepted by the Assembly much, we think, against its judgment of the administrative needs of the country, in order to accommodate the Muslim League. Now that partition is a settled fact, we are unanimously of the view that it would be injurious to the interests of the country to provide for a weak central authority which would be incapable of ensuring peace of co-ordinating vital matters of common concern and of speaking effectively for the whole country in the international sphere."

I think, Sir, this is a principle to which no same-minded person can take exception. When we accepted the May 16th Plan and when as a result of that we came to the conclusion that the powers that were to be vested in the Centre were very limited, most of us felt that that was not in the fitness of things and that the Centre must have more powers in order to execute the responsibilities that are to devolve upon it as a result of our gaining independence. But, then, as has been very rightly said, we had no say, but to accept the principles that were laid down in the May 16 Plan. Now that plan has been scrapped and we, today, have to be very clear in our minds, as to what we mean by a strong centre and whether any powers that we give to the Centre are necessarily detrimental to the free growth of the provinces.

Before we come to discuss the various items that are given in the lists, it is necessary, Sir, that we note what the attributes of a strong Centre are. To me, the attributes of a strong Centre are that it should be in a position to think and plan for the well being of the country as a whole, which means that it must have the authority not only to coordinate the activities during times of stress and strain, but also the power of Initiative to give directions to the various provinces in regard to the economic development of the country. The second attribute of a strong Centre is that it should be in a position to supply the wherewithal to the provinces for their better administration wherever the need arises. The third attribute is that it should have the right in times of stress and strain to issue directives to the provinces regulating their economic and industrial life in the interests of the country as a whole. The fourth attribute of a strong Centre is that it must have sufficient powers to protect the country against foreign aggression as also internecine warfare. Then the fifth attribute of a strong Centre is that it must be powerful and strong enough to represent the whole country in the international spheres. These are the attributes to me of a strong Centre.

The next question arises whether these being the attributes of a strong Centre we want a strong Centre or whether we do not. And before we discuss this question whether we want a strong or weak centre, we should at once understand that the existence of a strong centre in no way militates against the existence of a Powerful living unit inside that central authority.

Yesterday we heard rather curious speeches from two of the stalwarts of provincial autonomy. One was from Maulana Hasrat Mohani and the other from Shri K. Santhanam. Mr. Santhanam spoke rather bitterly and

very vehemently about the powers that are proposed to be given to the Centre under this scheme of the Union Powers Committee Report. But if we analyse the lists that have been appended to it we will find that there are very few subjects to which even a protagonist of Mr. Santhanam's type—a protagonist of the devolution or decentralisation scheme—could take exception to. As a result of my analysis I have come to the conclusion that for the Federal List, subjects from items 1—10 cover Defence activities in various shapes and forms, and I do not know if there is anybody who can take exception to it; *e.g.*, the defence of the territories of the Federation and every part thereof, and all preparations for defence, as well as all such activities as may be conducive in times of war to its successful prosecution and after its termination to demobilization. So on one in this House can take objection to this sort of activity on the part of the Centre. As I said, in items 1—10 there are enumerated various items which cover more or less the defence responsibility of the Centre, and I do not know if any body would take any exception to it.

Then again, from item 11 to item 25, there are various subjects given which are included in what is called the domain of foreign sphere and here also I do not think Mr. Santhanam or even Maulana Hasrat Mohani will take exception to that.

After this we come to item No. 28. This deals with imports and exports, libraries and museums and universities. These are certain responsibilities which are with the Centre already and which have to be with the Centre, and I do not know if anything substantial can be said against giving this responsibility to the Centre.

Then we come to items 29 to 39 which are under what we may call Communications. Here again there can be no difficulty in accepting them as a necessary part of the central authority.

In Items 40 to 53 in the Federal List, there are various subjects like Surveys, Federal Judiciary and Acquisition of Property for Federal purposes, Research, Census, Reserve Bank of India, Public Debt, Interest, Currency etc. I doubt very much, Sir, whether these items also can be given to the various provinces. It is but meet and proper that the Union Powers Committee should have given all these subjects to the care of the Centre.

Then from Items 54 to 59 we come to some subjects regarding Trade, Economy, Insurance, Corporations, Banking, Cheques, Bills of Exchange, Patents, Copyrights, etc. These are also all-India matters. No province can be saddled with the responsibility of executing them. Similarly, if you can the list there is not one item to which exception can be taken. Of course Items Nos. 54 and 64 are contentious.

Item No. 64 says:—

“Powers to deal with great economic emergencies in any part of the territories in the Federation affecting the Federation.”

Item No. 4 says:—

“Development of Industries where development under Federal control is declared by Federal law to be expedient in the public interest.”

These are the two items which might be taken exception to by way of saying that they encroach upon the responsibilities of the provinces.

[Shri Balkrishna Sharma]

But I beg to submit that there are occasions and there are situations in the Provinces where the provinces themselves cannot tackle these big problems, and if we have to enjoy a growth of equitable industrial distribution in the country, then we shall have to reserve to the Centre such of the powers as are sought to be given under these two items, and therefore I do not think, Sir, there is anything which can be said against the inclusion of these items to the care of the Centre. In what Mr. Santhanam and Maulana Hasrat Mohani said. I see a case for decentralization, and when I was hearing their speeches I was asking myself whether it is not India's age-long historical tendency of disintegration which was speaking through these stalwarts. Mr. Santhanam talked a lot about the obsession on the part of the framers of this Constitution to give more power to the Centre than was needed. Will, so far as the obsession is concerned, I think it is the other way about. It is the protagonists of decentralization who are obsessed with the fear that unless the Centre is kept weak, all the authority that they are likely to enjoy in the provinces shall not be worth the name. This sort of fear, after all, should not haunt us. We should not go on creating imaginary hobgoblins and then ask others to be afraid of those hobgoblins.

I think Maulana Hasrat Mohani talked a great deal of having socialist republics throughout the country. I think the Maulana does not know that the Soviet Socialist Republics cannot enjoy their existence in the country unless they are well knit and unless there is a central directive. After all, all of us must be prepared for the consequences of socialization of industry. Socialization of industry is not a thing which can be done in a piece-meal manner. It has to be centrally directed. It has to be guided from the Centre and then all of us have to prepare ourselves for a lot of grotesqueness in the process of nationalisation and socialization. We cannot fight shy of that. Then, in order to have a socialist society, we must at the same time have in our country a decentralised system of Government. That does not carry us very far. Therefore, I submit that the report, as it has been framed, deserves our fullest possible support, and when we come to discuss it item by item, the House will certainly find that all the criticisms that have been levelled against it do not hold any water whatsoever. It was also said that there should be equitable distribution of power and finances. It is already there. Look at the Provincial legislative list. You will find items from 40 to 58—there are 18 of them—which give all the rights of taxation to the provinces. I need not narrate all those items that are there. The Provinces can have their own land revenue taxes including assessment and collection of revenue, the maintenance of land records, survey for, revenue purposes and records of rights; then, taxes on agricultural income; taxes on lands and buildings; duties in respect of succession to agricultural land, estate duty in respect of agricultural land, duties on mineral rights, capitation taxes on professions, and so on and so on. So many opportunities have been given to the Provinces to levy taxes; and from the very lucid and learned discourse which we heard only a minute ago from Mr. Alladi Krishnaswami Ayyar we know that in no way the provincial interests have been ignored by the framers of this Report. Therefore, Sir, I wholeheartedly support this Report and I think the House on mature consideration will find that there is not one single item to which any exception can be taken.

Mr. G. L. Mehta (Western India States Group) : Mr. President. Sir, when some of us wanted to participate in this discussion yesterday I had

an impression that the Report that has been so ably and impressively moved by Sri Gopaldaswamy Ayyangar would receive the general benediction of this House. Of course, we were prepared for the amendment which Maulana Hasrat Mohani moved in a bilingual speech, but the speech of Mr. Santhanam, for whose objective attitude I have very high regard, took my breath away. Mr. President, we seem to discuss this question of division of powers as though it were a kind of tug of war or a tussle between one authority and another. It is nothing of the kind. It is a plan whereby through mutual concessions, provincial and cultural loyalties should be preserved and promote the political strength and solidarity of the Indian Union. The second Report itself has explained lucidly why residual powers should be with the Centre. Maulana Hasrat Mohani yesterday astonished us by saying that now that there is partition of India there is no reason for these residual powers to be with the Centre. On the contrary, the reason why this concession of residual powers was to be given to the Units was a kind of bargaining for communal considerations. But now that there is partition, there is no reason why the homogeneous Indian State should not have a strong Centre. There is some fascination, Mr. President, for always referring to the Union of Socialist Republics, but if you study the constitution and development of Soviet Russia, what do you find. The right of secession and other rights which are given to the Units are theoretical rights. The whole State is maintained through the rigid and ruthless discipline of the Communist Party. And therefore there is no point in always referring to the Union of Socialist Republics in India as though the socialist republics could be independent. As was pointed out by the previous speaker, Shri Balkrishna Sharma, even if you have socialism in this country, it is absolutely essential that there should be a Central direction and initiative. We should not forget, Mr. President, that the Federation that we are trying to evolve is a Federation which has no precedent in the world, because till now through the British administrative machinery and through their treaties and agreements with the Indian States, we have had a powerful Centre in this country. In several other countries, where Federation has been built up, it has been built up through independent sovereign States coming together whereas here until 1935 the whole question was one of decentralisation and revolution. And secondly, the whole relationship between the Centre, which was under British Indian administration until the 15th August, and the Indian States is one which is unique. It is no use people getting impatient and saying that there should be complete uniformity between the Provinces and the States from the beginning. We are not writing on a clean slate, and even if the system is illogical we have to remember that logic does not always fit in with politics. We have seen, for instance, that the British who are admittedly a most illogical people, have made a remarkable success of their constitution. We have therefore to build up the national unity of India in the best possible manner. This question of relationship between the Centre and the Provinces is considered as though it is one of mere political mechanism and separation of powers, but what will ultimately determine these relationships are economic facts and financial considerations. May I say, with all respect, that we are too apt to derive our ideas and frame the constitutional pattern on the 19th century political ideology of Britain? There is some danger in our thinking of the Federal system or some particular forms of government in the abstract as having some special merits which make them desirable in themselves. We are always fond of quoting some models, some patterns, and arguing that as A, B and C powers do not exist in some constitution of the world, we cannot have them in our own country. This sort of imitation of political institutions, of transplantation of political

[Mr. G.L. Mehta]

institutions from other countries has always some risks. There is said to be a tribe of monkeys in Africa which copy faithfully the houses of men and then live on the outside of them instead of inside. The transplantation of political institutions is not free from this danger of copying the obvious and leaving out the essential. We have to build up this system on the conditions of our own country, not on any abstract theories. The local needs and interests in our own country require special treatment and nobody suggests that this vast country with its size and its multiple people can be ruled on a unitary basis. "Over-centralisation", a French political observer said, "leads to anaemia at the extremities and apoplexy at the Centre". Undue centralisation is not a way of achieving uniformity. In fact, we do not wish to effect uniformity in this country, but unity in essential matters. But I must emphasise that we have to be on guard against fissiparous and disintegrating tendencies which are always bound to prevail and we have to be conscious of our national unity which we have achieved and which we must maintain as one of our priceless possessions. Mr. President, it is very often argued by our British friends that one of the greatest gifts of the British Government to this country has been the administrative unity which has been given to it. There is no doubt some truth in it, but there is also truth in this that as the national movement grew stronger, the British Government encouraged in this country every kind of fissiparous and disintegrating tendency and the result is the partition we see before our eyes. We are unfortunately too prone to fall victims to these disintegrating and centrifugal tendencies. Paradoxical though it may seem, it is only a strong Centre which can build up adequate provincial autonomy and achieve decentralisation. Under the scheme which has been presented to you, it can be broadly stated that the power to regulate economic life is divided between the Provinces and the Centre and there is wide scope for provincial powers and responsibilities in the economic and social spheres. After all, we have to judge this problem from the angle of the needs of the ordinary citizens and see how best they could be satisfied and not lose ourselves in the politics of machinery and manoeuvre.

As a matter of fact there are only two main criteria by which we have to judge this question namely, what will secure efficient administration and what will meet the social needs of the people. These needs, material or cultural, can be satisfied if the various Provincial Governments are in a position to supply them, these needs which the citizens today demand of them.

We must also not forget, Mr. President that economic forces and strategic considerations to-day tend to invest the Centre with large powers. If we want to organise economic development and social welfare as people organize for war, then the state of the future will have to be a 'positive' state, it will have to be a social service state. It will require large finances and more or less homogenous economic conditions will have to be maintained in order to achieve these purposes.

I was surprised to find my friend Mr. Santhanam objecting to planning being in the concurrent list of subjects. What else can it be? There are Central plans and there are Provincial plans and some of the Indian States have their own plans. In the Advisory Planning Committee under the chairmanship of Mr. K. C. Neogy, which submitted its report early this year, it was stated that the Central and Provincial Governments

must regard development as a matter requiring joint effort in a cooperative spirit and must agree on a common policy of developing their financial resources to the utmost possible extent. As a matter of fact, planning has been a concurrent.....

Shri K. Santhanam (Madras: General): I would like to draw the attention of the speaker that I wanted planning to be dealt with in a separate chapter of the Constitution and not merely as an item. I did not object to planning being done by the Centre and the Provinces together.

Mr. G. L. Mehta: If that is the case, then I think my friend has no objection to national planning being a concurrent subject. In any case, the initiative, the direction and guidance have to come from the Centre and the implementing of such decisions will have to be with the various units. Economic, technological and scientific developments have made somewhat obsolete, the old division of powers between the Centre and the circumference. Take the T.V.A.—The Tennessee Valley Authority in the U.S.A. The success of that scheme has shown that the fear that setting up a federal agency would undermine and destroy State Government's that is, the Unit's power and rights is a false fear; and that we can so organise as to have central production and yet have local responsibility. Whatever the constitutional set-up may be, the relationship between the Centre and the Provinces will be determined by economic forces and tendencies, and financial considerations. Commerce, trade and industry today as well as the economic relationship which they involve are national in scope and cannot be easily divided into Provincial and Federal aspects for purposes of regulation. Mr. President, Mr. Santhanam also said yesterday something about the mention of industries in the List of Federal Subjects. Apart from Item 6 Defence Industry, in the Item 65 there is the mention of development of industries where development under Federal control is declared by Federal law to be expedient in the public interest. This is the only rational way of dealing with this problem. As far back as 1945, in their statement on industrial policy, the Government of India have stated that industries in which a common policy is desirable should be brought under Central control. Can we not trust the future Central Government of India to decide which are the important defence industries, which are the essential industries and which are the industries which are inter-provincial in character and should be brought under Central control? In fact, in labour matters, we know that in many respects uniformity is desirable; otherwise there is the risk of one Province being very backward and another much ahead of it. Therefore there is strong case for regulation on a national basis. As regards the Indian States, for example, with some notable exceptions, the conditions regarding labour legislation and taxation, for example, do not attain the required standard and we should now try to evolve common standards in the spheres of industrial policy, taxation and labour legislation.

Mr. H. V. Kamath: Sir, is it permissible for my honourable friend to read from a manuscript?

Mr. G. L. Mehta: I am not reading; but if Mr. President, you do not desire me to read. If that is your decision....

Mr. President: I take it the member is not reading, the has only notes before him.

Mr. G. L. Mehta: If Mr. Kamath, whose eloquence I cannot match, can speak extempore, I will invite him to follow me.

[Mr. G. L. Mehta]

Mr. President, at no time has the importance of preserving the economic unity of India been so evident as in our experience during the time and in the post war period. The food question, for example, the whole question of price control, the whole question of rationing, all these require development and Organisation on an all-India basis which does not permit of territorial barriers or interprovincial jealousies and for these problems we require a comprehensive and integrated economic policy, not only for our material advancement, but for our very national existence. In many spheres we require common and even uniform standards, as, for example, in respect of naval and mercantile marine training, training in the various branches of aviation, in respect of administration of higher technological institutions and of co-ordination of higher education and higher technical education in particular; in all these respects we do require that there should be all-India policies and measures. This notion of a strong Centre or a weak Centre as Mr. Alladi Krishnaswami Ayyar observed, cannot be discussed and disposed of in merely general terms; you have to get down to brass tacks, to particular items, and then decide whether this item or function is really a function which can be performed better by the Centre or by the Provinces.

There is only one word more which I would like to add. We must not forget that one of the primary reasons for the Provinces demanding larger powers has been the need for economic development. We have to cure economic ill-balancing in this country. We have to have regional planning, we have to see that those areas which are more backward and under-developed are given even preference; because if this is not done, the lower standards of living in those parts or the lower national income there would menace the higher standards in the other parts. In order to avoid inter-provincial jealousies, economic development on a balanced plan for the whole country is essential. But here again, what is the authority that will do that? Unless there is a national authority, unless there is an authority to allocate the resources and determine the priorities and co-ordinate these different plans, we cannot really have the development of these less developed or under-developed areas in our country.

I cannot conclude, better than by quoting—and I hope Mr. Kamath will not object if I read a small portion at this stage—from the report of the Royal Commission on Dominion and Provincial Relations in Canada—

“National unity and provincial autonomy must not be thought of as competitors for the citizens’ allegiance, because they are two facets of the same thing, a sane federal system. National unity must be based on provincial autonomy and provincial autonomy cannot be assured unless a strong feeling of national unity exists throughout the country.”

An Honourable Member: Closure.

Sir A. Ramaswamy Mudaliar (Mysore State) : Mr. President, it is with some hesitation that I venture to intervene in this debate. I should not be understood to speak purely on behalf of the States though that primarily is my responsibility. I hope the Assembly will permit me to speak on behalf of all units of the Federation and give my frank views on the subject that is now under discussion. Let me first state that as far as I have understood the sentiments of every member of this Assembly, there is no one in this House who has a feeling that the Centre should not be strong. It is not a ‘tug of war’ between the Centre and the Provinces. It is not a question of not appreciating the necessity of a Centre which is strong, firm, knows its mind and has no fear of executing its policy. We want such a Centre. Those of the States who have acceded to this Dominion have acceded with no mental reservation whatsoever.

(*Applause*). It is with the desire to make this Federation a success, it is with the anxiety, that this Federation shall have as far as possible a dignified place among the comity of nations, that its representatives shall rise to the full stature of manhood, that in their speeches and in their contributions at International gatherings they will speak with a voice second in authority to none at that gathering that we have acceded to the Dominion. (*Loud applause*). Therefore, Mr. President, let there be no doubt whatsoever that there is anyone in this House representing a State or speaking on behalf of a State or representing a Unit and speaking on its behalf, who has the slightest desire in any way to minimise the work of this Centre, the powers of the Centre or the authority which that Centre should exercise. If in spite of that there have been occasional voices raised regarding provincial autonomy—which for instance is a misnomer because there is no such thing as Provincial Autonomy; the powers are shared between the Centre and the Provinces—if in spite of that there have been occasional voices raised, hushed voices sometimes, clamant voices, greatly daring at times perhaps, it is only because there is another aspect of the question which has also to be appreciated by this august assembly. The obverse and reverse of the coin should both be studied before one has a full and comprehensive idea of what this scheme means and what it is intended to serve. Let me tell you. Mr. President, and I hope You will agree with me as President of the Assembly if not as a Member of the Central Government, that the headaches of Administrators of the units are at least as great as the headaches of Administrators at the Centre. There are problems facing them which in their own sphere are acute, grave, difficult, economic problems of the first magnitude, grievances which it is hard to satisfy, ambitions, hopes, aspirations which it is very difficult to fulfil. Remember, Sir, that much of this sphere of activity which makes for the happiness of the individual man lies with the Province or the unit of administration and not with the Central administration. You in the province have the responsibility for free and compulsory education, a goal which you have put before yourself. You have the responsibility for proper medical aid for sanitation, for promoting health, making the man live a little longer than the average life of 25 or 27 years which has been so far our lot in this country. You have the responsibility of seeing that proper conditions of housing accommodation and other amenities are provided. All that responsibility is on the Provincial administration. It is because of the weight of that responsibility that the administrators of units feel that in the separation of powers and particularly in the sphere of taxation they have not got enough resources to satisfy those responsibilities. Let us not lay the flattering function to our soul that we are better patriots if we propose a strong Centre and that those who advocate a more vigorous examination of these resources are people with not enough of 'national' spirit or patriotism. Therefore, I would echo the sentiments that were given expression to both by my friend Sri Alladi Krishnaswamy Ayyar and by the last speaker and my friend Mr. G. L. Mehta, that what is to be discussed and thoroughly analysed is not the general proposition of a strong Centre and a weak Centre, or the division of responsibility and Sovereignty between the Centre, the Federation and the Provinces but the actual resources that are provided in this report of the Union Powers Committee. Let me say also this. I was glad to note that in the final and concluding remarks of my friend Sri Alladi Krishnaswamy Ayyar he threw aside the theoretical precedents that may be quoted from text books or Constitutions regarding Federation and asked us to apply our minds to the actual proposal in this paper and to analyse that proposal. I think that is a salutary thing to do. It is from that point of view that I venture to examine these proposals.

[Sir A. Ramaswamy Mudaliar]

Now, Sir, the cardinal feature of this, the one thing that has obsessed many of those who have studied this problem from the point of view of the unit, is its taxation proposals. I have said before and I repeat again, that the gravest responsibility is cast on the units for providing what are called nation-building activities. These nation-building activities, remember Mr. President, are the activities which build up the nation and these are the direct responsibility of the units and not of the Centre. For greater responsibility lies on the Centre for the defence of the country. For if we lose our hard-earned liberty, nothing else is worth having. I appreciate that. I want the Centre to have all the powers necessary for that defence. I want the Centre to have all the resources necessary for carrying out its primary objective of defending the country. There is no question of that; but let us also remember as I said, there is another side to the picture that the defence activity cannot be strong unless the nation itself the individual who makes the nation is also strong unless they are healthily fed, unless they are properly educated, unless they are in a position to stand up as real stalwart units of the nation and that responsibility again I say is on the provinces and not on the Centre.

Now, Sir, let us examine the taxation proposals, the powers that are given to the units in this paper, to the provinces. They have been itemised from item 40 to item 58. What more does a province want? They are as many as 18 items of taxation; but let us examine them. The House will pardon me for a few minutes if I coolly and analytically examine them item by item. The first item is land revenue. Now, Sir, it is a notorious fact that for years the agitation has been not to revise the settlements and to do away with land revenue as far as possible. Prime Ministers and Ministers of Provinces elected on adult franchise having the whole weight of the elected authority behind them in the Councils will find very hard indeed to raise land revenue. What of the Prime Ministers are do it in the race of that agitation? Land revenue, far from being an increasing asset will, I venture to prophesy, be a decreasing asset in the future so that land revenue may not be the great asset that it is claimed to be. Let us look at item 41—Duties of excise on the following goods—alcoholic liquors, opium and medicinal and toilet preparations. Alcoholic liquor, Mr. President, with a mandate from the Centre for prohibition which most of the Provinces have already accepted, with a ban which is demanded both by popular opinion and even by the dictates from the Centre—what is the revenue that we can expect from alcohol? Opium again is controlled by the Centre and is subject to International Conferences and regulations. It is bound to be a vanishing revenue. Let us therefore realise that 41 may as well be abolished as put on the list as a source of revenue for the province. Taxes on agricultural income, and I take that item along with Estates Duty in respect of agricultural land and duties in respect of succession to agricultural lands. When the question of the abolishing of zamindari is in the air, and I understand it is going to be an accomplished fact very soon, when division of large holdings is bound to come when peasant proprietorship is going to be recognized or made as far as possible feasible, taxation on agricultural land is bound to become a very poor source of revenue indeed, and if you take it along with Estate Duty in respect of agricultural land, the peasant proprietor having two acres to four acres holdings, what sort of duty are you going to collect from it?

Shri Alladi Krishnaswamy Ayyar: Estate duty even in respect of non-agricultural lands, though collected by the Centre is really a provincial source of income.

Sir A. Ramaswamy Mudaliar: I am aware of that from the report which has dealt with the question and I shall presently refer to it. Estate Duty on agricultural land is a misnomer according to me. You are not going to get it even if you are in a position to levy that tax. Then, Sir, taxes on lands and buildings, hearths and windows, I understand that this item appears in the Act of 1935 and in some tribal areas local bodies have a power to tax the hearths and windows. In any case it is not a tax from which the Provinces can expect much. This is a tax for the local bodies and not a source of revenue to the Province. Duties in respect of taxation of agricultural lands and Estate Duty I have already dealt with. (46) Taxes on mineral rights, subject to any limitations imposed by any Act of the Federal Parliament relating to mineral development. Here again, limitation comes from the Federal Parliament. (47) Capitation taxes. Yes, that is a very good source of revenue if any provincial Prime Minister will levy a poll tax, a revived *jezia* which was levied in the old days. I wonder how many of the Provincial Ministers and their colleagues will have the temerity to propose such a capitation tax to their provincial legislatures. (48) Taxes on professions, trades, callings and employments. This again is taxation of a very poor kind, yielding a small amount mainly intended for local self-government institutions. (49) Taxes on animals and boats. I wonder again, with the strong pressure from agricultural and rural areas which is bound to be exerted in the new legislatures, how many will be able to tax animals and boats. (50) Taxes on the sale of goods and on advertisements. This is the one tax that is being exploited now. But I venture to say that there is a limit even to that taxation. As far as possible it should be uniform more or less in all the provinces. You will be killing the goose if you merely go on increasing the sales tax. The law of diminishing returns is bound to operate as in the case of tariff on imported goods.

The next item on the list is: (15) Taxes on vehicles suitable for use on roads, whether mechanically propelled or not, including tramcars, a source of revenue intended for local bodies. Then we have: (52) Taxes on the consumption or sale of electricity. When one is trying to develop electricity in the provinces, when one wants industries to be established by giving cheap electric power so that as many industries as possible may be established in the different provinces, to impose a tax on the sale of electricity and what is more, to expect any heavy revenue from that is, I think, to indulge in a fanciful hope.

We have next, item 53. Cesses on the entry of goods into a local area for consumption, use or sale therein. This is a sort of octroi for the municipalities and other self-governing institutions. (54) Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling. Here again, betting and gambling are sought to be abolished by the provincial ministries. At any rate, public opinion is supposed to be in favour of the abolition of betting and gambling. The turf course, whose fate is hanging in the balance in more than one federating unit, is the only source of revenue from which any large income can be had. And taxes on entertainments; Let me tell you that life is rather dull in most of the areas of the Federation and I do not know whether any heavy taxation of so-called luxuries will really ensure to the happiness of the

[Sir A. Ramaswamy Mudaliar]

ordinary man who, instead of going to the toddy shop for a diversion, now goes to the cinema. Item 55 relates to the rates of stamp duty and item 56 refers to collection of dues on passengers and goods carried on inland water-ways. My honourable friends from the provinces know what can be had from this source. I think very few provinces get any substantial revenue from this item.

Then, I thought, Mr. President, that the one reform that was sought to be introduced was the abolition of tolls. In many of the provinces tolls have been abolished. It will be very difficult to revive that dismal system of hold-ups which has been the feature in the past in many of the cities of our country. I venture to think that tolls will neither bring in a large revenue nor will it be feasible to adopt them in all the provinces.

Shri M. Ananthasayanam Ayyangar (Madras: General) : In the States there are still tolls existing.

Sir A. Ramaswamy Mudaliar: Most of them have been abolished. There are only a few remaining and the process of their abolition is going on quickly.

Then there is item 58. 'Fees in respect of the matters in this list, but not including fees taken in any Court'. This is an unknown and uncertain source of revenue on which I have very little comment to make.

In the last paragraph, para. 6 of this Report it is said: "It is quite clear, however, that the retention by the Federation of the proceeds of all the taxes specified by us would disturb, in some cases violently, the financial stability of the Units and we recommend therefore that provision should be made for an assignment, or a sharing of the proceed of some of these taxes on a basis to be determined by the Federation from time to time." With all these ifs and buts and with the additional and subjective clause, this source of revenue is a poor source of consolation to the provinces. It is vague; it may be illusory; it is very indefinite and even that the Federation has to decide "in such proportion and on such basis as it may determine". I wonder how many of the Provincial Ministers will be happy at this state of affairs.

Let me now turn to the Centre. There has been a great deal of analogy put before us regarding the sources of revenue for various Federations. As Mr. G. L. Mehta has pointed out, our Federation is unique in many respects. We have to take into consideration the subsisting standards everywhere and the facts as they are and, with reference to them, for the time being at least, frame the Constitution. I have said already that here is none in this House who would object to a strong Centre with resources enough for keeping up its position. But there is one fundamental fact which has been ignored and which has come into vogue during the war period—a new method of increasing the sources of revenue. Let us remember, Sir, that while the provinces have nothing except the definite and declared sources of revenue the Centre has one inexhaustible source of revenue, the Nasik Printing Press. I say it advisedly because I know what has been happening during the last few years. The old idea that the currency of a country should have a fiduciary backing, that there should be gold or silver or something of the kind behind the note issue has gone waste in all countries. Today our currency has not got that backing. No country in the world, excepting the United States of America and Switzerland, has got that fiduciary backing which at one time was insisted upon for all paper currency. Now you can increase your currency at a tight moment. You can issue

treasury bills. You can issue your own currency, I do not for a moment suggest that it is advisable to do so. It leads to inflation and all that sort of danger, and I am one of those who believe that even at present this inflation has to be brought down as far and as quickly as possible. It is the Centre alone that can bring it down. Therefore I am not in a position to advocate that. But I say this advisedly that in the midst of an emergency when they cannot turn to another source of revenue they can expand this source as other countries have done in abnormal times. But where can a province turn ? At times it can float loans. But as history has shown, it cannot always lead to success. In that plight, I venture to think that provincial autonomy, even on the few subjects that have been entrusted to a province will be of a poor kind indeed. Therefore, Sir, while appreciating all that has been said in this Report about it, let me also add that there is another side to the picture which those who have prepared this Report have no doubt taken into consideration; but let me, like the Laputan flapper, conclude by saying that. I wish they had taken a little more into consideration the other side of the picture. I have done.

Mr. President: I have got the names of number of members who want to speak, but closure was moved before I asked Sir Ramaswamy Mudaliar to speak.

Mr. R. K. Sidhwa (C. P. & Berar: General) : Mr. President, Sir, before closure is moved, I would request you to bear in mind one thing. This subject is very important. It affects the economic condition of India, and it is important therefore that ample opportunities should be given to members to express their views. Before the closure motion is accepted, I would request the President to see whether there has been a debate representing both sides. One view has been expressed and the other view has not been expressed as well as it ought to be. Therefore, Sir, I would request you to allow both sides to express their views so that the House may know what they think about this important matter.

Mr. President: I am entirely in the hands of the House. But so far as the speakers are concerned, I think they have been evenly balanced, three on one side and three on the other, and so there is no question of the speakers being on one side only. I would like to put it to the House whether it wants further discussion. The question is:

“That the question be now put”

(The motion was negatived).

Mr. President: I have given many members in this side (to the right) an opportunity to speak. On this side (to the left) I have got a few names. Mr. B. Das.

Mr. R. K. Sidhwa: I hope, Mr. President, that you will not go by the slips of names you have got. We have also to speak.

Mr. President: I will not go by the names I have got here. On a previous occasion, I said that I would not take notice of slips. If any member stands up in his seat, he will catch my eye.

Mr. B. Das (Orissa: General) : Sir, I was very glad to hear my friend Sir Ramaswamy Mudaliar, speak about provincial revenues and income. He was a party before 1933 to the distribution of taxation under the 1935 Act. It is galling to me that Honourable Members of this House should

[Mr. B. Das]

try to perpetuate the taxation arrangements under the 1935 Act. What is the basis of that Act ? That Act gave all powers and all resources to a foreign Government. That devil of a foreign Government has quit India but the devil's system still continues. The Act of 1935 gave all resources to the Centre so that the Centre could rule and dominate and spend the country's resources as it liked. The Centre had no responsibility to the people of India except to send them to jails when it liked. Since the 15th of this month, we have a people's Government. This report is the fourth report that we are discussing, and I fail to observe that the Union Powers Committee's report is drafted in any democratic spirit. I am very glad that two gentlemen, Sri Alladi Krishnaswami Ayyar and Sri Gaganvihari Lalubhai Mehta, spoke of social welfare and social justice. I was pleasantly surprised to here these two gentlemen, situated in high places as they are and situated far above the people as they are, speak of social welfare and social justice. I think Sri Alladi Krishnaswami Ayyar who is a member of the Union Powers Committee has failed to give consideration to the primary duty of the State to render social justice to the people. We are not going to give powers to the Government, to the ministry, only for them to continue the policies of the foreign administration which were expensive and top-heavy. Defence, of course, there should be defence. Will defence suit the national temperament, the national requirement of India, or will it be in the line of the capitalist Western nations like the U.S.A. and England? I do not think that at any stage the members of the Union Powers Committee of the Union Constitution Committee had it in their minds that India's temperament will require a different orientation in the policy of expenditure at the Centre.

Sir, nobody wants Charity from the Central Government. I do not want that, though I belong to the poorest province, Orissa, which had a *per capita*, expenditure of Rs. 1-8-0 before the war but, there should be an equitable distribution of taxation. The Central Government, including the Governor-General, or the President who will be here in six months' time, and the Ministers, must think of their primary duty of social welfare. Nowhere in the Union Constitution or even in the Union Powers Committee's report have I found any definition of the primary duty of the Central Government. Is it only to assume all powers ? Certainly not. We will have to conceive of a system of administration so that the largest amount of taxation that will come from the people should go back to the people. It, should not be spent in manufacturing armaments or in manufacturing atomic bombs. Sir Ramaswami Mudaliar analysed provincial taxation and showed how provinces are kept merely on sustenance allowances. The foreign Government at the Centre wanted only cannon fodder from the provinces. People were driven by hunger and starvation to join the army, not, a voluntary army, to defend the British Empire, not so much the Indian Empire. This is the third time I am appealing for social justice and social security. It is understood from the press reports that the Union Constitution Bill is in the drafting or semi-drafting stage. It is no use Government assuming all powers. We may think we will function as the legislature, but the residuary power is vested in the Government, in the executive. I find from the Union Powers Committee's report that the tendency is that they want further powers, that they want Section 126 (a) should be incorporated in the Union Constitution Bill, so that the President, now the Governor-General, and the Cabinet will have immense powers.

Why this hankering, why this hungering in some minds amongst my colleagues here for these intense executive powers to be concentrated in the hands of the President or the Ministry ? The legislature must exercise its democratic functions and the people must control through the legislature the actions of the executive which should conform to democratic principles. I do not find any spirit of democracy there, Sir.

We have received the second report of the Advisory Committee. We have received many reports so far—which is not the subject matter of discussion here. There have been recommended certain concessions to the minority communities. Who wants little concessions ? We want our rights and privileges and we do not wish to hand over all our resources to a group of ministers. We do not want to hand over all our resources for carrying on the Government. What we want is that our resources should be so distributed that it should be spent for the welfare of the people. I am therefore grateful to Sri Alladi that he mentioned it and I am also grateful to my friend Sri Gaganvihari Lalubhai Mehta, ex-President of Indian Chamber of Commerce, who thinks in terms of welfare and economies through development. He wants big capitalists to develop India. I want fifty per cent. of the taxes of India should filtrate for the common good, to remove hunger, to remove starvation from the door of the people and the standard of living of the people should be better. But if we create classes of capitalists who will be super-capitalists we can never bring up the level of the common masses to that standard. Not that I am opposed to big industries, but I do not want the House should be enamoured of the sympathy of the big capitalists that they think in terms of economic expansion and economic development of India. The Government is our own today and no Government Member has participated in the discussions we are having today. As Members of the Constituent Assembly they ought to tell us what is their attitude, what is their line of thinking. I am not talking as a Member of the legislature, I am talking as a Member of this House. If the attitude of those who are our representatives in the Government is that the common mass, the common welfare of the people of India is their lookout, their main and primary duty, then, Sir, this Union Powers Committee's report, the underlying spirit of the report of this Union Powers Committee, should be scrapped. The Union Constitution should be so framed so that the resources of India, the intelligence of India, of the best economic thought of India, should be developed for the progressive benefit of the masses of India. That spirit I have not seen and I am very sorry that the Committee, however expert they were, however eminent they were as legal luminaries or financial experts, they have never bent their thought to it and I hope after today's discussion either the Union Powers Committee report is thrown back to the Committee again or when the Union Constitution Bill is drafted and placed before us they will develop that sense of duty to the millions.

Shri Narayan Singh (Bihar: General) : *[Sir, I support the motion to take the Union Powers Committee's report into consideration. A controversy has arisen as to what powers should be given to the Centre and I feel it necessary to speak something in this connection. Distribution of powers has begun and we should consider the matter thoroughly. Personally, I am of the opinion that the lesser the powers given to the Government the better it is. Sir, we have spent our whole life in fighting against a Government. We have just done away with a Government and

[] English translation of Hindustani speech.

[Shri Narayan Singh]

are going to establish another. To tell the truth, the out-going Government has not left behind any good or happy impression. We are discussing here as to how powers are to be distributed between the Central and the Provincial Governments. I desire that the primary units of Government should be established in villages. The greatest measure of power should vest, in village republics and then in the provinces and then in the Centre. But, unfortunately we have not as yet got village republics. The people have lesser voice in the Central Government than in the Provincial Governments. We must consider as to what powers should be given to the Government but at the same time we should also consider the measure of control the people should exercise on the Government. This requires our greatest consideration. The Central Government is vested with the authority of maintaining law and order in the entire country. It is vested with the power of defending and maintaining peace and order in the country. Is it not a very wide power? This much power should be enough for the Government. This Government is vested with all authority in respect of Communications and Foreign Affairs. All these powers go to make the Centre very strong. But in spite of these wide powers, members are anxious to make the Centre still stronger. I too desire this and in fact everybody should aim to have a very strong but good Government at the Centre. Unless the Government is good, its strength will be a source of evil rather than of good to us. Take it from me that there may be a Central Government which might transfer the capital from Delhi to Madras. This is not impossible. If the Government is good and honest it may do immense good to the people. But on the contrary, if the Government is not good, it might prove very harmful. Let me put a concrete example. There was a time when Bihar was considered to be the best place for Pusa Agricultural College. Those who have special knowledge of agriculture know that the Pusa Agricultural College can be run in Bihar with more profit and advantage than in Delhi. At one time, the Central Government established the Pusa College in Bihar. But when another Central Government was formed it shifted the college to Delhi. Such are the whimsical deeds of the Central Government which you must bear in mind. You know that the cost and labour involved in running the college in Delhi is excessive. It is a well known fact that the needs of the different provinces are different. We know that the system of rationing and the Food Department are under the Central Government but how are they, administered? The people in the U.P. and the Punjab do not need rice but wheat, whereas the people of Madras need rice and not wheat. The Central Government asks the people of Madras to eat not only rice but wheat also and to the people of U.P. and the Punjab it gives rice to eat. This is what the Central Government does. I too admit and want that the Centre should be strong. The stronger the Central Government the better it is. But at the same time, we should not curtail the powers of the provinces. Such powers as you think proper and those suggested by the Union Powers Committee should no doubt vest in the provinces. But in my opinion the residuary powers vested in the provinces should remain intact. The needs of one province differ widely from those of others. I need not say much on this. But while considering residual powers you will have to keep in mind that formerly when Pakistan had not come into being, we accepted the principle that residuary powers must rest in the provinces. Now it is not proper to say it is no more necessary because Pakistan has come into being. As to whom the powers should be conceded to ensure the greater measure of benefit to the masses is a question that should be well considered. Residuary

powers must vest in the Provinces. If you put them in the Concurrent List it would be quite enough. That will serve the purpose. I would appeal to you to consider this point fully. Everyone desires that the Centre should be very strong but at the same time it should not be entrusted with matters about which it has no idea and whereby any province may be put to a positive loss.

There is one thing more in the report which appears to me unsatisfactory. I belong to a free country and I have no liking for Princes but the report goes to show that the rulers of the States apprehend that their powers are being curtailed. We should act here in such a way that the Princes may not entertain any such apprehensions. If they are allowed to exist there will be dissatisfaction and the work cannot be carried on smoothly. We should see that Princes are with us and whatever they do is in the interest of their people. We have the right to remove such Princes who go against the interests of the people. But we must not entertain the idea of curtailing the rights which they have been enjoying during the British rule. Such an attempt will be harmful to us. Because of these residuary powers being vested in the Centre the Princes may be apprehensive of their future. Therefore I plead that so far as possible the residuary powers should vest in the provinces.]*

Pandit Hira Lal Shastri (Jaipur State) : *[I wish to say a few words about the principles laid down in the report which has been placed before us today. I do not want to enter into the discussion whether the Central Government should have more powers or less powers. Both of these views are being expressed but personally I believe that the Central Government should have sufficient powers. I want to support this report because in it the powers of the Centre and those of the provinces or the units have been beautifully adjusted. For maintaining peace in the country and for other purposes also there should be a strong Centre. But as our country is very extensive, we shall have to leave sufficient powers for the units also. I want particularly to impress that the units include our provinces and the Indian States. Hussain Imam Sahib used some strong words yesterday and urged that there should be no difference between the two. We admit that there should be no difference. We, however, know that there are many differences today and there are many varieties of States. There are differences of area, population and income. There is difference in the system of administration in the States and elsewhere. We know and understand these differences. Yet I admit that the Policy that is being adopted towards the Indian States is the correct one. It would be proper if today they are not made to agree to anything beyond the statement of May 16. We should be content with what they cede of their own accord. But at the same time, want to point out that if the authorities of the Indian States think that with their participation in the Constituent Assembly their duty finished and their loyalty too ceases by getting themselves included in the India-Union, they are greatly mistaken. Because in the age that is to come it is impossible that there should be one type of administration in one unit and another type of administration in the other. It is inevitable that throughout India, in every Indian State, province, big or small there will have to be one type of administration. It will be based

[] English translation of Hindustani speech.

[Pandit Hira Lal Shastri]

democratic principles. We are pained to find that the people of the Indian States are at present in great distress. We have declared that India has become independent and the whole country is rejoicing over it. India has surely become independent and we fully share these rejoicings. To achieve this independence and to bring it near, we have also made our contribution, however small it might be. We are proud of it. In spite of this, we are grieved to find that when India is said to have become independent, the people of the Indian States have still to achieve that status. This is very regrettable.

We were waiting for August 15 and it is past that date now. A new age is drawing and changes are taking place. How it is possible that no changes should take place in Indian States. We are to some extent confident of the farsightedness of the authorities, the rulers and the ministers of Indian States. They should understand that they will have to bend under the pressure of the times. If they do not bend, they will break. We are a little confident of this too. We have some confidence that the Central Government may help us. The previous Central Government did not help us. It helped those who helped the Government and were proud in helping to maintain it here. It helped them and did not help us. It hampered our progress as much as was in its power. That Government has ended now and its authorities too have disappeared. It is no more before us now. A new Government has now been established and we have every hope that it will help us. It may not be able to help us much but we do hope that it will not hamper our work.

But I want to tell you that I am in favour of a strong Central Government. If the States want to come in at present for a limited number of subjects, let them do so. At the same time, I want to say that when we are confident of anything we are so after understanding it. We have this confidence not because of the farsightedness of the Indian States or because of the help that the Central Government would give us but because we find some strength in ourselves and feel strength in our arms. On that strength, I say this. The Indian rulers may like it or they may not like it. The Central Government is pledged to democracy. It may interfere there or it may not, and anything else may happen or may not happen but we know that we are not going to leave any stone unturned to establish democratic government. What we can do, we shall surely do. The strength of the people will increase so much that Rajas, Maharajas, and their allies will not be able to resist it. So the prevalent system of Government in States is not going to stay. Therefore, we need not be impatient. By saying some hard things we, do not want to make the States perturbed. Nor do we want to worry them or to terrify them. It appears today that their patriotism is awakened and it is for that reason that they have come here or are to come here. Let them all come here. But everything is not over with their coming here. Changes will have to be made in States. After saying all this, I want to support the motion. The Central Government should be strengthened under any circumstances whatsoever. If the Government is weak, there will be no peace in the country. Maintaining of peace in the country is the greatest of all the tasks. After that, we will have the opportunity of establishing a new social order and a new economic order. Opportunity will come and all these tasks will be accomplished. Therefore, there should be a strong Central Government.

The Provincial Governments should also be vested with more powers. But there is a difficulty regarding the Indian States. All the Indian States are not alike. Some of them are big and some small. They will have to be grouped so that they may form a proper unit in new India.

Whatever has been said here against strengthening the Central Government has no particular effect on me. I am in favour of a strong Central Government.]*

Mr. Debi Prosad Khaitan (West Bengal: General) : Mr. President, of all the discussions that have taken place in this House the debate that is taking place on this question seems to be based more on rhetoric than on an understanding of the real needs of the country. Specially, Sir, I may say this of the eloquent speech that has been delivered by Sir Ramaswamy Mudaliar of international fame. He has covered the hollowness and weakness of his arguments by the flourishes of his rhetoric. He has forgotten for the moment the needs of the defence of the country and the requirements that become necessary for the purpose of fighting a war, whether defensive or aggressive. He has forgotten conveniently how the whole country has got to be regimented in times of war, the signs of which are already visible in the world and to which our unfortunate country, not yet fully developed, may become a victim at no distant date. I am no alarmist in this direction but I do believe that whether it be to protect our freedom, whether it be to spread education and good health or whether it be to produce more goods it is necessary that the whole country of India must be treated as one. And, each one of us, whether believing in provincial strength or in national strength, must see to it that internal peace and security and defence from external aggression is maintained and the production of goods, both agricultural and industrial, is developed, for it is only on the building up of our national wealth can we develop the nation-building activities, over which Sir Ramaswamy Mudaliar was so eloquent.

He analysed the items of taxation in the provincial list and was ironical as regards several of the items. The first item he dealt with was land revenue and reminded the House of the acquisition of landed interests by the Provinces. But has not the strongest argument in favour of that proposition been used when it was said that it was the intermediate tenure holders that take away all the income and the provincial government does not get the same ? Is it not to be expected that by either abolishing or purchasing the intermediate tenure holders the provincial government will benefit more than it does at present under the existing system of land revenue ?

Secondly, he laughed at item No. 42; Taxes on agricultural income. The Provinces have all along thought that they should possess this method of taxation and so long as intermediate tenure-holders existed there was not the slightest hope that the Provincial Government could get this as a good source of revenue.

He then laughed at the words "hearths and windows" but conveniently forgot the words immediately preceding them, namely "taxes on lands and buildings." Who can deny that these taxes on lands and buildings are a fruitful source of revenue not only to the provincial government but also to the municipalities for the purpose of promoting education, building good houses and encouraging other beneficial activities which are needed by the people of the provinces?

[] English translation of Hindustani Speech.

[Mr. Debi Prosad Khaitan]

Duties in respect of succession to agricultural land is another item which Sir, Ramaswamy Mudaliar very glibly said was of no use to the provinces. But the Provinces have always thought that estate duties in respect of succession to agricultural land, which he has completely ignored, would be a fruitful source of revenue.

Taxes on mineral rights, however insignificant they may have been in the past, will become a fruitful source of revenue to a large number of provinces when our mineral resources are developed and they will prove a source of great strength to the country as a whole.

Sir, I do not propose to detain the House by going over each item in the provincial list. I would like to draw attention to the items in List I, namely, the Central sphere. Let us analyse those items to find out whether it is administratively possible to realise those taxes if they are placed in the provincial sphere and whether, if they are assigned to the provinces, the urgency of developing the economic resources of the country, would be met. Central Taxation begins from item No. 77 in List I. Taxes on income other than agricultural income. It is well known that business exist of the same person or firm or Company in different provinces. It sometimes happens that the Main or Head Office of a company is in one province whereas the manufacturing concern exists in another province. All these difficulties and the need for uniformity really necessitate that taxes on income can only be fixed and recovered by the Central Government. I hope, Sir, that there is nobody here who will say that taxes on income or corporation tax which is item 73 can be assigned to the Provinces. If you do that, there will be a race between different provinces as did happen in the case of certain States in America. Different rates of tax were levied in different States for the purpose of either attracting business to certain States and for preventing other States from developing the same as well as for well-developed States to get unduly more income from certain industrial concerns and other sources of income. It is therefore highly desirable that taxes on income and corporation tax should go to the Centre. In the past, the proceeds of that tax have been distributed among the provinces, and I have not the slightest doubt that it was correct. In paragraph 6 of the Report the last sentence—which again was laughed away by Sir Ramaswamy Mudaliar—says that provision should be made for an assignment or a sharing of the proceeds of some of these taxes on a basis to be determined by the Federation from time to time. “From time to time” are particularly the words at which Sir Ramaswamy laughed. But I say it must be from time to time. The needs of different provinces vary from time to time and according to the circumstances, the Central Government has to see to it that a Provincial Government is not put to any difficulty. May I remind the House of the very sad circumstances in which Bengal was placed in the famine of 1943 ? If provision did not exist that the proceeds of taxes could be distributed according to the needs of Provinces from time to time, what would the position of Bengal have been if the Central Government did not come to the rescue of that Province in year 1943 and thereafter ? We are on the verge of a famine in Northern India at the present moment. Who can visualise, who is there bold enough to visualise, that the needs of Northern India will not be greater in the near future than the needs of the other Provinces ? Therefore, Sir, some elasticity has to be given to the Central Government for the purpose of determining from time to time the needs of the different provinces and the different units. There are some

provinces who are more industrially advanced than others and it, is necessary for us to see that the more backward provinces have to be brought as much as possible on a level with those who are higher developed. Their demands proportionately may in future be greater not only for the purpose of development of industries and agriculture but as well for the purpose of developing health, education and the other nation-building activities which Sir Ramaswamy Mudaliar stressed. It is no use criticising the authors of the report who have giving due attention to every word appearing in the Report and than laughing at it without devoting properly the attention we are able to give and the wisdom which peoples like Sir Ramaswamy is able to bestow with his international experience and his experience for a long time as Member of the Executive Council of the Government of India. He referred to the Nasik Printing Press as a fruitful source of revenue for the Central Government. At that time Sir Ramaswamy Mudaliar was loud in speaking about the sterling balances of India and explaining that they were a valuable property for our country and today when the same Sir Ramaswamy Mudaliar talks of the packing away of our currency he conveniently ignores the existence of those very sterling balances about which he used to be so loud in proclaiming their advantages and selling the goods of our country to England at much lower costs than England would get anywhere else, lower than controlled prices, and by other means, and it was only at the lower prices that our sterling balances are composed of, and now he tries to draw our attention to the Nasik Printing press, while at the same time, telling us that he is not in favour of inflation. The finances of a country are of a very delicate nature. Does he know what is the condition of the finances of our country at present? Formerly, the Government of India could go into the financial market and borrow to the extent of Rs. 100 to 150 crores per year, but what is the state of things that we see at present? The Reserve Bank in order to maintain the price of Government securities has got always to be in market and purchasing Government securities instead of having the courage to go to the market for the purpose of raising loans. It is necessary, in the interests of our country as also in the interests of the Provinces and also in the interest of every individual which the population of the Provinces is composed of, that our Central Government which is to look after the Defence which is to look after the development of industries, which is to help agriculture by means of irrigation, hydro-electric installations and by other methods should be strong and that we should not in any way weaken the Centre on theoretical arguments. Similarly, Sir, you will see that all the taxes that are put in the Central List are only such as can be conveniently administered by the Centre, as are necessary for the sake of uniformity in the different provinces and as are absolutely essential for the purpose of the development of agriculture, industry, etc. We have got to build a large mileage of railways, we have got to have a large mileage of roads, we have to develop a mercantile marine, we have got to develop so many things, which can only be done by the Centre and unless each one of these items is properly developed, we shall neither have our freedom maintained nor will it be possible for us to develop either education or health or agriculture or any of the other nation-building activities that we are all so anxious that we should develop. Ultimately, Sir where is it that the proceeds of these taxes go to? Is the Central Government which is representative of the country at large, which is responsible to the Central Legislature, on which the representatives of all the Provinces will sit and determine as to how the proceeds of the taxes are to be spent—are they going to allow the Central Government to fritter away the proceeds of the taxes instead of

[Shri Debi Prosad Khaitan]

utilising them in the best interests of the country ? They will utilise them in the best interests of the country either directly or by distributing a share of the proceeds of these taxes among the Provinces, which again will be in duty bound to spend them for the uplift of the country at large. Therefore, I appeal to all my esteemed friends here not to be carried away by this slogan of Centre *versus* Provinces, and to consider deeply in their minds what is in the best interests of the country. Let us maintain our freedom, and therefore, build up our defence. Let us maintain our resources, build up more and more concerns so that we can develop the total wealth of the country at large. It is only on the basis of that total wealth of the country that we can build up the edifice of education, health, culture, art and all those factors which go to make the life of every individual rich, beautiful and happy. (*Cheers*)

Shriyut Omeo Kumar Das: (Assam : General) : Mr. President, Sir, after the illuminating debate that has taken place, I was not inclined to take part in the debate. But I feel I will be failing in my duty if I did not bring to light a few important points in which my province is interested. At the outset, Sir, I would rather confess that I cannot whole heartedly congratulate the members of this Committee for the report they have produced. Sir, I agree that the distribution of powers is a very vital point in the Federal Constitution. In all constitutions it has been the bone of contention as to how to distribute the powers between the Centre and the Provinces. The question of residuary powers was the bone of contention in the field of Indian politics for many years past. One section of the people was demanding that the residuary powers be vested in the Provinces and another section of people was demanding that it be vested in the Centre, and the Congress had to take up the position of vesting the Provinces with these residuary powers as a conciliatory gesture to a section of the population; and the altered position that the Congress has taken to day is, I take it a reaction to the situation created by unavoidable, though regrettable partition of India. But I cannot understand the logic, why after taking up this position of vesting the Centre with the residuary powers, the member of this Committee have taken up a different attitude towards the States. After having taken up that position they ought to have maintained a uniform policy for the States and the Provinces. In the provinces they have divested the provinces where there is the Government of the people, but in the States where the people have no share in the administration they have vested autocratic rulers. To my mind it appears to be a denial of democracy.

Sir, legates as we are, of a system of administration which was not credited in the past with having dealt fairly and squarely with the Provinces in the matter of financial adjustments, I feel today that in our anxiety to strengthen the Centre we may be adopting again the same policy of strengthening the Centre at the cost of the Provinces. Strengthen the Centre we must, confronted as we are with a situation which is volcanic on one hand and dynamic on the other. But we should not weaken the Provinces. After all it is the Provinces which have to carry out the dynamic programme of the Congress. The financial settlement which was the outcome of this anxiety to strengthen the Centre, to bring about financial stability at the Centre only, with the Units starving for

funds to carry out the nation-building programme still holds good today and I do not find any change of outlook. The same policy of strengthening the Centre at the cost of the Provinces still holds good today.

Sir, I know this is not the occasion to make any special pleading for my Province, but I feel I will be failing in my duty if I did not bring to light a few facts regarding our provincial finances. My Province, Assam, has been the source of contribution to the Central exchequer to the extent of nearly Rs. 8 crores annually in the shape of excise and export duty on tea and petrol. But the subvention that was given to Assam was only Rs. 30 lakhs and I do not find any change in the outlook today. I feel, Sir,—and regret having to say it—that our leaders have not yet been able to shake-off the influence of the Government of India Act. Sir, with the installation of the Congress ministry not only in the provinces but also in the Centre, people are expecting a revolutionary change and they cannot be said to be unjustified in cherishing such expectations. We must free our administration, from the shackles of this octopus of red-tapism and we must devise some means to carry out our programmes speedily.

Lastly, before concluding, I must bring to the notice of this House another fact in which my Province is interested, in the list of subjects enumerated in the Federal List of subjects, I find migration and naturalisation. To my mind it appears these two subjects also should be put in the concurrent list or the language so altered as to permit the Province to have scope of action in these two subjects. Sir, I do not know how other provinces feel, but it is sore point with us. We know how mass migration into Assam has altered the very complexion of the population. It has disturbed the relative distribution in population. With the Communal Award and the communal representation it was not fair to us to allow mass migration on a large scale and in spite of the evictions that have been carried out in our Province, I still find a large number of people who are not people of the Province but only trespassers into government lands, still hanging on to the province, living with their relatives. In this sphere, Sir, I want the members of the Committee and especially the Mover of this Motion to think more clearly on this point and permit the provinces to have some scope in this matter. If Assam which is the homeland of the Assamese people, if they cannot be protected, for myself, I think I have no justification to come to this House. Assamese people have a culture distinct from other provinces. Assamese people have a language which is a separate language and which though Sanskritic in origin has got Tibetan and Burma influences and we must protect the Assamese people. In this view of the case I appeal to the Mover of this motion to provide scope for action by the province. Sir, with these words, I support the Motion moved by Sri N. Gopaldaswami Ayyangar.

Sir B. L. Mitter (Baroda State) : Mr. President, I do not want to take much time in saying a few words which I have to say because it has not been brought out in the debate so far. It has been assumed that the distribution of power in the report was made arbitrarily and some think that more power has been given to the Centre than ought to have been given; some think the provinces have been weakened and so on. I was a Member of the Committee. The Committee went into the matter of distribution of powers on a definite principle. It is this. Matters of national concern should be vested in the Centre and matters of provincial concern should be vested in the provinces. We always had this

[Shri B.L. Mitter]

a large mileage of roads, we have to develop a mercantile marine, we have fundamental principle in mind when we made the lists. We found that the Act of 1935 was a good guide because in making the list in 1935 Act the same principle was kept in view. I suggest to Honourable Members that, when we come to discuss the various items, members will kindly bear in mind the fundamental principle that matters of national interest ought to be in the Centre and matters of provincial interest ought to be in the provinces. There are some matters for which there should be a concurrent list in which both provinces and the Centre ought to have the power. My next point is with regard to the States. Some of the speakers have asked why should the States have a somewhat different position from the provinces ? The reason is obvious. India is about half and half of what used to be British India and what used to be States. Do we want the States to remain in the Union or do we not ? I do not think there will be any dispute here that we want the States to come into India, all those who are within the limits of what is India. Now the States agreed to come on the basis of the 16th May Declaration. Therefore if you want the States to come in and form one consolidated strong India, you have got to accede to the condition on which they came in and that is why some special provision should be made with regard to the States. Once the States come in there is no doubt that gradually the States and the provinces would approximate to each other. The States will come up. Assuming that the States are backward, to the backward portions you have got to show some indulgence. Let them come in, let them associate with you and then you will see gradually they will approximate to one uniform standard and that is our objective and thus India will be one consolidated strong India. I do appeal to members from the provinces not to mind the difference which may be made in favour of States.

Mr. President: I think we have had enough discussion now and after all if the Motion is adopted it means only that the report be taken into consideration and the details of the report will come up for discussion. So if the House permits me, I would now put the Motion to vote after giving the Mover of the Resolution a chance to reply if he wishes to.

Mr. N. Gopalaswami Ayyangar (Madras: General) : Mr. President, Sir, I do not think after this long debate it is necessary for me to take up much of the time of the House particularly because arguments taking a particular standpoint from one speaker or another have been answered by counter arguments from others taking the opposite point of view. It is unnecessary for me to refer to all the detailed points that have been raised in the course of this debate. I wish, Sir, however, to refer to one or two main considerations. One of them has just been referred to by my friend Sir B. L. Mitter *viz.*, a distinction that has crept into the preparation of these lists as between provinces and the Indian States. I did make a reference of this point in my opening speech and I indicated the considerations that had weighed with the Committee in arriving at the conclusion that (at the inception of the Federation in any case, some consideration should be given to the different sets of conditions which prevail in Indian States and in the Provinces. It is really the correct thing to keep in view as an ultimate ideal that in due course the Indian States will approximate to provinces and the distinctions that now exist will find themselves removed by common consent. At the moment what we are interested in is to maintain the integrated political structure that

has come into being now and if possible to strengthen that structure as much as we can even if in doing so we have to make a discrimination in favour of areas with certain different sets of conditions, perhaps in favour of certain, what I would even go to the extent of calling, Prejudices. Well, Sir, we have to recognize that position and the Union Powers Committee Report is based upon the recognition of that distinction.

The other big point that has been raised in the course of this debate is, I think, based almost entirely upon a delusion. That point is that by the lack of a sense of values or by reason of our not having examined the matter carefully, the Union Powers Committee has grabbed for the Centre functions and financial resources which would more appropriately have been assigned to provinces. That I call a delusion. That, arises from the fact that those who, have raised that objection have not sat down to compare the Lists that have been made for the Centre and for the Provinces in the Union Powers Committee's report with the Lists that you will find, for instance, in the Government of India Act of 1935. I base this particular argument on a statement which, with considerable labour, one of my Hon'ble friends from the States has prepared and shown to me and I think I am right in saying that there is hardly a single item in the present Provincial List in the Government of India Act which this much criticised Committee, the Union Powers Committee, has transferred to the Federal List (*Hear, hear.*) If I mention that point it is not because I want to claim credit for, the List that exists in the Government of India Act. It is possible for these critics to say that even what you find in the Lists attached to the Government of India Act, is not based upon solid, convincing considerations, that the Union Powers Committee should have gone further and if possible transferred some of the items on the Federal List of the Government of India Act to the Provincial List. I wish however only to say at this moment that the criticism that we have grabbed power for the Centre in matters which so far we have considered to be within the sphere of the provinces has no substantial foundation.

The next point that I wish to refer to is the one elaborated at length by an Hon'ble Friend of mine for whose administrative experience and oratorical gifts I have very great regard. That friend started by examining the list of taxes in the Provincial sphere and tried to belittle and pooh-pooh the items you find there. I think the case he tried to make out was that the distribution of the taxable sources between the Centre and the Provinces in the Union Powers Committee's Report was deliberately calculated to reduce the resources of the provinces and to increase the resources of the Centre. That view, I think, Sir, is far from the real state of the facts. As a matter of fact we have included in the Provincial List all the items of taxation and revenues which you find in the Provincial List of the Government of India Act today. In, this connection I must say that it was rather extraordinary that while my Hon'ble Friend spent so much time and rhetoric on belittling these various individual items in the Provincial List, he did not devote a reasonable proportion of that time and rhetoric to the items which we have included in the Federal List. There also we have only repeated what is to be found in the Government of India Act. He seems also not to have attached sufficient, importance to a matter to which the Committee has drawn very prominent attention in the last paragraph of its Report. The Committee recognises that the sources which are listed for the benefit of the Centre might produce revenues which would be perhaps on present

[Mr. N. Gopaldaswami Ayyangar]

standards more than adequate for the needs of the Centre. In any case it recognises the fact that, if the Centre retains the entire proceeds of all the Central taxes that are mentioned, it might result in upsetting the financial equilibrium of the Units and therefore has made the specific recommendation that steps should be taken for the assignment wholly of these sources to the units and for the sharing of other sources between the Centre and the Units periodically at the discretion of any authority which in the course of the framing of the Constitution we may decide upon establishing for that purpose.

Shri T. Prakasam (Madras : General) : May I just point out, Sir, that the Government of India Act was rushed through Parliament at a time when the country was carrying on fierce agitation ? (Voices: 'Mike, mike').

Mr. N. Gopaldaswami Ayyangar: I might for the benefit of the House repeat what Mr. Prakasam has drawn attention to. He seems to contend that the 1935 Act was rushed through Parliament that this country had no adequate opportunity to put its views before Parliament and therefore it is not an Act which we should have taken as a model for imitation. All that I would say in reply is that the 1935 Act was the last act in a series of proceedings which started I think about 10 or 8 years earlier and that the proposals that are contained therein passed through the hands of various Commissions and Committees and finally through a Joint Parliamentary Committee on which representatives of this country sat and that the whole scheme was evolved after the expenditure of an amount of labour and thought which we do not ordinarily associate with the framing of legislation of that kind.

Now, Sir, it may be that what was produced at the end of it all did not satisfy us in certain respects, but we certainly could not complain that that legislation was prepared in a hurry or rushed through Parliament in a hurry. We may not accept all that is contained therein.

What I am interested in pointing out in reply to the debate is that there is nothing that we have done in the Union Powers Committee's Report which you could attack in reason. We have heard a great deal about the resources of the Provinces being poor, about the resources of the Centre being inexhaustible and so on. I do not however remember having heard from any speaker in this House any constructive suggestion as to what we might have added to the Provincial List and what we might have subtracted from the Federal List.

Now, Sir, I do agree that as the report stands it does not give the House a full picture of what will be the final financial provisions in our new constitution after it comes to be fully drafted. I have more than once told the House that the scheme that is in contemplation is that this whole question of the resources that could be tapped in this country, the distribution of those resources between the Centre and the units and the machinery by which that distribution should be effected, either all at once or from time to time, should first be examined by an Expert Committee, and perhaps later on vetted by the Union Constitution Committee and finally that scheme would come before the House so that those who are the authors of that scheme might have the benefit of constructive suggestions from Members of this House. As it is, Sir, we have

only put before you the items which we wish to include in these three different lists. We have also told you that it is not intended that these items of revenue resources or tax resources should be exclusively appropriated to the Centre. We contemplate that certain items should be wholly assigned to the Provinces. We contemplate that others should be shared equitably between the Centre and the Provinces. Where then, Sir, is the justification for the criticism that the Union Powers Committee has failed to do justice to the Provinces in this connection? I for one am unable to see any ground for that criticism. Sir, I do not wish to take up the time of the House any longer. We have had a most interesting debate on this very vital issue relating to the Constitution and I hope that Honourable Members will recognise that during the quick changing events that have taken place during the last few months that Committee has done a piece of work which if it does not extort admiration will at least elicit some measure of approval (*Cheers*).

Mr. President: Shri Gopaldaswami Ayyangar's motion is:—

“Resolved that the Constituent Assembly do proceed to take into consideration the Second Report on the scope of Union Powers submitted by the Committee appointed in pursuance of the resolution of the Assembly of the 25th January, 1947.”

The motion is adopted.

An Honourable Member: I press for a division.

Mr. Hussain Imam (Bihar: Muslim): May I suggest the procedure which was sometimes followed in the Council of States, that is, in the old days minorities were asked to stand up in their places to express their dissent? From it you could make a note and not involve the whole House into going into the lobby.

Maulana Hasrat Mohani (U. P.: General) : What is the number of those who will remain neutral?

Mr. President: To my mind it is perfectly clear that there was a large majority in favour of the Resolution. Now those who are opposed to the Resolution will please stand up in their places.

(Six Honourable Members stood up.)

Mr. President: So I think my reading was quite correct. There are six opposed to it.

The motion is adopted.

Maulana Hasrat Mohani: I am in favour of the Resolution, but as I suggested a large percentage of those who have not voted have been neutral.

Mr. President: I think I am quite satisfied that the House is in favour of passing this Resolution and there is an end of the matter.

Mr. M. S. Aney (Deccan States) : Mr. President, as you have granted the Poll and asked those who are against, it is necessary for you to ask those who are in favour of it.

Mr. President: I do not think it is necessary, because it is quite clear and I have already declared. But if the House insists I will ask the Members who are in favour of the Resolution to please stand.

(An overwhelming majority of Honourable Members stood up.)

Mr. President: It is now quite clear.

An Honourable Member: Those who are neutral?

Mr. President: It is not necessary to know the neutrals. We shall take up the Report now. We have to take up the amendments. The first amendment is by Shri D. P. Khaitan.

Mr. Debi Prosad Khaitan: Mr. President, Sir, I sent notice of this amendment because in the Resolution of Shri Gopalaswami Ayyangar as it is worded only the words "Second Report" are mentioned. In the circumstances there was a little vagueness as to whether the first Report would come into consideration or not. But in the speech that Shri Gopalaswami Ayyangar delivered in moving this Resolution he made it clear that in spite of the occurrence of the words "Second Report" only, the House will be entitled to consider the first report also. In the circumstances, Sir, I do not think there is any necessity for my moving the amendment that stands in my name.

Mr. Naziruddin Ahmad (West Bengal: Muslim) : Mr. President, Sir, on a point of order, I submit that the House has accepted only the Resolution as it has been proposed. It has not accepted the Hon'ble Member's speech in support of the Resolution. It is an accepted constitutional proposition that when a Resolution is passed, any speech made contrary to it or inconsistent with it, is not necessarily accepted but is rather rejected. The Resolution says that the "Second Report" be taken into consideration while in the speech it was suggested that that part of the first report which is not inconsistent with it may be looked into. The so-called introduction of the first report is extremely qualified and it is that part of the report which is consistent with it which in the opinion of the Hon'ble Member may be looked into. It comes to this, to my mind, that the first report is out of date and has been discarded and only that part of it only which is consistent with the 'Second Report' may incidentally be taken into consideration as a relevant document.

And then again, the amendment which was tabled should have been moved before the Resolution was put to the vote.

Mr. President: It has not been moved.

Mr. Naziruddin Ahmad: Yes. As the amendment has not been moved, it simply falls through. If the Honourable Member who tabled the amendment is happy with the idea that the first report holds the field, let him be so. But the constitutional position is that the first report is not formally before the House.

I have a second reason for making this submission. Those members who unfortunately were not in the House from the very beginning that is, those members who came here as the result of the statement of June 3rd have not yet been supplied with a copy of the first report. That also indicates that the first report is not before the House as it is constituted today.

In these circumstances, I ask for a ruling as to whether the first report is before the House by reason only of the fact that the Honourable Member in a qualified manner said that it may also be referred to. I submit that it could be taken into consideration by way of argument in an incidental manner and not as a substantive Report properly before the House to be voted upon.

Mr. President: Has the honourable member received a copy of the blue book? It contains the first report also.

Mr. Naziruddin Ahmad: Unfortunately, that packet was sent to my address in the Constitution House where I was during the last Session. I have since shifted to the Western Court. In spite of repeated letters and messengers to the Constitution House I have failed to recover the packet.

Mr. President: It is unfortunate that it did not reach him. He will be given another copy.

We have to proceed with the consideration of the Report. There are certain paragraphs in the Report and we have got appendices which contain the lists. I have got notice of certain amendments suggesting that certain paragraphs should be substituted by something else, that certain additions should be made to certain paragraphs and certain fresh paragraphs should be added. It seems to me that the report as a whole is now before the House and the Report is the Report of the Committee. I do not know whether it is open to the House to substitute a paragraph of the Report. Perhaps, the House can say that the principle embodied in a particular paragraph should be substituted by certain other principles or that the substance of the Report should be altered in a particular manner. I do not know if it is correct in form to say that a paragraph of the report should be substituted by something else.

Any way, that is only a technical matter. We have now to proceed to the merits of the report. We shall have to take the report paragraph by paragraph and if any amendments have to be made by the members, I will call upon them to put forward their suggestions of which they have given notice in the form of amendments. We take up the report paragraph by paragraph. Mr. Gopaldaswami Ayyangar, will you take up the report para by para ?

Mr. N. Gopaldaswami Ayyangar: Sir, I did not quite catch the suggestion that you were good enough to make. Is it your idea that I should read these para by para?

Mr. President: No. I do not think it necessary that the paragraphs should be read.

Mr. N. Gopaldaswami Ayyangar: May I make an alternative suggestion which would perhaps be simpler and this is a procedure which in the legislatures we follow in regard to bills. After the motion for taking the report of a Select Committee into consideration has been passed, the procedure is that the President says, the question is that Clause I do stand part of the bill, and then amendments are moved. If I may suggest the procedure, Sir, you may refer thereby to the number of the

[Shri N. Gopaldaswami Ayyangar]

paragraph in this report and say that that para do stand part of the report. If there is any amendment, it may be considered and the para put to the vote.

Mr. President: I will follow that procedure. We shall take up para by para. I have not got notice of any amendment to para I.

Shri K. Santhanam: Sir, I have got a suggestion to make. I think we should take the items first and take the body of the report finally, because it is only a summary of the items. After we have disposed of the items, we can then discuss the various paras. If we take up the items first, it will save a lot of time. If we take the paras first, there will have to be a repetition of much of what has been said these two days.

Mr. M. S. Aney: Mr. President, the Report is in two parts. The first part gives us the principles on which the three lists in the second part are prepared. Now, to take up the analogy which has been referred to by one of my friends there, of considering a bill when it comes before the House, it must be noted that the bill generally has got one statement called the Statement of Objects and Reasons of the bill. Then there is the bill. The bill is considered first. At the end after the bill is accepted, we accept the Objects and Reasons as only giving us the grounds relevant to understand the bill and nothing more than that. We need not consider this report clause by clause. This gives the general principles on which the three lists are made. We have to examine these lists in the light of the principles enunciated there. Therefore, the proper procedure would be to consider the items first and at the end of it, if we find in dealing with the lists that some principles in the paragraphs have undergone a change, then we may make any change as regards the other part of the report.

Mr. N. Gopaldaswami Ayyangar: Sir, I entirely agree with Mr. Aney that if we strictly followed.....

B. Pocker Sahib Bahadur (Madras: Muslim): On a point of order, Sir, I would like to know whether the second report alone or the second report along with the first report, is before the House for consideration.

Mr. President: The second report is under consideration. It incorporates much of what was contained in the first report. If there is any difference, it is only the second that is under consideration now.

Mr. N. Gopaldaswami Ayyangar: If we followed strictly the procedure relating to bills, I agree entirely with Mr. Aney that what he proposes would be the right course. The particular suggestion I did make was due to your having already ruled that we were to consider the report also para by para. We have passed a motion that the report be taken into consideration and that by itself could be deemed to be sufficient approval of the House for taking the report under consideration and we have only to deal with the items in the list. You may have perhaps a general debate at the end when you can review the entire course of discussion and arrive at any conclusion you please. If, therefore, you are pleased to direct that we should consider the report para by para then the procedure I suggested may be adopted. If, on the other hand, you think that the report has already been taken into consideration, there is no need to go into the detailed paragraphs of that report and we may take simply the items and dispose of them.

Mr. President: I think we had better go to the lists. We shall take the items in the list one by one and when this is finished, we may take up the paragraphs if necessary. Perhaps, it may not be necessary at all. We shall take this up tomorrow. The House is now adjourned.

The Assembly then adjourned till Ten of the clock on Friday, the 22nd August 1947.

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CONSTITUENT ASSEMBLY OF INDIA

Friday, the 22nd August 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (the Honourable Rajendra Prasad) in the Chair.

MEMBERS TAKING THE PLEDGE

The following Members took the Pledge.

1. Mr. Prafulla Chandra Sen (West Bengal : General).
2. The Honourable Pandit Govind Ballabh Pant (United Provinces : General).

REPORT OF THE UNION POWERS COMMITTEE—*contd.*

Mr. President: We shall now proceed with the discussion of the items in List I in the Appendix to the Report of the Union Powers Committee. We shall take up item No. 1. I find there is notice of amendment by Sir Ramaswami Mudaliar, Sir V. T. Krishnamachari, Shri Srinivasan and Shri Venkatachar.

ITEM 1

Sir V. T. Krishnamachari (Jaipur State): Mr. President, Sir, I move:

“That in item 1, all the words after the word ‘thereof’ be deleted.”

My reason is that the words beginning from “generally” are unnecessary. They are explanatory. I understand they have been adopted from some judgement of the High Court of Australia. It seems to me to be unnecessary to add these descriptive words to the list of subjects. That is the reason why we have set down this amendment on the order paper. We have no objection to the sense of the words, but we consider that in the list such descriptive explanations are out of place.

(Messrs. K. Santhanam Naziruddin Ahmad and T. A. Ramalingam Chettiyar did not move their amendments—No. 5 in List No. 1, No. 4 in List No. IV and No. 6 in List No. I.)

Mr. President: There is no other amendment to this item of which I have notice. If anyone wishes to speak on the amendment which has been moved he may do so.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President Sir, the amendment which stood in my name is the same as the one which has been moved though it is in a different phraseology. I submit that the words proposed by the amendment to be deleted are unnecessary. The expression “defence” in item No. 1 is, think, comprehensive enough. No further descriptive words are necessary as will appear from numerous

[Mr. Naziruddin Ahmad]

other items in the List—both in the List attached to the Report and the List attached to the Government of India Act. I Will cite one or two instances: item No. 3—“Central Intelligence Bureau”; No. 6—“Defence industries”; No. 7—“Naval, Military and Air Force works”. There are numerous other similar items. The items are described merely by name. According to a well-known principle applicable to such cases all incidental or ancillary powers necessary to give them full effect, are implied in these expressions. They are cryptic expressions which explain themselves. Everything necessary to those subjects is implied. In these circumstance, the proposed deletion will bring the item into line with many other similar items in the list. So, in order to secure uniformity as well as to remove much surplusage, I support this amendment.

Shri M. Ananthasayanam Ayyangar (Madras: General) : Sir, it is not unusual to elaborate the points that come in these lists. I would request the attention of the House to item No. 33 in List No. 1 of the Government of India Act, 1935. Corporations are a Central Subject. “The incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporation, but not including corporations owned or controlled by a Federated State..... etc.”. That is the language used. They have said what they mean by the word ‘corporation’.

In various countries where ‘defence’ alone was entered as an entry in the federal list, they have taken this matter to a court of law. Differences arose and the courts, had to interpret the word ‘defence’. Here I have got a case (Australian Bread Case 21 C. L. R. 433) where Griffith C. J. said the word ‘defence’ includes all acts of such kind as may be done in the United Kingdom either under the authority of Parliament or under the Royal Prerogative of the Realm. Among others it includes preparations for war in time of peace, and any such action in time of war as may be taken for the successful prosecution of the war and the defeat of the enemy. Sir, this explanation was given, or this decision was arrived at after elaborate discussion in a court of law. Should we once again go through this travail? I think, Sir, if the Honourable the mover of the amendment has no objection to these items being there, the inclusion of them may be allowed. The only objection is that it is not elegant. The language is not elegant. It is not a piece of literature that we are enacting here. It is a piece of law. It is better to be more specific. Wherever it is possible to avoid doubts, let us avoid them.

Mr. N. Gopalaswami Ayyangar (Madras: General) : Sir, the reasons for the inclusion of the words, whose omission has been suggested, have been recognised by the Hon’ble the Mover himself, and have been elaborated by Mr. Ananthasayanam Ayyangar. I have nothing to add to those reasons. I think that on the whole it is better that we should not incur the risk of courts possibly taking different views upon a question of that sort. As we are all agreed that the substance of what those words indicate must be included in the item of ‘Defence’, it is much better that we do include those words in this item. If the Hon’ble the Mover has no objection, I would suggest his withdrawing his amendment.

Mr. President: The mover of the amendment wishes to withdraw. Has he got the leave of the House to withdraw it ?

(The amendment was by leave of the Assembly withdrawn.)

Item 1 of List I—Federal Legislative List, was adopted.

ITEM 2

Mr. President: Again there is an amendment in the name of Sir V. T. Krishnamachari.

Sir V. T. Krishnamachari: Mr. President, Sir, I move the deletion of item 2. My reason is that requisitioning is temporary acquisition, and there is item 43—Acquisition of property for purposes of the Federation, which covers what is substantially implied in item 2. It seems to me that there is unnecessary duplication. It is for that reason that I move the deletion of item 2. In times of war, item 1 confers all powers of requisitioning that may be needed.

Mr. President: There are certain other amendments also.

I think we had better discuss this because this amendment suggests the deletion of the whole item. So any other amendments which are only for adding something or subtracting something may be taken up later on. Does anyone wish to say anything about this amendment?

Mr. K. M. Munshi (Bombay: General) : Mr. President, the amendment, Sir, is based on a little misconception, if I may so put it. The power to requisition has been construed to be included in the Defence power, and is a prerogative of the Crown in England. In India the question arose during the last war when the Central Government exercised the power of requisitioning, and the point was raised that requisitioning during the war was a Defence power, and Defence, not being a subject which was within the legislative competence of the Central Legislature, the Defence of India Act could not include the item of requisition in it. This was largely conceded in some of the High Courts and Parliament had even to intervene at a stage. Now, no doubt therefore, the Union possessing the powers of defence under item 1, would have the power to requisition immovable and movable property during war, but in the period of peace or during the time when preparations are being made, it is doubtful whether the power to requisition would be included in the Defence power. This item No. 2 has been specifically mentioned to obviate any doubt on this question. As already pointed out by my friend Mr. Ananthasayanam Ayyangar earlier during the debate, there have been numerous decisions on some of these items and we do not want the same point litigated over and over again in our courts for the satisfaction of the litigious public and members of my profession. Therefore it is necessary that this power should be specifically mentioned—including training and manoeuvres—since even during peace time, the power for requisitioning may have to be used. That is the whole object of it and I am sure my Honourable Friend Sir V. T. Krishnamachari will withdraw his amendment.

Shri Himmat Singh K. Maheshwari (Sikkim & Cooch Behar Group): Mr. President, Sir, during the war, requisitioning was resorted to in many places as a special measure, but it involves great hardship to many individuals, and the power was abused in a very large number of cases. During war time such abuse may be tolerated, but it is now proposed to grant this power of abuse to every 'local Hitler' who is likely to use such power against every person whom he may dislike. I suggest, Sir, that the House should throw out this item as a safeguard for the freedom and security of the common man.

Mr. Hussain Imam (Bihar : Muslim) : Mr. President the power to requisition lands for the purpose of defence is one of the most essential

[Mr. Hussain Imam]

powers which we should give to the Centre in order to maintain the stability and strength of the Union. But there is no doubt that what the last speaker said is a fact. Lands were requisitioned and they continue to remain requisitioned two years after the termination of the war even today. There is no doubt that there has been a great deal of mis-management by the former government. But the mis-management by the former government is no reason why we should not trust our own representatives to do better when the time comes.

I have come here to make a suggestion that as requisitioning of lands for the purpose of defence is an essential thing, it should be in the central list. But I want to suggest that this requisitioning should be also for the purposes of peace. There are time when lands have to be requisitioned in times of peace. For instance just now we have got the case of the Central and Provincial Governments having to deal with the great influx of refugees from the different areas. For dealing with such problems there should be power for the requisitioning of property by the State. I would therefore like to point out to the draftsmen the need for including an item of this nature in the concurrent list.

Shri H. Chandrasekharaiya (Mysore State) : Mr. President, Sir, in my opinion the amendment moved seems to be a very reasonable one. The necessity for the proposed entry has not been explained by Mr. K. M. Munshi who thought fit to oppose the amendment. He referred to a case which happened during the time of the war, but he did not cite any case which happened during times of peace. The requisitioning, as put down here does not even require the previous consultation of the Province or the federating State. Even in the Government of India Act of 1935 there is no entry of this kind in the Federal List. In fact, whenever lands have to be acquired for the purpose of the Federation, Section 127 of that Act provides that it should be done under certain conditions and with payment of compensation. But as the entry now stands, it implies requisitioning any land straightaway and in an arbitrary manner even without referring the matter previously to the concerned Unit. For all these reasons, I pray that the House will kindly accept the amendment proposed by Sir V. T. Krishnamachari.

Shri M. Ananthasayanam Ayyangar: Sir, the mover of the amendment did not take exception to this item on the ground that it is unnecessary or inconvenient, but only on the ground that it is covered by a later entry, item No. 43 in the list. "Acquisition of property for the purposes of the Federation." In his opinion, that is a more comprehensive item, and therefore this item No. 2 need not find a separate place as a separate entry in this list. That is all the objection I, however, feel that there is necessity for such a separate entry. Requisitioning of property for defence purposes is a different thing from requisitioning them for general purposes of the Federation. In the one case it is restricted to land and in the other it can be all kinds of property.

Then again, whenever property is acquired for any particular purpose the nature of the purpose also varies. Sometimes for carrying on dangerous or noxious trades some property is requisitioned and specific powers are given to the Local Boards for this purpose. Therefore, I say there is need for distinguishing defence purposes from the other ordinary purposes. By providing it in item 43, pointed attention of the Assembly is drawn to this distinction.

The last speaker said that under the Government of India Act of 1935, the Provincial Government could acquire property for the purpose of the Federation on payment of compensation. I am sure a similar provision will be made here also, and the property of an individual would not be acquired without compensation. We have, in the Fundamental Rights already laid it down that no property would be acquired without the payment of adequate compensation. Therefore, this item may be allowed to continue in the list.

B. Pocker Sahib Bahadur (Madras: Muslim) : Mr. President, Sir, it is practically admitted that this item is covered either by item No. 1 or item No. 43 of the Federal list. Now the question that has to be considered is the retention or deletion of item No. 2, whether, even if it is superfluous, we should not keep it there. My view is that, in view of the fact that his particular detailed item is also covered by item No. 1, there is no necessity for mentioning it as a separate item. Moreover, if it is retained as item 2 it will give rise to difficult questions in the construction of item No. 1 whether it does cover many other points also. It may be argued that since one detail is particularly mentioned as item 2, other details are not covered by item 1. Therefore it is not at all advisable to retain this item 2 as a separate item in view of the fact that it is really covered by item No. 1. Therefore, I submit, Sir, that this may be deleted.

Shri S. V. Krishnamoorthy Rao (Mysore State) : Mr. President, I submit that neither item. No. 1 or No. 43 covers this item No. 2. A country like India with a large army will have to keep its Army fit and the training will have to be given in different geographical and climatic conditions. For that purpose, the Army will have to be requisitioning land in various parts of the country and in various parts of the year. So such power for the Centre is very necessary because Defence is a Central subject. So I oppose the amendment.

Mr. Tajamul Husain (Bihar: Muslim) : *[Mr. President, item 2 is that the Central legislature has got the power of acquisition and requisition of land anywhere it likes in the Indian Union for defence purposes. On that, an amendment has been tabled by my able friend that this item should be removed. Mr. President, I am unable to understand the logic as to why this amendment has been moved. Suppose there is an invasion of India, or Travancore which has acceded to the Indian Union, and it becomes necessary to establish a front there, then would you not give the Central legislature power to requisition land? I am astonished at this amendment. In my opinion the Central legislature should be given the power to requisition land for manoeuvres.]*

Mr. Naziruddin Ahmad: Mr. President, Sir, I certainly support the spirit of item No. 2, namely, that the Centre should have power for requisitioning land for its own purposes, but I should submit that the clause is unnecessary. It has been fully covered by item No. 1. There is a great distinction between 'acquisition' of land, which is taking complete title, and 'requisitioning' of land, which is taking possession for temporary use. I don't think therefore that item No. 43 will cover this item, but I submit it is covered by item No. 1. Once we elaborate each power, there will be no limit at which we should stop. There are a very large number of items which are expressed merely by catch words. So if we further define this power, a large number of ancillary powers will have also to be defined. That I submit would be introducing a vicious principle. 'Defence' is also covered by item 15 relating to 'War and Peace'. If there was any

[] English translation of Hindustani speech.

[Mr. Naziruddin Ahmad]

doubt, item No. 15 will remove it. For all these considerations, I submit that Item No. 2 is unnecessary and redundant and should be rejected.

Mr. N. Gopaldaswami Ayyangar: Sir, I think it is conceded by the House that in any case under certain circumstances the Federal Legislature should have power to make laws regarding requisitioning of lands for defence purposes. What has been put forward in favour of the amendment is that that power could be traced either to item No. 43 or to item No. 1.43, as the House knows, refers to acquisition of land for purposes of the Federation and, in connection with the interpretation of a section of the Defence of India Act which related to requisitioning of land, some High Courts in the country took the view that requisition did not come under acquisition. It was therefore necessary, especially after the war was over and for the purpose of completing what remained to be done in regard to properties which had been requisitioned during the war, to make statutory provision to enable the Centre to deal with requisitioned property for a limited period of three years. But we are now considering a constitution which is to be of permanent duration.

Now, Sir, it will be conceded that requisitioning will in any case be necessary under conditions of emergency, whether war or otherwise, for defence purposes including purposes of training and manoeuvres. Now when we reach a stage when such a power has to be taken, the Federal Legislature should be clothed with authority for making that law. Now if that power could be inferred from item 1—I have already said that doubts have been expressed about it being inferred from item 43—if that power could be inferred from item 1, it may be that item 2 is altogether unnecessary; but we have got to reckon with the fact that, while a number of other items which we have mentioned in detail could be brought under item 1, we have still enumerated them in this list. Now what is the harm in adding requisitioning to the number of those detailed items when you concede that requisitioning should come under the general power of defence? We shall have this power in the Federal list. Whether that power should be used and whether a law should be made during peace for enabling requisitioning to be done is a matter for the future Federal Legislature. It might be that in the law which may be proposed for requisitioning we may insert conditions which would not allow requisitioning to be done unnecessarily or when the conditions do not warrant it; but that in certain circumstances requisitioning may, not be necessary in peace time is not a ground for our eliminating this item from the list altogether. And there is another point I want to mention. Assuming that the contrary view is taken and it is held that requisitioning of land does not fall within the purview of item 1 of this list, what will be the position? The position will be that it will be an item which is not to be found in any of the 3 lists and therefore will become a residuary item and the power of making a law for dealing with that item will be with the Centre. I quite appreciate the position that, in view of the distinction that we are making in respect of the quantum of residuary power and the allocation of powers between the provinces and the Centre, if this item becomes a residuary item, in the case of the States, the States might claim jurisdiction to legislate for this item. But what will be the effect of the amendment which has been moved by the representatives of the Indian States? Supposing it is removed, then the power is necessary for the federation under certain circumstances and in certain emergencies. Then, whatever arguments we may have from the Centre's point of view will be concentrated on demonstrating that requisitioning is a very necessary item in the general power of defence and therefore we

would still, I think, have to legislate on them. Therefore I think the balance of considerations is in favour of leaving this item alone in the Federal list and, when any legislation is attempted on this particular item, then perhaps this House can take steps for ensuring that it is not used in circumstances which do not warrant it. I therefore suggest that this amendment may not be pressed.

Sir V. T. Krishnamachari: The main point the amendment seeks to make is that whatever powers of requisition may be needed in times of war and emergency must be conceded and are conceded under item 1. But public interest requires that powers in times of peace must be exercised under the Land Acquisition Act. The question is one of public policy—whether we want the power of requisitioning to be exercised in times of peace when there is no war or emergency. The object of this amendment is to prescribe that in times of peace, the ordinary Land Acquisition procedure should be used where lands are required for purposes of training and manoeuvres.

Mr. Tajamul Husain: Sir, I rise to a point of order. After the mover has replied, can there be any speech? Nobody has any right of reply. I want a ruling from you, Sir.

Mr. President: I thought Mr. V. T. Krishnamachari was going to withdraw the amendment. That was the reason for allowing him to speak.

Sir V. T. Krishnamachari: Sir, I do not press the amendment.

Mr. President: My anticipation was correct. He does not press the amendment.

Mr. Tajamul Husain: Then I withdraw my point of order.

Mr. President: The amendment is withdrawn. I take it the House allows him to do so.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Then there are certain other amendments of which notices have been given.

(Messrs. K. Santhanam, Mohanlal Saksena, M. Ananthasayanam Ayyangar and N. Madhava Rao did not move the amendments standing in their names.)

Mr. President: I do not think there is any other amendment. So I put the original item to vote now.

Item 2 was adopted.

ITEM 3

Mr. President: Then we take item 3. I do not think there is any amendment to item 3.

Shri K. Santhanam (Madras: General): Sir, I want to speak about item 3. The Central Intelligence Bureau is not a proper subject. Central Intelligence should be the subject. Why should we have a legislative power confined to the Bureau? I do not see there is any need for restricting the scope. I would make a suggestion that the last word may be dropped and that Central Intelligence may be a proper subject.

Mr. President: Mr. Gopaldaswami Ayyangar, that seems to be a reasonable suggestion.

Mr. N. Gopaldaswami Ayyangar: We shall consider it when settling the text.

Mr. President: Then I put item 3 to vote.

Item 3 was adopted.

ITEM 4

Mr. President: Then we proceed to item 4.

(Messrs. K. Santhanam, H. V. Pataskar, and Naziruddin Ahmad did not move the amendments in their names.)

Shri Himmat Singh K. Maheshwari: Sir, I move.

“That for item 4, the following be substituted:

‘Preventive detention in a Province for reasons of State connected with defence and external affairs.’”

In List I of the Government of India Act of 1935 what is now item 4 forms part of item No. 1, and reads as follows: “Preventive detention in British-India for reasons of State connected with defence, external affairs or the discharge of the functions of the Crown in its relations with Indian States.” It will be noticed, Sir, that this particular item related to British Indian provinces only and not to the Federating States, the reason obviously being that if preventive detention were to be the exclusive concern of the Federal Government in the areas of the Indian States, the States themselves would find it impossible to take prompt action to prevent trouble in times of emergency. The present item seeks to extend this power to all the territories of the Federation and to that extent it makes the position of the States unduly difficult and it also involves unnecessary interference with their normal administrative machinery.

Another point, Sir, which I wish to bring to the notice of the House is that this item only vaguely describes the circumstances in which preventive detention may be ordered. The circumstances are summarised in the words “for reasons of State”. But this might include almost anything under the sun. I suggest, Sir, that it is desirable to state clearly which particular reasons of State should justify preventive detention. I have therefore suggested that such detention should be ordered only in connection with defence and external affairs and not in connection with other matters of which there will be plenty to be dealt with by the Federal Government.

We were told yesterday that List I in the present Report is almost identical with the corresponding Federal Legislative List in the Government of India Act, 1935. Now, although this particular item does find a place in the List, it has been substantially altered to the disadvantage of the States and also to the disadvantage of the subjects in as much as it seeks to spread its tentacles almost to an unlimited extent I hope, Sir, that the framers of the Report will find it possible to reconsider this particular item and modify it in the light of the suggestion I have made.

Shri Gopikrishna Vijayavargiya (Gwalior State) : *[Mr. President I oppose the friend who has just moved the deletion of this amendment on the ground that it is not in the interest of the States. I think the argument is wrong. As we are going to make a Federation, the States are also in duty bound to protect it. When we are going to establish a strong

*[]*English translation of the Hindustani speech.

united administration and a strong federation, do they intend to shelter those in States who go against this Federation ? We have to check all those who are disloyal to the country whether in provinces or in the States and the same law should be applicable everywhere.

I come from a State and submit that we gladly cede rights to the Federation and we must. This item must remain.]*

Shri B. L. Mitter (Baroda State) : Mr. President, I oppose the amendment moved by Shri Himmat Singh Maheshwari. The reasons he gave in support of the amendment tend to separate the States from the rest of India. The item is: "Preventive detention in the territories of the Federation for reasons of State." If the States form an integral part of the Dominion of India, then the reasons which make it necessary for the Government of India to take action should apply equally to the States as to the rest of the Dominion. An act of the State is never resorted to unless it is in the interests of the Dominion as a whole. That being so, I do not see why any distinction should be made between States and the rest of the Dominion when an important measure is considered necessary in the interests of the Dominion as a whole. Supposing some mischief is brewing in a State and it is necessary in the interests of the whole Dominion that preventive detention should be exercised in respect of that person, if the Central Legislature do not have the power to restrain such mischievous activities, then the whole object of preventive detention would be defeated. I oppose the amendment.

Mr. Naziruddin Ahmad: Mr. President, Sir. I should submit that I heartily desire that all the States should accede to the fullest extent possible so that they should be treated exactly as the Provinces. But for that purpose I think we should proceed in a legal and constitutional manner. I believe that the States have acceded on three broad matters Defence, Foreign Relations and Communications. Mr. Ayyangar informed the House that their Instruments of Accession consist of about 18 or 20 items on which they have acceded Constitutionally, therefore, I submit that the jurisdiction of the Federation over the States would extend only to those subjects on which they have acceded. Beyond that it would not be constitutionally proper or possible to extend our authority to the States. As I have already submitted the States should fully accede, but I should also think that that should be effected through negotiations and on a voluntary basis. It is the mutual appreciation and mutual selfinterest and mutual dependence for the safety and welfare of India as a whole that full accession should follow. I have therefore this difficulty of accepting item No. 4 in its fullest implications. I should therefore ask the constitution experts in the House, of whom there is quite a galaxy, to consider the matter dispassionately from a constitutional point of view and give their decision. Then the alleged difficulty pointed out of a trouble brewing somewhere in an Indian State and that the Federation should have full power to deal effectively with that trouble and the Federation should therefore have sufficient power to deal with a problem like that, but I think that that would contravene the conditions upon which the States have acceded. If it is for defence purposes or any of the purposes for which the States have acceded, there would be no difficulty. But, however justifiable we might feel in acting in the way suggested, It would be beyond our constitutional power, at any rate. constitutional propriety, to act in that way. I should therefore ask the Honourable the Mover of the Report to consider that, and I am sure it will receive adequate and effective consideration at his hands.

[Mr. Naziruddin Ahmad]

The other difficulty which I have felt on this item is a smaller one. It is about the last word in this item, namely "State". This item has been taken from item 1 of List I in the Government of India Act and the expression has been bodily lifted from that item of the Government of India Act. But in this report we have also used the word "State" in a different sense, namely, the Indian State. There may thus be some possible confusion. At any rate the use of the same technical expression in two different senses is inartistic and should be avoided. There may not be any actual misunderstanding resulting from this, but I should suggest that the Drafting Committee should consider the selection of some other suitable word, so as to prevent any possible confusion with the word "State" as it is understood in the Indian State. I should therefore consider that on the whole the item should be carefully considered and we should not proceed on mere grounds of convenience or expediency, but rather on the ground of justice and commonsense.

Mr. Hussain Imam: Mr. President, I rise to oppose the amendment, because it wants to create differentiation between the Units of the Federation; that the Provinces should be subject to the jurisdiction but the States should not be subject to jurisdiction. This is a formula to which I cannot agree, but I do fear that the item itself goes counter to the fundamental rights we hope to secure. Preventive detention is nothing but a method of arbitrary detention without trial. If you want to put a man under trial, then he will come under the ordinary law. No specific provision would be necessary for that purpose. It seems to me that we are trying to revive Regulation 3 of 1818 and similar measures that were taken. No doubt in modern democracy powers of this nature are given, but they are given under circumstances of grave menace to the peace and tranquillity in the country. It was only in times of war that regulations of this sort were passed in European as well as American countries. But in times of peace no reason of State should prevail and cause a person to be detained without his having committed an overt act. I therefore feel, Sir, that if this power is to be given, it should be qualified in such a manner that his right of preventive detention should remain with the Centre only in times of war and other grave menace to peace and tranquillity of the country. In ordinary times, a power of this nature would be misused. Human nature being what it is, it is necessary that we should provide some method whereby you can avoid the misuse of power. Power brings with it intoxication and it is rather difficult to imagine that it will not be misused in time of peace. I am therefore suggesting not its deletion, but elaborations so that proper precautions may be taken that it may not be misused.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Mr. President, Sir, this item No. 4 "Preventive detention in the territories of the Federation for reasons of State"; is a very important question involving an important principle. I have listened very carefully to the speech just delivered by my Honourable friend Mr. Hussain Imam. I can only tell him that I am one of those who have systematically opposed the preventive detention in any shape or form in the past. Mr. Hussain Imam rightly apprehends that this provision might lead to abuse and might be an instrument of oppression.

May I tell him that the situation is now completely changed? We must realise that we are going to start a new State of our own, absolutely independent State, and that the Central Government, the Union Government must be armed with certain powers which can be used by it, not for frivolous reason, but for the interests of the State itself. The

amendment which has been moved unduly restricts the scope of the powers that are sought to be conferred by item No. 4.

Mr. Hussain Imam has referred to Regulation III of 1818. I am sure he would realise that when the Britishers first came into this country and wanted to stabilise their Government here, in the very early stages of their occupation, they thought it necessary to have some legislative provision, some powers by which they could stop persons, potential mischief makers from doing any mischief to the State. Therefore, from their point of view, in the early days of the British Rule in this country, it was thought necessary that a legislative provision like Regulation III of 1818 should be provided to give the Executive certain powers to deal with mischief-mongers. Now, why does he apprehend that the Central Government, the Union Government which we are now going to set up under the New Constitution should abuse this power? I know no human agency, no human machinery is perfect. But you have to give the Central Government certain emergency powers which have got to be exercised by them in the interests of the Dominion itself. If there is an abuse as my honourable friend apprehends, because Regulation III of 1818 in the later stages of the British Rule came in for a lot of abuse—I know a lot of people were deported and civil liberties were suppressed—but now we have got our own State, our own Government elected by the people with a President elected by the people and of the people, and besides, it must not be forgotten that in the Fundamental Rights we have provided a relief of *Habeas Corpus*. There is no danger of civil liberties being trampled under ruthlessly and carelessly as it has been done in the past under the British Rule. If, for instance, in any part of the federation, in any territory, not necessarily in a province, in a Native State, some persons were found by the Government, on reliable information, out to create mischief that would not only be detrimental to the best interests of the Dominion, but to peace, do you think that the Government should sit quiet and not move in the matter, simply because there has been no overt act on their behalf which would bring them under the clutches of the law? There may be fifth columnists who may be secretly working in the Dominion itself, in any part of the territory; they may be in the pay of a foreign Government; they may even be in the pay of a rival Government of any Dominion Government in India. Therefore, in the present set-up of things, when we have within the geographical borders another independent State, it is all the more necessary that such a power should be provided in the constitution to be utilised by this Union Government when it thinks it necessary. It is quite possible in the scheme of things that one Native State may be conspiring against another and probably by no ordinary test, because of no overt acts, he could be brought under the clutches of law. If the Indian Government had reliable information that his activities were such that he would endanger the peace between two different parts of the Indian territory itself. Certainly the Central Government must have power to intervene to stop that mischief-making.

Therefore, it is not a question of civil liberties being in danger; it is a question of high reasons of State, and reasons of State should take precedence over everything. Therefore, I oppose this motion and support the original proposal for inclusion of item 4 in the federal list.

Mr. Tajamul Husain: Mr. President, Sir, I support item 4 and oppose the amendment. In my opinion, Sir, powers must be given to the Central

[Mr. Tajamul Hussain]

legislature to detain for reasons of State any person or group of persons. Now, Sir, supposing in a province or in a State, there is a group of persons who is in conspiracy with a foreign enemy power with a view that that foreign enemy power may invade India, what should we do at that time? Therefore, the Central legislature must have power to detain that group of persons at once and prevent it from doing further danger and mischief, and there should be no open trial. What would happen in an open trial? Many State secrets, weaknesses of the Indian Defence may be out. The enemy may know at what point we are weak. After all, you know, Sir, the technicalities of the law. Accused persons who are guilty may be acquitted. Therefore, with these few words, I strongly support that item 4 should be retained in its original form and the amendment should be opposed.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim) : Mr. President, Sir, my justification for intervening in this debate is to point out that this item in this list is included in order that the Federal legislature might legislate in regard to this item. If we understood that, all the objections raised have no place at all in this discussion. But, as preventive detention is abominable to a free country, to free citizens, some honourable members have sounded a note of warning that the Government coming into power, or rather newly coming into power, as the Honourable Mr. Hussain Imam pointed out, might get intoxicated with power, and in its enthusiasm, especially when it happens to be a party Government, in its enthusiasm to hold its power by all means, it might override the fundamental rights of the people not to be deprived of their liberty without trial. So I do not think that Mr. Hussain Imam was opposed to the granting of powers to the central legislature in this regard, but he only sounded a note of warning.

And now, Sir, even at this juncture it is necessary for us to see that in future when the central legislature thinks of passing a legislation unnecessarily undue advantage may not be taken by it on the ground that this item has been placed on this list; and the criticism of an Honourable Member with regard to the speech of Mr. Hussain Imam is not correct; as I have stated, he only sounded a note of warning. And it is also not correct to say that there is a provision of *Habeas Corpus* and that it will save the people from unnecessary and illegal harassment. If legislation of the sort of the 1818 Regulation was passed, *Habeas Corpus* would have no place at all. Therefore we cannot seek any comfort from the provision of *Habeas Corpus*. While I submit that a state must be armed with powers to detain persons in certain circumstances like war or grave menace to tranquillity, it is always necessary that provision should be made even in legislation in regard to the fundamental right and liberty of a citizen to be tried by competent courts of law and to be declared guilty or not guilty, if that is possible. Therefore while I am not opposed to the inclusion of this item, I along with Mr. Hussain Imam would sound a note of warning that in future when any legislation is sought to be made in regard to this item, free Indians should not be deprived of their liberty in free India.

An Honourable Member: The question may now be put.

Mr. N. Gopalaswami Ayyangar: Sir, I take it that the main amendment before the House under consideration is the one moved by my Honourable friend Shri Himmat Singh Maheshwari. That amendment seeks to limit the power given by this particular item to preventive detention. In a province for reasons of State connected with defence and

external affairs. Now the difference between this amendment and the original item has two aspects. One is that the orbit of this detention should be limited to reasons of State connected with defence and external affairs; and the second as that the federal legislature should have power to make laws for detention only within the limits of a province. Perhaps I might dispose of the second of these limitations at once. Assuming that, for reasons of state it is necessary to detain a person, is it the intention of the Honourable Mover of this amendment that, if such a person escapes to the territory of an Indian State, the Federation should not get him detained there or have him brought back to British India and detained there? No, after all, the States also form part of the territories of the Federation, and, if detention of persons for reasons of State is necessary, that detention should be possible in any part of the area of the Federation. Therefore, Sir, this does not seem to accord with the spirit in which the States, ought to accede to the Federation.

Secondly, as regards the limitation in respect of matters connected with defence and external affairs, I am not sure if we should limit them to these two particular cases. There are matters which may not be connected with defence or external affairs in connection with which it may be necessary for the Government of the Federation to detain particular individuals. It may be a thing connected with the very existence of the State, but it may not relate to defence or external affairs. It would probably conduce to the disappearance of conditions which may threaten the existence of the State if we had power to control movements of people of that sort for a short while and kept them in detention for the purpose of ensuring that the atmosphere improves until the time arrives for our setting them free. In any case if it is necessary to have preventive detention powers in the case of persons in matters connected with defence and external affairs, there are other matters also in connection with which such power is necessary. Therefore, Sir, on both these grounds I do not think this amendment deserves to be supported by the House.

Then there were certain other matters referred to by other Honourable Members. Mr. Naziruddin Ahmad warned us against taking power which may not constitutionally be correct in view of the fact that the States might be acceding only in respect of a certain limited number of subjects. I am sure, Sir, that care will be taken to see that any powers that we take in this regard do not encroach upon the free sphere in which the the States will be allowed to act after they accede to the Federation. That is a matter relating to the wording of the clause and I can assure Mr. Naziruddin Ahmad that what he has said in that connection will be borne in mind.

Then I will refer to one or two points mentioned by my Honourable friend Mr. Hussain Imam. One of these suggested that preventive detention is something which will go against fundamental rights. Now fundamental rights are going to be enumerated in our constitution; and if we put preventive detention in the federal list, any laws that we make in respect of this item could not conflict with the rights that we shall recognise in the body of the constitution. Therefore, Sir, the legislation that we shall have the power to make cannot conflict with fundamental rights as recognised in the Constitution.

Then there was another matter. I think it was not Mr. Hussain Imam but Mr. Naziruddin Ahmad who brought it up. He referred to the use of the word "State" in the expression "reasons of State". The Honourable Member appears to have thought that in some way or other that word "State" might get confused with Indian States. I wonder if I have

[Mr. N. Gopaldaswami Ayyangar]

got his point all right. But, if I have got his point all right, my only answer to that point is that the word "State" has nothing to do with Indian States. Unfortunately in the Government of India Act, from which as he very properly said, we have lifted these expressions out into our own list, the word "State" has been printed with a capital letter. I think, that perhaps was a mistake. If we substitute a small letter for the capital letter, "reasons of state" would have the meaning which it was intended that that expression should have. I therefore, Sir, oppose this amendment and would ask the House to accept the item as it is.

Mr. President: The question is:

"That for item 4, the following be substituted:

'Preventive detention in a Province for reasons of State connected with defence and external affairs'."

The motion was negatived.

Mr. President: I shall, now put the original motion to the House.

The question is:

"That Item 4 in List I—Federal Legislative List be adopted *viz.*:

'Preventive detention in the territories of the Federation for reasons of State'."

The motion was adopted.

Mr. President: I might draw the attention of the House to the fact that we have gone through only four items and we have taken one and a half hours. We have got 84 items in the List. At this rate it will take five days to deal with the items. I do not wish to rush anything but I would urge Members to go as fast as they can.

ITEM 5

Shri K. Santhanam: I would request your permission to move the amendment in my name in List V in place of the one down in List I.

Mr. President: Yes.

Shri K. Santhanam: Sir, I move:

"That in Item 5 the words 'for the defence of the territories of the Federation and for the execution of the laws of the Federation and its Units' be deleted."

I need not take up much of the time of the House. These words are unnecessarily restrictive. The Federation should be able to use its forces for all legitimate purposes, including such work as is assigned to it by the United Nations or in pursuance of Treaties and Agreements. Therefore the deletion of these words gives a freer scope for the employment of our Military, Naval and Air Forces. I hope it will be accepted.

Mr. President: Motion moved.

"That in item 5 the words 'for defence of the territories of the Federation and for the execution of the laws for the Federation and its Units' be deleted."

Sir V. T. Krishnamachari: Mr. President, I would like to move amendments 11 and 12 to Item 5 in List I.

Sir, I move:

"That in item 5, after the words 'Air Forces' the words 'borne on the Federal establishments' be inserted."

This is a formal amendment. My next amendment relate to the second portion of item 5. Sir, I move:

“That in item 5, for the words ‘the strength, organisation and control of the armed forces raised and employed in Indian States’ the following be substituted:

‘The strength of the armed forces raised and employed in Indian States and the organisation and control of such part of the forces as may by agreement be earmarked for service with Federal Forces.’”

You will find a reference to this, Sir, in paragraph 5 of the report. The intention is to maintain all the existing powers of co-ordination and control now exercised over such forces. We agree that all the powers at present exercised should continue to be exercised by the future Federation, but we have attempted to reproduce the existing position in the amendment as we have tabled it. I shall be glad if Mr. Gopaldaswami Ayyangar will examine this and see whether this reproduces the existing position. We feel that this reproduces it more accurately than the original item, and we shall be glad if Mr. Gopaldaswami Ayyangar will examine this and employ such language as will correctly reproduce the existing position.

Mr. H. V. Pataskar (Bombay : General): Item 5 as it stands at present restricts the use of Naval, Military and Air Forces for two specific purposes, namely, “employment, thereof for the defence of a territory of the Federation and for the execution of the laws of the Federation and its Units.....”

As that employment is confined to these two objects, I have given notice of an amendment that the scope should be widened by adding:

“for implementing treaties and agreements with other countries for maintaining peace and security inside the territories of the Federation.”

The object, of giving notice of this amendment was to widen the scope, because our country may make treaties with other countries and these forces might have to be employed for implementing those treaties. I find now that my friend, Mr. Santhanam has already moved an amendment, which is wider in scope than mine. He wants all those words that refer to the use of these forces to be deleted. If that amendment is carried, there is no point in moving my amendment. I therefore request that you allow me either to move it or not after Mr. Santhanam’s amendment is disposed of one way or the other.

Mr. N. Gopaldaswami Ayyangar: I straightaway wish to say that we propose to accept Mr. Santhanam’s amendment.

Mr. H. V. Pataskar: Therefore I need not move it.

Mr. S. V. Krishnamoorthy Rao: Sir, my amendment is in two parts.

“That in item 5, the words ‘and its units’ be deleted; and for the words ‘raised and employed’ the word ‘maintained’ be substituted.”

the latter part is merely verbal one and I do not press it. As regards the first portion, the Indian Union consists of the two parts, the democratic provinces with elected presidents, and the States with their autocratic dynastic governments. If the Federation undertakes to use its army to execute the laws of these States, then it will be a negation of democracy. I do not think any democratic government will allow that to be done. It is to prevent this that I tabled my amendment. But

[Mr. S.V. Krishnamoorthy Rao]

Mr. Santhanam's amendment certainly fulfils this purpose which I have in my mind, and since that amendment is accepted, I do not press mine.

(Shri V. I. Muniswami Pillay and Shri D. Govinda Doss did not move their amendment No. 5 in List III)

Mr. President: These are all the amendments which we have notice of. The original items and the amendments are now open for discussion.

Shri Ram Sahai (Gwalior State): *[Mr. President, as a representative of one of the States, I oppose the amendment moved by Sir V. T. Krishnamachari. The amendment implies that some forces should remain under the States and others under the Centre. But at the same time, the language of the amendment includes the word "agreement". By this, the little importance that the power regarding forces which the Centre had is lost. I wish to tell the House that the independent authority enjoyed by the Centre over the defence forces is also put to an end by this amendment. The condition of the armies in the States is so bad that they cannot be used for defence whenever they are needed. Some training is necessary. And hence it should be completely under the control of the Centre. I therefore oppose the amendment.]*

Shri Yudhisthir Mishra (Eastern States Gp.): Mr. President, Sir, I support the amendment which has been moved by my Honourable friend, Mr. Santhanam, to item of list I. The words sought to be deleted indicate how the naval, military and air forces of the Union Government would be employed. It is proper that the scope of the employment and the function of the forces should be dealt with by the future Union legislature and that it should not be restricted by the Constituent Assembly. Sir, I take objection, in particular, to the words "for the execution of the law of its units". It would be disastrous for the people of the States if for the execution of the laws of the States, as they stand now, the forces of the Union are employed. The laws in the provinces would be framed by the Provincial Legislature which will consist of the representatives of the people. But, Sir, there is no guarantee that in the Indian States the people of the States would have any hand in the framing of their laws. As long as the people of the States do not enjoy democratic rights they will fight against the autocracy of the rulers and also against the laws framed to suppress the movement of the people. In many of the States, especially in Orissa States, in the name of public safety, ordinances have been passed to suppress the movement of the people who are fighting for their freedom. It would be a tragedy if the forces of the future Union Government be employed to suppress the people who are fighting for what the Congress and the Indian people fought for the last 27 years. With these words, Sir, I support the amendment moved by Mr. Santhanam.

Mahboob Ali Baig Sahib Bahadur: Mr. President, Sir, the House is under a great handicap because the Honourable Member who gave notice of a certain amendment—Mr. Pataskar—has not actually moved his amendment. He has on the other hand said that if Mr. Santhanam's amendment is passed he would not move his amendment. I do not know, Sir, whether such a procedure is allowed. In any case, members who intend to support the amendment given notice of by Mr. Pataskar do not clearly see how his amendment is covered by that of Mr. Santhanam. It

[] English translation of the Hindustani speech.

may be contended that according to Mr. Santhanam's amendment the significance of the word "defence" is so wide that it covers the cases mentioned or contemplated by the amendment of Mr. Pataskar. But Mr. Pataskar's amendment is to this effect that the Union forces must be enabled to be employed for implementing the treaties and agreements with other countries. The government might enter into defensive and offensive treaties with other countries. In such cases, power must be given to the government to employ the forces for the purpose of implementing these treaties. Well, of these activities on the part of the Indian forces are included in the word "defence" which I consider is the real implication, then, I think Mr. Pataskar's amendment may be allowed to be moved. The other instance mentioned by him is for the maintenance of peace and security inside the territories of the Federation. Here again it may be contended that the words "defence of the territories" may include the maintenance of peace and security inside the territories of the Federation. There is a little difficulty here, Sir. For instance, if the Federation Government wants to send its troops into a native State—I mean an Indian State, I am sorry, excuse me—whether this legislature has got the right to legislate in regard to that, whether the Union Government has got the right or the power to send these troops to the Indian States for the maintenance of peace and security. Supposing there is a big riot or rebellion or some sort of thing happening in an Indian State, the question is whether the Central Government or the Union Government would be entitled to send troops to the Indian States. These are the instances covered by the amendment given notice of by Mr. Pataskar. As I said, the House is under a great handicap in this respect. The Mover stated that if Mr. Santhanam's amendment is passed, he would not move his. This hypothetical way of moving an amendment is rather peculiar; in any case, the mover of this amendment or those who want to support it may be given a chance to move the amendment even after Mr. Santhanam's amendment is passed.

Mr. A. P. Pattani (Western India States Gp.): Mr. President, the amendment moved by Sir V. T. Krishnamachari requires considerable attention, especially as the mover has said that the intention of that amendment is to stabilise the position as it is today. So far as I know, there are three types of forces employed in Indian States. One is the Field Service Troops, second is the General Service Troops and the third is the Internal Security Troops. I know that before the last war, there were some States that had forces which were not affiliated or pointed to what is known as the Indian States Forces scheme under which these three categories of forces which I have mentioned came. But even those States, who were maintaining these forces outside the category of the Indian States Forces scheme, obtained equipment and arms through the Central Government. To that extent, Sir, I submit to the House that whether the forces were Field Service Troops, General Service Troops, Internal Security Troops or troops outside any of those organisations, the strength and equipment of those troops was determined or rather permitted, or any other term we may like to use, by the Central Government. If my interpretation is correct, then I submit, Sir, that the recommendation of the Committee as it stands is the correct position and I trust the Mover will look at it in that light.

B. Pocker Sahib Bahadur: Mr. President, Sir, I entirely agree with the Honourable Mahboob Ali Baig when he says, that the House is under a very serious handicap in understanding the position as regards the motion and the various amendments before the House. We do not know, Sir, which are the amendments for consideration before the House.

[B. Pocker Sahib Bahadur]

Of course, there was the motion and there was Sir V. T. Krishnamachari's amendment. There was also Mr. Santhanam's amendment. Mr. Pataskar's amendment also is there, I take it, because although he said he was not moving it if Mr. Santhanam's amendment is carried he has moved it conditionally. Whether that procedure of moving an amendment conditionally is permitted or not it is for you, Sir, to say.

Mr. N. Gopalaswami Ayyangar: I thought, Sir, that Mr. Pataskar said he was not moving his amendment.

Mr. President: Yes; he did not move it.

B. Pocker Sahib Bahadur: Supposing Mr. Santhanam's amendment is not carried in spite of that, is it to be taken that Mr. Pataskar declined to move it?

Mr. President: Whatever the reason may be, it is always open to a member not to move an amendment of which he has given notice. For whatever reason he may not choose to move it. In this case Mr. Pataskar did not move his amendment, whatever reasons may have influenced him.

Mr. H. V. Pataskar: Sir, I would like to speak a word on this amendment, not my own.

Mr. President: He has not finished yet.

B. Pocker Sahib Bahadur: Even now Mr. Pataskar has not said definitely whether he has moved his amendment or has declined to move it.

Mr. President: As I have said, the amendment has not been moved and it is not before the House.

B. Pocker Sahib Bahadur: If that is so, I would submit—of course, it is a matter of procedure on which you have to give a ruling—that if an amendment has been given notice of and if the Honourable Member who has given notice of the amendment has spoken on that amendment and has not said whether he does not move it or he would like to move it conditionally—whatever it is—I would request you to give, a ruling as to whether it is open to any other member of the House to move the same amendment with the President's consent. In view of the uncertainty of the present position, I would request, you, Sir, to give me permission to move the amendment as my amendment if the fact is that the amendment is not before the House; if on the other hand, the amendment is before the House, I would like to support the amendment and give my reasons therefor.

Mr. President: I think under the rules it is open to any member to give notice of an amendment and later not to move it for any reason he likes, but if he has not given notice of an amendment he cannot adopt somebody else's as his own. Mr. Pataskar's amendment has not been moved and it is not before the House.

B. Pocker Sahib Bahadur: Mr. Pataskar's reason was that Mr. Santhanam's amendment answered the point and it is only on that ground that he has declined to move. I would say, Sir, that Mr. Santhanam's amendment does not answer the purpose and it would leave the whole clause,

incomplete. Therefore I would submit that it is necessary that the clause should be such as to include at least the purpose of Mr. Pataskar's amendment. Conditions will arise sooner or later in this country in which India has to enter into alliances with neighbouring States in order to defend herself against some foreign aggression of some kind or other. For instance it is very likely that India may have to enter into a Defensive alliance with the neighbouring State of, say, Pakistan or Afghanistan in order to defend herself against an aggression from Russia or some other country. Well, it is to provide for such a contingency that Mr. Pataskar's amendment has been proposed and it is necessary that specific provision should be made to enable the Federation to legislate on that. Therefore I would submit, whatever may be the technical position as to whether the amendment of Mr. Pataskar is before the House or not, it is very necessary that some provision should be made in order to make legislation under that subject possible for the federation.

Mr. H. V. Pataskar: Sir, I would like to make it clear first of all that I did not move the amendment that stands in my name and the reason that I mentioned for doing so was that the amendment moved by my friend Mr. Santhanam has wider scope. On that point I would like to offer some further remarks. Now, Sir, from the clause under discussion the words "the raising, training, maintenance and control of Naval, Military and Air Forces and employment thereof", remain while the rest of the words from that clause 'for the defence of the territories of the Federation and for the execution of the laws of the Federation and its Units are omitted by the amendment which has been moved by my friend Mr. Santhanam. Naturally the object with which I had given notice of ray amendment was that it was mentioned in item 5 that these Naval Forces or Military Forces or Air Forces were to be used for two specific purposes which were mentioned viz., for the Defence of the territories of the Federation and for the execution of laws of the Federation and its units. Naturally I thought it was necessary that such Forces ought to be used for the purposes which were mentioned in my amendment. It is quite possible that we may have to enter into treaties with other countries and in that case we may have to make use of these Forces for implementing them. When only two purposes were mentioned, in the clause, I thought it was necessary that the other two purposes which to my mind were important should also be incorporated but when I found that my friend Mr. Santhanam moved as amendment by which he wanted to omit an reference to any purposes leaving it open to the Federal Government or the State to use them for any purposes whatsoever, I naturally thought that that amendment gave a wider scope and therefore my amendment became unnecessary. Now, therefore, to all those friends who may have any doubts I would like to say again that "The raising, training, maintenance and control of Naval, Military and Air Forces and employment thereof" naturally means that they could be employed for any purpose connected with the State. If necessary it may be further made clear by adding the words 'for purposes of State' after the words "employment thereof" and if the mover has no objection I would suggest an amendment to Mr. Santhanam's amendment to substitute the words 'for purposes of State' in place of the words which have been omitted. Of course, even if these words are not there the employment thereof will be entirely in the hands of the State and in their discretion Therefore I think the purpose for which I wanted to move my amendment does not any longer exist for the simple reason that now it is open to the State to use these forces for any purpose whatsoever. With these words, I would submit that I do not wish to move my amendment.

Mr. M. S. Aney (Deccan States) : Mr. President, Sir, there are two amendments which are under consideration of the House. One is by my Honourable friend Mr. Santhanam and the other is by Hon. Sir. V. T. Krishnamachari. This item which is under discussion deals with the question of Defence which in my opinion is of paramount importance and the House should very carefully consider the terms of this particular item. The whole structure of your Defence, its object and purpose, are to depend largely upon what you decide now. The first part of this item deals with the Federal Forces and the second part of it deals with the Forces maintained in the Indian States. I shall deal with the two Forces separately. In the first part the powers with regard to raising training, maintenance and control of Naval, Military and Air Forces and employment thereof for the Defence are claimed by the Central Government, for the Federal Forces and in the second part which deals with the strength and organization of the Forces raised and employed in the Indian State, powers in regard to that are also claimed by the Central Government or by the Federal Government. Mr. Santhanam wants to delete the portion which relates to the definition of the purposes for which the Federal Forces are to be employed. Mr. Santhanam's amendment is that we should not make any reference to the purposes for which the Federal Forces are to be employed. I want to invite the attention of this House to this particular point because it has some importance in my opinion in the interest of the units themselves. There are two objects which have been specifically stated here for which the Federal Forces could be employed. The first object is for the Defence of the territories of the Federation and the second is for the execution of the law of the Federation and its units. Now Defence of the territory is undoubtedly an incontrovertible matter and everybody can easily understand the use of the State Forces for that. For the second purpose it may not be easy for the Central Government to make use of that force unless specific provision is already made. Whether it is necessary to make use of that Force or not for that purpose is a matter which you must very carefully consider. Suppose a law of the Federal State is not obeyed by the people or a law of a unit is not obeyed by the people of the unit, are the Federal Forces to go and help those units in restoring law and order and enforce obedience of the people to the laws of the Federation and the units ? When you ask the units to join the Federation, when you ask the States also to become units, you indirectly take a responsibility to help them if necessary in the maintenance of law and order and those conditions are to be fulfilled. The Central Government should therefore have the power of allowing the Federal Forces to be used for those purposes at the time of emergency. It is necessary in my opinion to specify the purposes. There may be other purposes also for which the State Forces may be required and if we are not prepared to specify all those purposes, we may add at the end 'and for such other purposes as the State may determine from time to time.' In order to cover all those cases of emergencies when State Forces can be used some specific provision should be made. The Federal Forces exist not only for the purpose of Defence of the Federal territories from foreign invasion but also for the protection of the parts or units of the Federation from internal revolution as well. The use of the State forces for the latter purpose is very important and even necessary, in my opinion. Under the conditions under which our new Government is going to function it is necessary that some such power should be specifically given to the Federal Government for using those forces for the latter purpose. As regards that, I think that Mr. Santhanam is one with me. The omission of the words defining purposes will, according to him, widen the powers of the State. I fear that it may give rise to narrow interpretations of the powers, creating difficulties in times of emergencies

and thereby endangering the safety of the State. I therefore say that although I am not opposing the amendment it will be wise if he does not press his amendment and brings some other amendment such as, adding at the end the words 'for such other purposes which the State may think fit and proper'. Such an amendment will cover all cases which he has in view in bringing forward this amendment. I am only making these observations for the consideration of the House and of the drafting committee later on.

Now, coming to the second amendment which my Hon'ble Friend Sir V. T. Krishnamachari has moved, I appeal to Mr. Gopaldaswami Ayyangar who is nursing this law and doing all the piloting work to see whether, in view of the Instruments of Accession which each State is making, suitable changes could not be made to suit the conveniences of the States. I am very anxious, if we are going to give any definite assurance in the name of the Government of India to the States, to see that we do not give the impression that we are encroaching upon the power of the States in making this Schedule. I appeal to him to examine these provisions carefully and see whether the wording as it is found here is likely to be construed as encroaching upon what has been reserved for the States in this matter. It is a matter that should be settled by negotiation between him and the representatives of the States such as Sir B. L. Mitter and others. Their object also is the same, *viz.*, to create a strong force for the Federal Government for defending the territories of this country, for maintaining law and order and for preventing convulsions inside the country. These are my suggestions which I hope Mr. Gopaldaswami Ayyangar and the House will consider.

K. T. M. Ahmed Ibrahim Sahib (Madras : Muslim): Sir, on this occasion I would like to draw your attention to the very great handicap and difficulty which is experienced by Members on account of the sudden withdrawal of numerous amendments on the floor of the House. There are on the Agenda paper numerous amendments. Suddenly member after member rises and withdraws them. It is obvious, Sir, that the withdrawal by the Members is not due to their individual judgement, but is the result of decisions arrived at outside the House by the Party to which they belong. Therefore I would appeal to the Members of this House and to the President to see that the withdrawal is communicated by the Members beforehand so that the other Members of the House may be saved from the inconvenience caused by the sudden withdrawals. When we come to the House we have to come prepared in respect of all the amendments on the agenda paper and should have formed opinions as to whether to support or oppose them. Suddenly we are faced with these withdrawals and much time and energy is lost by us. It will be better if, as soon as the Party concerned decides upon these amendments their decisions are communicated to the office so that the office may communicate them to the other Members of the House that such and such amendments have been withdrawn. I hope that the Party concerned will have some regard for the convenience of the Members and communicate its decisions in regard to these amendments to the office in time so that we may be able to know what amendments will be moved and what not. I am quite conscious of the fact that neither the President nor the House nor myself can compel any Member to give notice of his withdrawal earlier. But, when we know that the Party concerned has come to a decision with regard to these amendments much earlier than the date and hour of a meeting of the Assembly, it will be for the convenience of the Members if they tell us earlier that they are not moving such and

[K.T.M. Ahmed Ibrahim Sahib]

such amendments. I appeal to you, Sir, to see that this procedure is adopted. Hundreds of amendments are tabled and not even a few of them are being moved. Why all this inconvenience and why all this waste of energy? Sir, I appeal to you and to the Party concerned to have some regard for the convenience of the other Members.

Mr. President: I think it is the right of every Member of the House to give notice of any amendment he likes, and if any Member does not take advantage of that right which he possesses and does not give notice of amendments in his own name and depends upon somebody else, he can have no grievance if that other Member on whom he was relying does not move his amendment. It is not a question of convenience or inconvenience when Members are given time to send up their amendments which they later find it not necessary to move. No doubt with such withdrawals some inconvenience is caused. But no Member can have a grievance on the ground that any one Member has not moved his amendment. If the Honourable Member thinks that any particular matter is of such importance that an amendment should be moved, he must himself have given notice of an amendment in time. I cannot ask any Member not to withdraw an amendment if he wishes to, but I am quite sure Members will take into consideration the convenience of other Members and accommodate them wherever they can.

Mr. Gopaldaswami Ayyangar may now reply to the debate.

Mr. N. Gopaldaswami Ayyangar: Sir, so far as I have followed this debate, there are only two amendments before us for taking a decision on in respect of this item. The first is the one moved by Mr. Santhanam. Sir, I accept his amendment with only one verbal change which does not affect the substance of it. As amended by him the first portion of Item 5 will read :

“The raising, training, maintenance and control of Naval, Military and Air Forces and the employment thereof”.

The rest of the words in that sentence will be omitted. I think it will be better to say ‘and their employment’ and drop the word ‘thereof’. That is the only thing.

Shri K. Santhanam: I have no objection.

Mr. N. Gopaldaswami Ayyangar: As for the point raised by Mr. Aney it is no doubt desirable to indicate some of the Purposes for which these Forces might be employed. But he also seemed to concede the position that such mention might limit the range of the purposes for which those Forces might be used.

On the whole I think it will be conceded that the purposes mentioned in the original draft are only the obvious ones and even if we omit them the words ‘their employment’ will cover those purposes as well as many other purposes for which the armed forces could be employed. I think, Sir, it is best to drop those words at the end of the first part of this item and leave it at the place where Mr. Santhanam has proposed that that sentence should be left. Then, Sir, the other important amendment that was proposed was the one which was moved by Sir V. T. Krishnamachari.

There is no difference of view between what those who support this amendment have at the back of their minds and what the Committee itself had at the back of its mind when it worded this particular item, the latter part of it, in the way that it has done. The intention of the Committee is stated in paragraph 5 of the Report. This says:

“We have included in the federal list the item ‘the strength, organisation and control of the armed forces raised and employed in Indian States’. Our intention in doing so is to maintain all the existing powers of coordination and control exercised over such forces.”

The purpose of the amendment is to draw attention to the degree of connection between the Centre and armed forces in the Indian States. The categories in which those forces are placed were mentioned by my Honourable friend Mr. Pattani and the Committee’s understanding of the present state of things was the one which has been embodied in the wording of this particular item. I understand that while the mover of this amendment thinks that the wording that has been suggested in the amendment is more in accord with the intention of the Committee than the wording in the item as drafted, he is not in a position to say that it is absolutely accurate; and he himself suggested that I should investigate this matter, and see that the intention of the Committee is implemented in the sense that it was intended to do. I therefore wish to give the Honourable the Mover of this amendment the assurance that I shall do so and we shall, if necessary, in the text of the constitution that will come up before the House later on re-word it in a manner which would be in accord with the intention as stated in paragraph 5 of the Report. I hope, Sir, that, in view of that assurance, the Mover will not press his amendment.

Sir V. T. Krishnamachari: I do not press that amendment.

Mr. President: We have Mr. Santhanam’s amendment which has been accepted by the Mover. It only involves a slight verbal change.

Mr. Santhanam’s amendment was adopted.

Mr. President: Then there is only a verbal amendment moved by Sir V. T. Krishnamachari that in item 5 after the words “Air Forces”, this words “borne on the Federal establishments” be inserted.

Sir V. T. Krishnamachari: I withdraw that in view of this amendment.

Mr. President: That is withdrawn and the second amendment is not also pressed. We have got the original item as amended by Mr. Santhanam and that is now put to the vote.

Item 5, as amended by Mr. Santhanam’s amendment, was adopted.

ITEM 6

Mr. President: Then we go to item No. 6.

Sir V. T. Krishnamachari: I do not press this amendment, Sir, in view of Mr. Alladi Krishnaswami Ayyar’s. I propose to support Mr. Alladi Krishnaswami Ayyar’s amendment. Therefore, I do not propose to move this amendment.

Mr. President: Mr. Alladi Krishnaswami Ayyar you have to move the amendment to item No. 6.

Mr. Alladi Krishnaswami Ayyar (Madras : General) : The amendment of which I gave notice runs in these terms:

“That for item 6 the following be substituted:

‘Industries necessary for the purpose of Defence or for the prosecution of war and declared as such by Federal law’.”

I might mention it has been suggested in some quarters that the first part of the amendment might make it a subject of litigation inviting a judicial decision as to whether industries are necessary for the purposes of defence and therefore the suggestion has been thrown out, that there may be a slight verbal amendment to my Motion, namely, industries declared by Federal Law as being necessary for the purpose of defence or for the prosecution of war. If the House has no objection to that verbal amendment with that verbal amendment I shall move my clause, *i.e.* “industries declared by Federal Law as being necessary for the purpose of defence or for the prosecution of war.”

In moving the amendment, I should just like to make a few observations. In the first place there is no intention behind this item to interfere with the normal function vested in a Provincial Government, namely, that industries must in the normal course be the sole concern of the Provincial Government. This is intended to be an exception to that rule and that is why the word “defence industry” was put in. But the word “defence industry”, it was rightly pointed out, is open to the legitimate comment, that under modern conditions of warfare any industry may be treated to be a defence industry and if so under the guise of this item the Union Legislature might interfere with Provincial Autonomy and the normal course of Provincial Administration.

Therefore, a certain qualification is necessary for the words “defence Industries” and that qualification is brought out by the amendment. No doubt, it gives power to the Federal Legislature to declare certain industries as defence Industries by Federal law. How does that make any difference, it might be legitimately commented upon. The answer is, the attention of the Federal legislature is particularly drawn to this point when the Federal Legislature is called upon to declare whether it is necessary for the purpose of defence or not. If, for example, it is likely to be wrongly used, the representatives of the people in the legislature will take exception to the enactment and urge that it does not carry out the object of the measure, namely Federal defence, that it is merely an object which is mentioned in the preamble, but the actual sections do not carry out to take exception to this fact, namely, that it is not intended to subserve the purpose of defence. I trust that this amendment will, while serving the purpose of defence, also remove the apprehension on the part of the provinces that under the guise of this item, there is any intention on the part of the Central Legislature to encroach upon the legitimate and proper sphere of the provinces, namely, the promotion and encouragement of provincial industries.

Mr. Himmat Singh K. Maheshwari : Mr. President, Sir, the amendment which stands in my name runs as follows:

“That in item 6, For the words ‘Defence industries’ the words, Industries for the manufacture of fire-arms, ‘atom-bombs and ammunition’ be substituted.”

The fact, Sir, that this item is vague has been realised and admitted *Prima facie* it is not clear which industries will fall under this category. Textiles or Sugar Mills, Vegetable Oil Mills or Cement, Iron and Steel factories, Cultivation of Food crops, all these are necessary for the purpose of defence. If the intention were to include them or some of them in item 6. I fear a great deal of confusion is bound to result. A comparison of the present list with the Government of India Act, 1935, also shows that the framers of that Act did not consider this item to be necessary for inclusion in the legislative list then. Even now, nobody seems to be clear in his mind as to what industries are really intended to be brought in. Mr. Alladi Krishnaswami Ayyar's amendment just moved does not seem to me to carry us far. Even now, the wording of the amendment moved by him is almost equally vague. I should like therefore, Sir, some explanation, some clarification to be given to the House as to what exactly the intention is in including this item. When such clarification is afforded, it will be time for me to consider whether I shall withdraw my amendment or press it.

Mr. President: Mr. Madhava Rao. I passed over an amendment which you have given notice of.

Mr. N. Madhava Rao (Eastern States) : Sir, in view of the amendment moved by Mr. Alladi Krishnaswami Ayyar, I do not propose to move my amendment.

Mr. President: These are all the amendments which I have got notice of. The amendments and the item are now under discussion.

Mr. Naziruddin Ahmad: Mr. President, Sir, I support the amendment moved by Mr. Alladi Krishnaswami Ayyar and oppose the amendment by Mr. Himmat Singh Maheshwari.

I think the need for this item has been already made clear by Mr. Gopaldaswami Ayyangar. I should have thought that item 1 'Defence' was comprehensive enough. But as he pointed out, this may lead to litigation and trouble and in order to avoid all misunderstanding different sub-items have been introduced. But then, there are ambiguities in the item even in its present form as to what 'defence industries' might mean. So, the amendment by Mr. Alladi Krishnaswami Ayyar has attempted to make the position clear. It is left to a Federal law to define the purpose. There is no doubt that when the Federal law attempts to define it, a very careful examination will be made of the industries which might reasonably come within the purview of the objective. But it is impossible now to further clarify it, because, if we attempt to do so, we will unduly restrict the scope of this item. As the assurance given by the mover of the first amendment would not be binding on the honourable the mover of the Report on behalf of the Leader of the House, I therefore think that the mover of the Report himself should give the assurance that in making legislation, the purpose of defence should be strictly adhered to. If this is done, I think there will be no trouble.

With regard to the last amendment, my fear is that it unduly restricts the scope of the item. Defence is so great and important a subject that everything, even personal or even national convenience must yield to the exigencies of defence and in these circumstances, we should give full power to the Federal Legislature to deal with it. There is no doubt that the convenience of the public would be taken into account so far

[Mr. Naziruddin Ahmad]

as can be consistent with the safety of India. With these few words, as I have already said, I support the first amendment and oppose the second.

Mahboob Ali Baig Sahib Bahadur: Mr. President, Sir, I consider that the amendment moved by Mr. Alladi Krishnaswami Ayyar is unnecessary. The motion for inclusion of defence industries is correct. It is enough. If Mr. Alladi Krishnaswami Ayyar's amendment is accepted, a difficulty is created. If we remember that these items mentioned in the list are the items with regard to which the legislature can legislate, it is not necessary for you to include in this very item that they should be declared by federal law as industries for defence purposes.

It is unnecessary for you to include under this particular item that they should be declared by federal law as industries for defence purposes. Was it meant by the inclusion of certain items in this list to say that these are items with regard to which the Federal Legislature has the right to legislate? In these circumstances where is the necessary in this particular item to mention that certain items should be declared by federal law as defence industries? If we accept this amendment several difficulties will arise with regard to other items by contrast or by difference in the wording of this item and the other items.

This clause "declared as such by federal law" is unnecessary. The item may be left as it is. If you mean to specify in this particular item certain industries. I should very much prefer the amendment of Shri Himmat Singh K. Maheshwari which mentions the specific instances upon which the legislature can legislate although I do not agree that the items mentioned might not be extended. My preference is for the original item as it is. As I submitted the amendment of Mr. Alladi Krishnaswami Ayyar is not only unnecessary and superfluous but it might lead to unnecessary difficulties with regard to other items. If this House wants to specify certain items on which the legislature can legislate, it is better to enumerate all the items. Therefore I oppose both the amendments and support the item as it is in the original motion.

Mr. Alladi Krishnaswami Ayyar: Both in the Government of India Act and in the present report you will find the words declared by federal law" in several items by which such declaration is made a condition of the item being brought into the list. That is the object of the clause "declared by federal law to be necessary for the purpose of defence or for the prosecution of war".

Mahboob Ali Baig Sahib Bahadur: That does not justify the inclusion there.

Mr. N. Gopaldaswami Ayyangar: Sir, in the ordinary course of things I should have been grateful to Mr. Mahboob Ali Baig for the support he gave to the item as it stands in the list but I am afraid I have been persuaded to the view that Mr. Alladi Krishnaswami Ayyar's amendment is a better description of the power that should be vested in the Federal Legislature than the original item. The reason for that has been indicated by Mr. Alladi Krishnaswami Ayyar himself. But what I would draw the attention of the House to is the new description that is proposed in the amendment of Mr. Alladi Krishnaswami Ayyar. Industries are a subject primarily assigned to the province. If we are going to cut out of that subject a slice in respect of which the Federal Legislature should have power to make laws, it is desirable that that slice should be fairly well defined and that that power should be taken only in respect of those

industries which have to be taken out of the jurisdiction of the provinces and placed within the jurisdiction of the Centre. If we left the item to stand as it is in the original draft, the courts would have the jurisdiction to say whether a particular industry is or is not a defence industry: whereas if we adopted the language of Mr. Alladi Krishnaswami Ayyar's amendment as verbally modified by him, it would be for the federal legislature first to take a decision as to whether it is necessary for purposes of defence that a particular industry should be taken over under the control of the Federation; and, when the legislature has taken that decision, the courts cannot intervene to say that it is not an industry necessary for purposes of defence. That is why it has been decided to accept this amendment.

So far as the amendment moved by my Honourable friend Mr. Himmat Singh K. Maheshwari is concerned, the matter has been referred to already by Mr. Nasiruddin Ahmad. We cannot confine defence industries to the manufacture only of fire arms, atom bombs and ammunition. Even in times of peace the Federation may have to exercise jurisdiction over a number of industries which do not relate to those items. If it is necessary for purposes of feeding, clothing or otherwise equipping our armed forces that certain industries should be taken over under the control of the Federation—whether those industries should be owned by the Federation or controlled by it—there should be no impediment in the way of the Federal Legislature acting in the manner in which it is suggested that it should act. Therefore I would oppose Mr. Himmat Singh Maheshwari's amendment and accept the amendment of Mr. Alladi Krishnaswami Ayyar.

Mr. President: I will put first the amendment of Mr. Alladi Krishnaswami Ayyar to vote.

The question is :

“That for item 6 the following be substituted:

‘Industries declared by Federal Law as being necessary for the purpose of defence or for the prosecution of war’.”

The motion was adopted.

Shri Himmat Singh K. Maheshwari: I take it, Sir, that Mr. Alladi Krishnaswami Ayyar's amendment is only intended to put off decision and I have therefore no objection to withdrawing my amendment.

Mr. President: The amendment of Mr. Alladi Krishnaswami Ayyar takes the place of the original item and I will therefore put it to the House.

The question is:

“That the original item as amended by Mr. Alladi Krishnaswami Ayyar's amendment be accepted.”

Item 6, as amended, was adopted.

ITEM 7

Mr. President: There is only one amendment to item 7. That is by Shri Himmat Singh Maheshwari—No. 4 in List VI.

Shri Himmat Singh K. Maheshwari: Mr. President, Sir, the amendment which I beg leave to move is:

“That in item 7 the following be inserted at the end:
‘other than works belonging to a Federated State’.”

[Shri Himmat Singh K. Maheshwari]

The item as it stands at present is "Naval, Military and Air Force works". As I understand it, Sir, some Federal States have got Military and Air Force works built by them at their own expense. I take it that the Federation has no intention of taking these over, subject, therefore, to any assurance that may be forthcoming on this point I should like to say as little as possible and to await further remarks from the framers of the Report.

Mr. N. Gopaldaswami Ayyangar: Sir, with regard to the last observation made by my honourable friend Mr. Himmat Singh let me say that the inclusion of this item as it stands in the list does not necessarily import any idea of the Federation expropriating any State of any of its rights of property in works built by it. But I must warn him at the same time that if, in the interests of the general defence of the country, the Federation should decide that it should take over and either own such works in Indian States or should control them, then it should be free to do that sort of thing. I do not think even Mr. Himmat Singh will question the right of the Federation in the interests of the general defence of the country to determine for itself what Military, Naval and Air Force works should be owned or controlled by the Federation and what might be left to the Indian States themselves. That will be a matter of detail in any legislation that may be undertaken. But the power will certainly be there in the Federation.

Shri Himmat Singh K. Maheshwari: In view of the explanation given I withdraw the amendment.

(The amendment was, by leave of the Assembly, withdrawn.)

Mr. President : The question is:

"That item 7 be adopted."

The motion was adopted.

ITEM 8

Mr. R. K. Sidhwa (C. P. & Berar: General) : Sir, item 8 in List I of the Appendix reads: "Local self-government in cantonment areas, the constitution and powers within such areas of cantonment authorities, the regulation of house accommodation in such areas and the delimitation of such areas." If you refer to the Government of India Act, 1935 (p. 299 item 2) the words are almost identical to what I have read before the House just now. It reads thus: "Local self-government in cantonment areas—not being cantonment areas of Indian States—the regulation of house accommodation in such areas etc." So the wording in this list coincides almost identically with what the Government of India Act says: My amendment reads thus:

"That in item 8, for the words 'Local self-Government in cantonment areas, the constitution and powers within such areas of cantonment authorities' the following be substituted:

'Control of the area occupied by military force, arsenals, factories for manufacturing areas, ammunition, etc.'

From the amendment that I have moved it will be seen that I am making a differentiation between the local self-government area and the cantonment area. This subject has for the last two decades been a most contentious subject and has been receiving the attention of the various authorities of India—I mean particularly the local authorities and the cantonment authorities—on the one side the Provincial Government and

on the other the Central Government. Just before the war the Government of India had to intervene and find out a way for this contentious subject that has been pending since over two decades. Then the war came in and the subject-matter is at a standstill. Those who have visited the cantonments and studied the subject, I am sure, will be able to grasp this contentious subject very easily. Notwithstanding that, I would suggest to the honourable House to bear with me for a few minutes to understand the intricate question that this item relates to.

There are in India several cantonments where troops are located. Within that cantonment area and within those areas where the troops are located there is a civil population. This civil population is also governed by the Cantonment Act. As far as the troops area is concerned that is kept by the Cantonment authority in as sanitary a state of affairs as possible and all amenities are given to the troops. But just about a mile and a half away from this troops area, where the civil population resides, these amenities are not given. There is scarcity of drinking water, the drainage system is very defective, hospitals and wells are lacking. In some places the area covered is from one mile to about eight or nine miles, and the limitations are so framed that at certain stations the area comes within the jurisdiction of the local authority—I mean the provincial government—and just across the road, only 25 yards away it is the cantonment area.

All sorts of complications have arisen so many times between the local authorities, the Central authorities and the Provincial authorities because the rights and privileges which the civil population enjoys outside the cantonment are denied to them inside the cantonment. This is because the cantonments are, as I said, governed by the Cantonments Act. Under this Act a limited number of persons are nominated from the Military authorities and a few from the rest of the population to look after the affairs of the cantonment. A few landlords and people like them may be there. All the other seats are filled by the military officers. Therefore the rights and privileges of the civil population inside the cantonment are denied to them whereas the population just across the boundary—just 25 yards off—are enjoying these rights, in their local bodies and municipalities.

Mr. M.S. Aney: How much more time will the Hon'ble Member take?

Mr. R.K. Sidhwa: I will take a long time, Sir. This is a matter on which I am not expressing merely my own views, but it is a matter on which the All India Local Bodies Association from year to year and from month to month.....

Mr. President: In that case, we shall continue the discussion tomorrow. You can continue your speech tomorrow if you like (*Some Honourable Members* : Not tomorrow, but Monday.) Yes, on Monday. The House stands adjourned till 10 o'clock on Monday.

The House then adjourned till ten of the clock on Monday, the 25th August 1947.

BLANK

CONSTITUENT ASSEMBLY OF INDIA

Monday, the 25th August, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

SIGNING OF THE REGISTER

The following member signed his name in the Register:—
Mr. Syed Abdul Rouf.

TAKING OF THE PLEDGE

The following members took the pledge:—
The Honourable Sri Kala Venkata Rao.
Mr. Syed Abdul Rouf.
The Honourable Mr. Brijlal Nandlal Biyani.

ANNOUNCEMENTS BY THE PRESIDENT

Mr. President : I have received a letter from the President of the Constituent Assembly of Burma in reply to the message we had sent to him. The letter reads as follows:—

“On behalf of the Constituent Assembly of Burma I personally thank you for your message of condolence for the loss Burma has sustained by the assassination of General Aung San and his colleagues. The Burmese nation will surely enjoy peacefully the fruits of independence which the fallen heroes have just won for Burma. Kindly convey to all Members of the Constituent Assembly our appreciation of this message of sympathy. I will convey the message of condolence to the bereaved families.”

Before we go to the next item, namely the consideration of the remaining items in the list, I would like to make certain announcements with regard to the programme of this session. As I said the other day, we should try to complete the consideration of the Report of the Union Powers Committee as soon as possible. The progress we have so far made has been very slow. I propose to set apart today and tomorrow for the consideration of the Union Powers Committee Report, and from Wednesday we shall take up the Report of the Advisory Committee relating to Minorities and Fundamental Rights and I think this will take Wednesday and Thursday. Friday will be reserved for the consideration of the Report of ‘the Committee which we appointed the other day to suggest to us what steps should be taken with regard to the Constituent Assembly and the Legislative Assembly functions of this Assembly. I hope thus that we shall be able to end the work of this session by the 31st at the latest. If necessary, I propose that we sit in the afternoon and also on Saturday and Sunday next and if necessary, have night session. We have got so many other things to do that it is not possible to prolong this session beyond the end of this month and therefore I am anxious to complete this work as far as possible. Now, I am proposing to interrupt the consideration of this list by interposing the Reports of the Advisory Committee for this reason. So far as the drafting is concerned, it will depend very

[Mr. President]

much upon the consideration Which this Assembly gives with regard to those subjects covered by the Reports of the Advisory Committee on Fundamental Rights.

But so far as the list itself is concerned, much drafting is not required and whether the Assembly accepts a few subjects or turns them down it would be easier to incorporate that in the draft when the report is drafted. Therefore I am anxious that the part of the work of this Assembly should be finished which is essential for drafting purposes as I wish to have the draft prepared as soon as possible and for that purpose a drafting Committee will have to be appointed which we shall do on the last day of the Session.

There is one other thing which may take a little time. The late Sir Prabha Shankar Pattani has bequeathed to the Nation a portrait of Mahatama Gandhi done by a distinguished artist of England Mr. Oswald Birely and that has been presented to us by his son who is a member of this House and members will surely appreciate the gift and would like to have the portrait put up in a suitable place in this Assembly. For that purpose we may require a little time on one of these days which I shall fix for that function. I shall announce the day. May be on Friday next in the afternoon but I shall finally fix it up later.

Mr. Tajamul Husain (Bihar : Muslim) : Sir, you have told us that this Session would perhaps end by the end of this month but you have not told us when the next session will begin.

INCIDENTS IN WEST PUNJAB

Shri Algurai Shastri (United Provinces : General) : *[Mr. President, I want to say a few words before the commencement of today's proceedings. I wish to draw your attention to the fact that in view of the unfortunate incidents in West Punjab, and the manner in which people are being massacred and the killings are taking place, today's proceedings should be postponed in order to express our sympathy with the unfortunate people there. It is inappropriate for us not to pay attention to these unfortunate happenings and to proceed with our work of constitution-making. I have been realising this for some-time; and for the last several days, I was on the look out for an opportunity to raise this point but hesitated to do so, in consideration of the fact that when this Assembly meets as a Dominion Parliament, that will be the right occasion for its consideration. But when on that day, some of our colleagues drew your attention on the flag question, you permitted the Leader of the House to make a statement here. I am of opinion that problems can arise, in view of which it will not be improper for us to postpone our proceedings for a short while. The Constituent Assembly is a democratic and independent body and over the whole field of its work it is fully sovereign. There have been incidents in a portion of this country where innocent children and women have been massacred and where trains have been stopped and passengers murdered. These incidents invite our attention. During these last few days such shocking and heart-rending incidents have taken place that it will be difficult to find their parallel (even) in the barbaric epoch of India's history. At a time when foundations of democratic government are being laid, occurrence of incidents of this kind is painful. If we are

*[English translation of the Hindustani speech.]

concerned only with making our constitution and pay no attention to these incidents, then the coming generations will say that, just as Nero was playing on his flute while Rome was burning similarly we were absorbed in constitution making while Lahore and other places were burning and people were being killed. We must not give an opportunity (to anyone) to put such blame on us. Our sense of Humanity will diminish if we do not express our heart-felt sympathy for those helpless people whose wealth worth crores of rupees has been looted and who are very anxious for the protection of their wealth and property which is (still) in the Punjab. Fleeing people are being butchered. How disgraceful it is that people's heads are being chopped off in the same way as a lawn-mower cuts off the grass; Since the 15th we are the Dominion Parliament as well. How much our hearts are full of anger anxiety and shame at our being unable to protect those helpless old men, women and children! This is such a helpless state and such a deplorable state. that it puts us to shame and grief. It would have been very different if either the Honourable Home Member or the Leader of the House or the Defence Member were to make a statement in this connection. Therefore I propose that in order to express sympathy for the dead or for their survivors, the proceedings (of this House) should be postponed. I am aware that objection may be raised to this proposal but we have seen that on the arrest of our leaders, the proceedings of Corporations and Municipal Boards etc. used to be postponed. When on previous occasions we could postpone proceedings we should not have any difficulty in doing so today, even though Maulana Hasarat Mohani has suggested that the report of Union Powers Committee should not be considered at all. We should have a full constitutional right to postpone the proceedings for a short while and I hope that the House will postpone its Proceedings at least for fifteen minutes.]*

Mr. President : *[There is no doubt that there would hardly be any Indian whose heart would not be pained and full of sorrow and grief at whatever is happening as a result of which so many murders are taking place and there is such a lot of loot, arson and destruction. Now the question is as to what we here in this Assembly can do and what we cannot do. You may rest assured that your government is doing and will make every effort to do whatever is possible in this connection. Your Prime Minister is himself touring those places and it is for this reason that he is not present here today. There is no doubt that we have full sympathy with those numerous persons who are undergoing terrible suffering. We will help them to the extent possible and will not shirk our responsibilities. At this time, if it is the desire of all members of the House, surely we should stand up and express our sorrow and sympathy for all those who are involved in this calamity and who are suffering all these hardships. If all agree, then I hope that those who are undergoing all this suffering and pay our homage to those who, as a result of these calamities, have departed from this world.]*

The Members stood up and observed silence for a minute.

]* English translation of Hindustani Speech.

Mr. President : A suggestion has been made that the House should express its sympathy, by adjourning itself for about quarter of an hour, with those who have suffered in the riots which are going on in the country. I have suggested that instead of adjourning the work of this Assembly, we should all rise in our places and express our deep sympathy with those sufferers, and there can be no difference of opinion that the riots which are taking place are the most disgraceful from the point of view of the nation and are such as would make the heart of any patriot sick with the happenings and I therefore requested the members to stand in their places and express their sympathy with the sufferers and I have also pointed out that so far as the Government is concerned, the Prime Minister has flown to that place and is not here today because he is there and is doing all that can be done to help the sufferers and bring about the cessation of the events that are taking place there.

We shall now proceed with the discussion.

REPORT OF THE UNION POWERS COMMITTEE—*contd.*

Dr. P. S. Deshmukh (C. P. & Berar : General) : Sir, I want to make a suggestion for your consideration if we can modify the programme you have announced. It is quite evident that we do not propose to complete the consideration of the Union Powers Committee's Report. In view of the fact that we can only advance a few items more, it would be better I think for us if you allot tomorrow also for the consideration of the Minority Committee's Report and thus have a day more for the consideration of the Report of the Committee that you appointed the other day. My point is that we should not adjourn the present Session without doing two things.

Firstly, we should complete the consideration of the report of the committee on Minority Rights and secondly we, as the Dominion Legislature, should not disperse without having an opportunity to discuss the West Punjab situation. These are the two things which I would like you to consider. If you accept my suggestion we may be better able to complete the consideration of the Minority Committee's Report and then meet for a couple of days as Legislature to discuss the most harrowing spectacle of the West Punjab, and also the East Punjab. Sir, we are quite sure that our Government is doing its very best and we have no doubt that everything possible is being done. Nonetheless, since we have transformed ourselves into a Legislature, every one of us is responsible to the millions of people whom we represent. As such we ought to know, and the world ought to know and India ought to know what exactly is happening there and to what extent we have discharged our duty. From that point of view, I think you should, Sir, accept my suggestion by which we will have one more day for discussing the Committee's Report, and then if possible meet as a Dominion Legislature may be even for a few hours during the present session itself.

Mr. President : Let us not spend any more time discussing the programme of sittings. I have fixed day after tomorrow to enable members to have as much time as they want for the consideration of the Report on Minority and Fundamental Rights. I have fixed day after tomorrow to enable members to have time to send up amendments before it actually comes up for discussion.

The question of having a meeting of the Assembly as Legislative Assembly can be decided only after the report of the Sub-Committee has been received. We shall await its report.

The Assembly will now resume consideration of the Report of the Union Powers Committee. Mr. Sidhwa will now speak on his amendment to Item 8.

Mr. R. K. Sidhwa (C. P. & Berar : General) : Last Friday, while moving my amendment to Item 8 in relation to the powers of the cantonment authorities, I stated that there are cantonments in various stations in India, small and big, and that these are within a radius of one to eight miles. As far as the troops are concerned, they are located in barracks and governed by the Cantonment Code or Cantonment Act. These troops are given all facilities and comforts and conveniences. I have no objection to that. The troops certainly ought to get all conveniences such as good water-supply, proper drainage, hospital facilities, etc. There are theaters and cinemas also for their amusement. Apart from that they have got their own messes and canteens and shops from which they could provide themselves with their other requirements. We do not want to make any change in these arrangements hereafter as far as the conveniences of the troops are concerned. We do desire that the troops should be well looked after and kept content in the area in which they reside. What we seek is this : Within a distance of two miles of these areas where the troops are located there is civilian population also in these cantonments areas. If the House will bear with me for a while I would like to mention that this civil population is deprived of all the rights and privileges which the population elsewhere enjoy. We do not want that this civil population should have the same facilities and convenience, as the troops enjoy. But I contend that some at least of the creature comforts should be provided for this civil population. I have in mind provision of drinking-water supply, drainage facilities, hospital arrangements and electric lights.

Another thing is that these areas in the earlier days had been selected in a haphazard manner, without any serious consideration being paid to the selection. They have been so arranged that on one side of the road there is the civil Government functioning, and on the other, the military. This fact has caused discontent and grievances and these have been ventilated in the press and in conference and in correspondence between the Provincial Governments and the Centre. Nothing has been done so far to remove the cause of discontent. The military authorities are lukewarm in this matter of provision of facilities to the civil population.

When these questions are raised now, it may be argued that we are running our own Government and that we must have a different outlook in all these matters. We are also told that we are labouring under an inferiority complex, even now. I submit that one can reply to such arguments that the government being popular, the old Government of India Act can continue and not bother about making a new Constitution. It must be remembered that there is a principle involved in this question, viz., that we should see to it that the civil population in the cantonment areas get the same rights as the civil population elsewhere. They should not hereafter be denied the vote and the opportunity to get redressal of their grievances.

In the Cantonment Board there are only a few nominated members and fewer members to represent the civil population. Sir, it, is very improper that the civil population should enjoy certain rights and

[Mr. R.K. Sidhwa]

Privileges even in notified areas and the civil population, in the cantonment areas should be denied the same. This is a matter of right and therefore my amendment seeks that where there are troops they should be governed by the cantonment board, but where there is civilian population it should be governed by the Municipal Act so that the civil population may have the rights and privilege which the civil population elsewhere is enjoying. Let me tell you that at times when the people in these areas suffer from diseases they do not get the medical help which the people living in municipal areas get; because under the present Act any person who is residing out of municipal limits is not entitled to the beneficial measures in force in municipal areas.

Another important factor is that a large portion of this area and the land has been given away to a certain class of people almost free of charge. I would say if this land is sold it will realize crores of rupees. These lands ranging from two to five thousand square yards are given to a class of people at a nominal price of Rs. 500 or Rs. 1,000. On these lands properties have been built and occupied by some people and then sold and resold and that class of people have made tons of money. It is State land. The Provincial Government is deprived of this land. The Central Government also has been deprived of this valuable land and the whole benefit is enjoyed by a section of people. I might here inform you, Sir, that in one station alone 80 per cent. of the property is owned by one man.

Mr. President: I do not want to interrupt you, but we are not discussing the mismanagement in the Cantonments. We are discussing a particular item in the list and whether the Federal list should contain this item. You need not therefore go into the whole question of mismanagement or maladministration of Cantonments here.

Mr. N. Gopalaswami Ayyangar (Madras: General): If you will kindly permit me to say a few words, I hope Mr. Sidhwa will not pursue the speech. I will say just a few words. Sir, five amendments have been given notice of in connection with this clause. A number of questions have been raised in connection with this particular item and, Sir, it has been considered that it will be desirable to investigate all the aspects of this question in detail before the final form of this item can be settled. If you will permit me, Sir, I would ask that this item may be held over for the present. We will come back to it later on.

Mr. President: The suggestion is that this item may be held over and may put forward in a form which will be acceptable to all and then all these amendments will become unnecessary. We will pass on to the next item, No. 9 of the list.

ITEM 9

(Messrs. Mohan Lal Saksena and M. Ananthasayanam Ayyangar did not move their amendments.)

Mr. Naziruddin Ahmed (West Bengal: Muslim): Mr. President, Sir, I beg to move that item 9 be deleted. The reason is that there has been in the past considerable amount of dissatisfaction in the country that we had not freedom as to the use of arms or firearms. There has been tremendous and persistent agitation over this and it need not be elaborated. Now my amendment is that this should be removed from the Federal List and be made a Provincial subject, for which purpose an appropriate amendment would be submitted later on. I think that so long as the British were here their objective was to disarm the people and they did so out of suspicion and jealousy of the Indian people and they kept it as a central subject. Now as the British have gone, the reason for making it a Central subject has also, I submit, gone. It would be a very proper gesture now on the part of the Centre to let the Provinces, to exercise this power. If there is any difficulty as to giving these privileges to the Provinces it may be carried to List No. III and it would be a concurrent subject. I submit that the retention of this item any more as a Central subject would be wrong. I believe that though the British have gone, their ghosts still haunt our minds and we want to cling to the power.

Mr. President: There is only one amendment. It is that item 9 should be deleted. Does anyone wish to speak about this?

Mr. N. Gopaldaswami Ayyangar: Sir, I gathered from the speech of Mr. Naziruddin Ahmed that he does not propose to remove from the scope of legislation this item of arms, fire arms, ammunition and explosives. His suggestion seems to be that there is no need for Federal legislation on this subject, and that this subject might be transferred to the Provinces. I think, Sir, that, in a matter of that importance, arms, fire arms, ammunition and explosives, particularly, in these days, it is very necessary that the control which legislation might impose upon these particular things should emanate from the Centre. There should be uniformity about the manufacture, possession, transport and use of arms, fire arms and ammunition. It would perhaps interest Mr. Naziruddin Ahmed to know that even the States which have acceded to the Dominion already have acceded on this subject, which means that they are prepared to let the Federal Legislature make laws for this subject. I hope, Sir, he will not press this amendment.

Mr. President: I will put Item 9 now to vote. The amendment is that this item should be deleted.

The amendment was negatived.

Mr. President: I put the item to vote, whether it is to be retained.

The motion was adopted.

ITEM 10

Mr. President: We will now proceed to Item No. 10. I do not find that there is any amendment to this, unless. Mr. Himmat Singh Maheswari wishes to move any amendment.

Shri Himmat Singh K. Maheswari (Sikkim and Cooch Behar Group): Mr. President, Sir, the object underlying my amendment *to this item is that the mineral resources required for the production of atomic energy should be paid for wherever it may be necessary to take them over. This does not require any lengthy argument and I hope the framers of the Report will accept it without any hesitation.

Mr. President: Does anyone wish to say anything about this?

Mr. N. Gopalaswami Ayyangar: Sir, this item relates only to the passing of legislation by the Centre in respect of atomic energy and the mineral resources required for that purpose. But the inclusion of an item like that in the Federal list does not mean that the Centre is going to expropriate any people who might own mineral resources of their own, whether it is an Indian State or a Province or a private individual. If it is necessary for the interests of the Federation that control should be exercised or even acquisition should be made of those resources; certainly due compensation will be paid. I do not therefore think that it is necessary that this word should be added at the end.

Shri Himmat Singh K. Maheswari: In view of the assurance given, I do not press my amendment.

Mr. President: I take it that the amendment is allowed to be withdrawn. I put the original item 10 to vote.

The motion was adopted.

ITEM 11

Mr. President: We go to the next item. (Item 11.)

So far as I can see, there is no amendment to item No. 11. I put it straightaway to vote.

The motion was adopted.

ITEM 12

Mr. President: We go to item No. 12. There is an amendment by the Prime Ministers of States to this item.

Sir V. T. Krishnamachari (Jaipur State): We do not move the amendment.

Mr. President: There is no other amendment to item No. 12, I put the item to vote.

The motion was adopted.

*That in item 10 the following be inserted at the end:
"subject to payment of compensation to the unit."

ITEM 13

Mr. President: We pass on to item 13. There is no amendment to item No. 13. I put it to vote.

The motion was adopted.

ITEM 14

Mr. President: Now, we take up item No. 14. There is an amendment by Sir Ramaswami Mudaliar and other Prime Ministers of States.

Sir V. T. Krishnamachari: Mr. President, Sir, I move:

That in item 14 of the following be added at the end:—

“Provided that the Federation shall not by reason only of this entry have power to implement such decisions for a province or a Federated State except with the previous consent of the Province or of the State.”

Now, Sir, we participate in all kinds of International Conferences, Associations and other bodies. The power to implement the decisions taken at these Conferences, Associations and other bodies must depend on whether the subject matter of that decision is a provincial or a Federal subject. My proposal is that if these decisions relate to provincial subjects, the consent of the province concerned should be taken before the decisions are implemented. In the absence of such a restriction, the powers of provinces and of States will become almost nugatory. These Conferences relate to matters like agriculture, food, and largely matters which are within the scope of provincial authority. Honourable members will remember that we have section 106 in the Government of India Act which makes provision for this. If the intention is to re-enact section 106, my amendment will not be needed. If, however, that is not the intention, I propose that these words be added at the end of item 14.

Mr. President: Mr. N. Madhava Rau, there is an amendment to item 14 in your name.

Mr. N. Madhava Rau (Eastern States Group II): I do not propose to move the amendment.

Mr. Naziruddin Ahmed: Mr. President, Sir, I beg to move:

That in item 14 the following be added at the end:—

“on matters within its legislative competence, and in other matters affecting a province or a State, with the express consent of such State.”

The point which I wish to make in this amendment is that there may be subjects which are entirely Central or it may come within List No. III in which case the Centre will also have jurisdiction. But the subject may also come within List No. II that is within the provincial jurisdiction. In that case, it would not be proper to give powers to the Centre, to do anything without the consent of the province. In fact, that would be an indirect encroachment over a thing which is reserved entirely and exclusively to the province.

Then, with regard to the States, from the papers which have been circulated amongst us, we find that the States have acceded subject to important reservations. They have acceded with regard to certain

[Mr. Naziruddin Ahmed]

subjects which have been clearly defined in the Schedule attached to their Agreement. There may be subjects which are outside the scope of that Schedule. In that case, to ask the Central Government to legislate or to agree to matters coming within the scope of those subjects which are outside the scope of the Agreement, that would be allowing that Government to encroach upon spheres which would be prohibited by the Agreement. The Agreement makes it absolutely clear that the States do not accede to anything except those enumerated in the Schedule. In these circumstances, I submit that it would not be proper for the Centre to take powers which may go outside its scope. The principle embodied in my amendment would thus be necessary to prevent confusion and some scrambling for power with regard to certain matters.

Mr. President: There is no other amendment. Now, the amendments and the original item are under discussion. Those who wish to speak may do so.

Mr. K. M. Munshi (Bombay: General): Mr. President, Sir, I oppose the amendment that has been moved by my honourable friend Sir V. T. Krishnamachari. Honourable members will see that item 16 is "The entering into and implementing of treaties and agreements with foreign countries". They will also find a similar amendment to that item by the same four honourable members. Now, I do not want to anticipate the arguments on that amendment. But item 16, as honourable members will see, relates to the implementing of treaties and agreements with foreign countries. These agreements and treaties are bilateral between this country and another. So far as item 14 is concerned.....

Sir V. T. Krishnamachari: Are we on item 16?

Mr. K. M. Munshi: No. I am distinguishing between the two, if the honourable member has the patience to listen to me. Item 14 does not refer to bilateral treaties, but refers to international conferences. Now, as the House knows very well, in this age international relations are not necessarily governed by treaties. There are various conferences at which India sends out her representatives and she will be sending them out in much larger measure in the future. At these conferences decisions are taken on the footing that the representatives of India have got the power to implement those decisions; no representative of India will be heard with any weight at all, if he has to keep a reservation that he would come back to this country and ask his 35 unit Governments and if one of them disagrees he would not be able to implement those decisions. In this present world it would be impossible for India in such conditions to take part effectively in any conference, except of course as in a debating society without coming to any decision. Therefore it is highly essential that the central legislature as well as the Central Government should have ample power not only to participate in these conferences but to implement the decisions arrived at there.

Take for instance this simple example that I can give you at the moment. Suppose there are trade relations with a country, and as a result of an impending war or of her conduct which is against international policy those trade relations are to be terminated, suppose, all the members of that international association in a body said that they should denounce such trade relations or follow a particular kind of policy as regards them and, that would be a decision, not a treaty. Even if that decision were adopted practically by the whole world, the Indian representative would have to say that he must go back to India and see that every Unit of India—even a State with a population

of 20 or 25 thousand—has to say about it, and that until such consent is forthcoming he could not implement it. That will reduce the whole Central Government to a farce before the international world. As the House is aware, we are moving towards a position when most of the decisions regarding all larger policies are taken by international conferences, not in the shape of actual treaties but conventions. Decisions with regard to education, hours of labour and various other matters are taken in this way. Surely if this clause is deleted, it will again come to this that a small section of India can hold up the implementation of the decision approved by the rest. Assuming this power is taken away, India's representatives can go to any of these gatherings and be a party to all their decisions, but when they come here one-sixtieth of India can put a veto upon the implementation of those decisions. That will be the effect of accepting this amendment. If therefore India is to be an international personality and equal to other sovereign bodies of the world it must have the power not only to take part in these decisions but also to implement them.

The safeguard is this. This item here means that the central legislature will have the power to make laws for the purpose of implementing these decisions. Before a decision is implemented it will come before the central legislature; that legislature will fully debate upon it; and it will then decide whether it will implement that decision or not. It is not going to be taken behind the back of the representatives of any member of the Union; it means not only the lower House but the upper House as well,—the House of States. Therefore the representatives of the whole of India—the people as well as the States—will have the right to vote upon it and bring to bear upon it the influence of an all-India opinion. That is the effect of the clause as it stands. Therefore it is not as if something will be done behind the back of any State or province. India as a whole assembled in these two legislatures will consider the point of view of each unit as put forward before it and then come to a conclusion in the interest of the whole of India. If both Houses of the legislature by a majority come to the conclusion that the decision is to be implemented, is it suggested that one State or one small province can say that whatever the legislature may have done it should have liberty not to implement that decision? That destroys the very basis of the sovereignty of this country. Therefore I submit that though it looks a very harmless amendment, the results which will flow from it will cripple the power of India as a sovereign member of international society, and I submit that this amendment should be rejected by the House.

Pandit Hirday Nath Kunzru (United Provinces: General): Sir, I feel that the amendment placed before the House by Sir V. T. Krishnamachari which is practically a repetition of the provision which existed in section 106 of the Government of India Act of 1935 is a very unfortunate one. He cannot be unaware of the criticism to which that provision has been subjected during the last ten years, particularly in connection with questions relating to labour. Although questions relating to labour could under the Act be dealt with both by the Central and the provincial Governments it was clear that in all essential respects the labour question is an all-India affair; it cannot be dealt with piecemeal by provinces. If it is to be dealt with successfully, in other words in such a way as to create contentment throughout the country and to be in accordance with international views and standards, it is absolutely clear that it should be within the power of the Central Government to give effect in the last resort to agreements entered into at the international labour conferences. Yet it did not possess this power under

[Pandit Hirday Nath Kunzru]

the Act of 1935. No question relating to the matters which require the consent of the Governments of the units for their implementation has given rise to such dissatisfaction and criticism as that relating to labour. I think even if there were no other instance to be taken into account we should be perfectly justified in throwing out Sir V. T. Krishnamachari's amendment.

But there are other questions which in these days require to be dealt with by the country as a whole. Sir V. T. Krishnamachari was afraid that the power which item 14 would confer on the Central Government would be too vast, and as an illustration of the subjects that it might extend to, he mentioned food and agriculture. I was rather surprised when my honourable friend mentioned these two subjects. If there is anything today that requires to be dealt with by the National Government, it is questions relating to food and agriculture. We know the dangerous position to which we were reduced in 1943 and 1944 because the Government of India either did not possess or was unwilling for some time to exercise the powers required to control the Provincial Governments and bring them to accept a uniform policy. I may go further and say that experience has shown that the matter is of such vital importance that although a state of war does not exist, the Central Government must continue to exercise the power of coordinating provincial policies in regard to food and agriculture for at least some time more. Again, Sir, these questions are so important as to require the almost continuous attention of international bodies. There is the Food and Agricultural Organization which has been set up in order that these questions might be dealt with in a coordinated way in all the important agricultural countries. It would be most unfortunate, it would be retrograde, if we accepted Sir V. T. Krishnamachari's amendment, with our eyes open and with a full knowledge of the dangers that we would be exposed to. If we had to obtain the consent of every unit in order to adopt a uniform policy, we would drift again into the position that existed in 1943.

Apart from this, Sir, I should like to say one word with regard to the fears that the representatives of the States or any other units might entertain with regard to the power that the Central Government would enjoy in case item 14 was accepted by this House. The National Government, before accepting any responsibility, will naturally consider whether the responsibility will be one which can be discharged by the units with their own unaided resources, or only with the aid of the National Government. It will not be in a hurry to enter into agreements which will involve large expenditure, because it will in that case be morally bound to help the Provinces to fulfil the obligations accepted by it. Honourable Member may be afraid that the acceptance of international conventions might involve the units in expenditure which they would be unable to bear. I do not think that there need be any fear of it because it is well known that the units, whatever financial powers may reasonably be conceded to them at the present time, will not be in a position either to make education free or compulsory, or to adopt the measures recommended by Sir, Joseph Bhore's Committee in regard to public health or make satisfactory progress in regard to other matters which would lie within the provincial sphere unless they receive generous help from the Centre. It is inconceivable to me in these circumstances that the Central Government should, without adequate thought and previous consultation with the units, commit them to policies which it would be beyond their resources to implement. Again, Sir, the

representatives of India at the international conferences which will be concerned with subjects which the Provinces will be called upon to deal with, will not belong exclusively to the Central Secretariat or the Central Legislature. They will be taken from the Provinces also, and from other units too. Why need we therefore entertain any apprehension about the effect of any international agreement entered into by the Government of India on the finances of the Units ? Sir, taking past experience into account, and considering the unenviable position that we have occupied during the last 25 years and more at the International Labour Conferences on account of the unfortunate limitation placed on the power of the Central Government by the Government of India Act, 1935, it is right, and necessary in my opinion, that the power of the Central Government to give effect to international agreements should be wider than it is at present. I should like to add, before I close, that if the number of units were limited and they were of a size which would make it possible for the Government of India to consult them and pay due weight to their views, there might be a case for the acceptance of Sir V. T. Krishnamachari's amendment. But we do not know at the present time how many units there will be or what the size of the smallest unit will be. If a unit is to consist of a few thousand or a few hundred people, the acceptance of Sir V. T. Krishnamachari's amendment would place us in a very difficult position. We shall be laughed at international gatherings if we say that we cannot commit India without consulting units which are no better than big zamindaris. In view of this, Sir, I think the position that will be created by Sir V. T. Krishnamachari's amendment is impossible to contemplate. I am therefore, wholeheartedly for its rejection.

Sardar K. M. Panikkar (Bikaner State): Mr. President, Sir, I think there has been a very considerable amount of misunderstanding in the debate that has followed the motion by Sir V. T. Krishnamachari. The issue is not whether agreements reached at international conferences should be ratified by the Central Legislature or implemented by the Central Legislature. It is accepted by everybody that agreements entered into by India at international conferences must be ratified and implemented in the Central Legislature. Then what is the issue ? The issue is that in order to do so it must be related to a federal item or an item in the concurrent legislative list so that the power for this legislation may be vested in the Central Legislature. Now the issue raised by Mr. Munshi and by Pandit Kunzru is that there are many conferences in which India has to go and take part, where decisions are arrived at and where it is not possible to consult all the units when we come back to legislate and give implementation to agreements arrived at. Here, I venture to say, there is a slight misunderstanding because if you take the question of the I. L. O. for example, which has been prominently mentioned, if you turn to the concurrent list, you will find that item 26 deals with welfare of labour; conditions of labour; provident funds; employers' liability and workmen's compensation; health insurance, including invalid pensions and old age pensions. Now, as long as that item is in the concurrent list, the right belongs to the Union Legislature to pass any law which it considers necessary whether in terms of any international agreement or otherwise to give effect to its policy. In the same way in regard to every matter of importance either in the concurrent legislative list or in the federal list. Therefore, the issue that arises is if the Union goes not merely to a recognized international conference as the U.N.O. or is a party to the I. L. O. as India may be, but say to the Moral Rearmament conference at Switzerland, are we in position to give effect

[Sardar K.M. Panikkar]

to the decisions? In order to do so, it is absolutely necessary that it must be related to a substantial item in the federal or concurrent legislative list and the federal or concurrent legislative lists have been made in such a manner as to include every possible thing which may be of common interest. So, what is left to the Provinces or States are purely matters of local administration, not of an all-India or of a common character. That being so, to entrust wide powers such as the enforcing of decisions by legislation, the implementing of any agreement or arrangement reached at international association—itsself a very dangerous definition, what kind of international association or conferences it is not mentioned—is most dangerous which will, nullify every provincial and State constitution, because it is not limited to the subjects in the federal or concurrent legislative list. After all, Section 106 of the Government of India Act, as it stands, specifically limits the power of implementing such decisions. I am as anxious as any other Member here that the Central Legislature should have ample powers to give effect to treaties and agreements reached with other countries. But in order to do so it must be related to one or other subject in the concurrent or the federal legislative lists. As item 14 stands, it is rather peculiarly worded. It reads—

“Participation in international conferences, associations and other bodies and implementing of decisions made thereat.”

If this relates to items which are in the federal and concurrent lists, then this clause is not necessary. If it relates to matters outside the federal or concurrent list, then this clause will completely nullify every legislative item in the Provincial list or in the list pertaining to the Units and therefore I shall strongly suggest that whatever you may want is in Item No. 16. You may make the position clear in regard to the I.L.O. and other conferences or associations of a recognized international character. I would very respectfully submit that to give any more powers, such wide and undefinable powers to the Central Legislature, would be to nullify every act of the Provinces and units and to give the Union the right to interfere in every sphere of power without having a proper legislative source to which this legislative authority can be traced. Therefore, I have pleasure in supporting the amendment which has been put forward by Sir V. T. Krishnamachari.

Sir B. L. Mitter (Baroda State): Mr. President, I wish to draw the attention of this Assembly to one aspect of this question which has not yet been touched upon. I agree with Sardar Panikkar that there is a certain amount of misunderstanding in this matter and reference has been made to Section 106 of the Government of India Act. Section 106 of the Government of India Act was enacted when India, as defined in that Act, was not an organic entity. India consisted of British India and the States and therefore special provisions had to be made in regard to the States. But now India is an organic entity. There is no distinction, so far as the outside world is concerned, between the Provinces and the States. Therefore any reference to the Government of India Act is not quite relevant.

Now, this item speaks about the implementing of decisions made at international conferences. Before you implement a decision, you have got to ratify it. The decision will come before the Central Legislature for ratification. Then, at the next stage, if the Central Government so decides

that the ratification needs to be further implemented by legislation, then and then only does item No. 14 come into operation. Consider what is the nature of things likely to come before these international conferences for decision. They will be matters which are common to nations and matters which are of national interest and not of parochial interest. That being so, the chances are that anything outside the exclusive or concurrent list will not ordinarily come in for international decision. But supposing some matter of provincial importance is embodied in an international decision. Then this question will be debated in the Central Legislature where the Unit will be represented and if there be anything in the nature of oppressiveness, naturally the Central Legislature will take account of it. Where is the risk then in empowering the Central Legislature with the implementing of international decisions?

My point, therefore, is this; that international decisions are likely to be taken on matters of national interest and common to many nations. India now goes to the international conferences as an organic entity and not as a collection of political units as under the Government of India Act. That being so, Sir, I do not see any risk in giving this power to the Central Legislature. I would request my Honourable friend Sir V. T. Krishnamachari to withdraw his amendment.

Mr. M. S. Aney (Deccan States): Mr. President, Sir the item here has really raised a controversy which I thought would not be raised at all; but on the amendment standing in the name of Sir V. T. Krishnamachari being moved and another amendment in the name of Mr. Naziruddin Ahmad also, being moved, the controversy has assumed a form in which I find that certain fundamental aspects of this question are being obscured. Let us see what this item calls upon this House to do. It relates to participation in international conferences. So far as participation is concerned, I believe nobody seems to take any exception that it should be the right of the Central Government or the Dominion Government to send representatives to participate in these Conferences in the name of India. The real difficulty comes in regard to implementing those decisions. Now, as has been very rightly pointed out by my friend Sir B. L. Mitter, these decisions will be arrived at after consultation and deliberation at the international conferences. They will embody decisions on matters not taken in the interest of any particular part of his country or that country, but from the broader point of view of international usefulness and international benefit. The question is, when decisions of that nature involving international considerations are, to be implemented, although they might be related to matters within the provincial sphere, are those decisions not fit subjects to be considered by the Central or Union Government? Units are intended to govern their territory in regard to certain matters purely from the interest of the persons living within the territory of the unit. Their view is therefore necessarily limited to a territorial nature, bounded by the geographical limits within which the units have to carry on their administration, but here there are decisions taken in which the world view is taken and therefore in the carrying out of those decisions the Central Government will be in a better position to see whether those decisions should be implemented or not, and even in the former case, what is the proper way to implement them so as to justify India before the civilised world. That is the stand point from which these decisions will have to be looked at. This is not possible, in my opinion in the very nature of things if these matters are left to be decided by Provinces or units. It is this body the Central Legislature, I mean, which is in a position to take a broader and international view and therefore the authority for implementing those decisions must also vest in it. I

[Mr. M.S. Aney]

think it is obvious to everybody that if India to stand as a whole, before the whole world, it is the Central Legislature only which can represent India before the world and it must be responsible for implementing those decisions also. In all affairs outside India, the authority is exclusively left to the control and administration of the Central Government and I submit this is a matter of that nature, *i.e.*, falling within the category of external affairs. International conventions are external considerations which affect the affairs inside the country. Therefore, in the natural course of things this should be a matter for the Central Government to decide and I am sure that Sir Krishnamachari will see that nothing is lost if he does not press his amendment and let the item stand as it is. I therefore oppose the amendment.

Mr. T. Channiah (Mysore State) : (*Spoke in Canarese*).

Mr. H. V. Kamath (C. P. and Berar: General): Mr. President, the Honourable Member knows English and I suggest that you request him to speak in English.

Mr. T. Channiah: I have got option to talk in any language. I like (*continued to speak in Canarese*).

Mr. Shankar Dattatraya Deo: (Bombay: General): Sir, We must at least be told in what language the Honourable Member is speaking.

Mr. President: My information is that he is speaking in Canarese. (Laughter).

Shri Mohanlal Saksena (United Provinces: General) : How do we find out whether he is talking in Canarese or not?

Diwan Chaman Lall (East Punjab: General): On a point of order, Sir, Are there any arrangements for a translation to be made into some understandable language of the speech that my honourable friend is making?

Mr. President: There is no arrangement for translation. If an Honourable Member chooses to speak in his own language, I cannot prevent him. The other members miss the speech and the speaker himself is not in a position to influence the bulk of the members present here. So the loss is more on the side of the speaker than on the side of the members who do not follow him. I don't wish to interrupt any member who wishes to speak in his own language.

Mr. T. Channiah: Thank you, Mr. President (*continued to Speak in Canarese*).

Mr. M. S. Aney: Sir, on a point of order. Are you in a position to know whether he is speaking relevantly or not?

Mr. President: I am not in a position to know whether he is talking relevantly or not. This is the third occasion when a gentleman has spoken in a language which is not understood by the bulk of the members present here. I allowed a member to speak in Telegu and another in Tamil and I thought I could not prevent a member who wished to speak in Canarese. I know that he will himself realize that

the speech he is making is not understood by the bulk of members and that he is therefore wasting his time. I would therefore request him to cut short his speech.

The Honourable Mr. B. G. Kher (Bombay: General): He is talking of the relations between the States and the Centre. I submit that has nothing to do with the subject we are discussing.

Dewan Chaman Lall: Rule 59 of the Rules of Procedure and Standing Orders of this Assembly says—"In the Assembly, business shall be transacted in Hindustani (Hindi or Urdu) or English, provided that the Chairman may permit any member who cannot adequately express himself in either language to address the Assembly in his mother tongue". I submit that the Honourable Member is now taking advantage of this particular rule and he has no business to take advantage of it. He knows English. He has already expressed himself adequately in English and therefore he should not now be given an opportunity to speak in his mother tongue.

Mr. President: This Rule, exists in the Rules of the other Legislative Assemblies also and there the members have been permitted to speak in their own languages even if the member could express himself in the English language. I would therefore allow him to express himself in his mother tongue. I would, however, request him to cut short his speech.

Shri Raj Krushna Bose (Orissa: General): In that case, when you allow, the members to speak in a language which is not understood by the bulk of the members, the Chair will, at least, keep an interpreter by his side to know what the member is speaking about.

Mr. T. Channah: (*Concluded his speech in Canarese.*)

Mr. President : We have had enough discussion. I now ask Mr. N. Gopalaswami Ayyangar to reply if he wishes to.

Mr. N. Gopalaswami Ayyangar: Sir, the two amendments that are before the House for consideration now are those of Sir V. T. Krishnamachari and Mr. Naziruddin Ahmad. In substance I think they raise the same issue more or less. So far as the merits of the amendments go, they have been sufficiently canvassed already the speakers who have dealt with the matter before me. I do not wish to add anything of a material nature to the discussions that have taken place. The main thing for our consideration is whether, in the case of International Conferences, Associations and other bodies, the Federal Legislature should have power to legislate not merely for our participation in those Conferences and Associations but also for our implementation of the decisions arrived at at those Conference and Associations.

Now, Sir, if, as has been conceded, it is very necessary in view of the new status that India has acquired in the International World that this country should speak with one voice at those Conferences and Associations and if it is also agreed that India should be a party to any decisions arrived thereat, it is to my mind important that steps should be taken by India as a whole for the implementation of such decisions. Ordinarily speaking, I agree with Sardar Panikkar's argument that the Federal Legislature should trace its powers of legislation in respect of matters decided at those Conferences only to specific

[Mr. N. Gopaldaswamy Ayyangar]

entries in either the Federal List or the Concurrent List. That is so, but—we have got to remember that we go to those Conferences not on behalf of the Federation as distinguished from the Units of the Federation. We go to those Conferences as representing India as a whole, *i.e.* the Federation and the Units combined, and, if we are empowered to subscribe to the decisions arrived at at those Conferences, it is only right that we should be in a position to implement those decisions which we agree to at those Conferences. It is on use our assenting to such decisions and coming back home to find that we at the Centre are unable to implement them but have to remit those decisions to the various Units for the purpose of arriving at their own decisions in regard to such matters and either implementing those decisions or refraining from implementing them. Now, Sir, that would put India as a country in the International World, in a very awkward position. There is of course the fact that, when we do reach decisions at those Conferences, those decisions are of varying degrees of importance. At many of those Conferences, only pious decisions are arrived at, but at others human freedoms are declared and so on. It would be difficult for us to attempt implementing every one of the resolutions that may be adopted at those Conferences; but what does this item really mean? It does not mean that every decision that is arrived at at those Conferences is necessarily to be implemented by legislation. It only means that, if it is decided that those decisions should be implemented, the Federation should have power to legislate about them. That is about all. Therefore, Sir, looking at it from that point of view it seems to me that, if the House agrees to legislation for participation in such Conferences, it should also agree to its having power to implement such decisions as deserve implementation.

There is one other point I would like to mention. The proviso that has been suggested by Sir V. T. Krishnamachari in respect of this item is really not a thing which should be accepted so far as the List of Items is concerned. I think really if that question is to be debated at all it must be by his giving notice of an amendment when the text of the Constitution comes up before the House and asking for a specific section, on the lines perhaps of section 106 of the Government of India Act, to carry out his object. To put a proviso of that sort into a mere enumeration of the list of items in respect of which the Federal Legislature is empowered to make laws is, I submit, not an appropriate way of bringing up that matter. I have nothing more to say.

Mr. President: I will now put the amendments to vote. The first amendment is the one moved by Sir V. T. Krishnamachari.

The question is—

That in item 14, the following be added at the end:—

“Provided that the Federation shall not by reason only of this entry have power to implement such decisions for a province or a Federated State except with the previous consent of the province or of the State.”

The amendment was negatived.

Mr. President: Then there is the amendment of Mr. Naziruddin Ahmad.

The question is—

That in item 14 the following be added at the end :—

“on matters within its legislative competence, and in other matters affecting a province or a State, with the express consent of such State”

The amendment was negatived.

Mr. President: I will put the original item 14 to vote.

The question is—

“That Item 14 be adopted.”

The motion was adopted.

ITEM 15

Mr. President: I do not find that there is any amendment to this item No. 15. So I put it straightway to vote.

The motion was adopted.

ITEM 16

Mr. President: There is a notice of an amendment by Sir A. Ramaswami Mudaliar, Sir V. T. Krishnamachari, Shri M. A. Srinivasan and Shri C. S. Venkatachar.

Sir V. T. Krishnamachari: I withdraw the amendment.

Mr. N. Madhava Rau: I also withdraw my amendment.

Mr. Naziruddin Ahmad: Mr. President, Sir, I beg to move that in item No. 16 the following be added at the end:—

“on matters within its legislative competence, and in other matters affecting a province or a State, with the express consent of such State.”

Sir, the matter has been fully debated and I do not wish to go over the ground covered already. I beg to submit one thing *i.e.* in the debate on clause 14 Mr. Munshi almost gave away his case when he said that no action would be taken by the Centre without consultation with the units or with the States and that the Centre would never do anything behind their back. That is a very indirect concession that the Provinces and the States are entitled to be consulted. Then again, Mr. Ayyangar also said in a reply—I think it was with reference to proviso to amendment to Item No. 14—that this item was not the proper place to put it in, suggesting thereby, if I caught him rightly, that the same may be dealt with in the body of the Act itself in some appropriate form. These two speeches by two eminent men in the House indicate to me that they also felt the difficulty of their position. In fact the point is simply this. That Mr. Ayyangar and Mr. Munshi are very influential men of the Centre; let us suppose they go to an international conference and there they agree that all properties of the men in the street should be expropriated and distributed amongst the influential men. The man in the street says: “You cannot do it without my consent”. But the influential men say: “If you interrupt us in our noble pursuit at the International Conference, I think you are obstructing us.” This is exactly the position. Although noble sentiments may lie behind this action, it is a question of the rights of the provinces and the States. The question is whether you can be permitted, even indirectly, even for the benefit of the whole of India, to circumvent the legislative safeguards of the provinces and the States by means of a proviso like this. I submit that the debate has not answered this difficulty which

[Mr. Naziruddin Ahmad]

I feel. In fact the Provinces and the States have rights within their legislative competence being in List No. II that is, within the exclusive provincial jurisdiction or in the case of a State within a sphere on which they have not acceded. The question is whether the Centre should be permitted indirectly to encroach upon those exclusive spheres. Thus all the distinctions in the legislative list would be brought to nullity. On a question of principle I think that this should not be allowed to be done however laudable the motive may be supposed to be. All that I desire is that the List should be so amended or some sufficient safeguards should be introduced into the body of the Constitution that in going to an international conference previous discussion with the province or State should take place and their consent taken and then the Centre should send their representatives to such conferences. It would be absurd to go there without this formality. This seems to me to be absolutely simple and straightforward and absolutely legal. I do not know why in the name of efficiency and good name of the Centre this encroachment should be resorted to. I think the point which I made is based upon sound constitutional reason and something should be done to provide against acts being done by the Centre behind the back of the Units on their exclusive subjects.

Mr. Alladi Krishnaswami Ayyar (Madras: General): Though a decision of the House on item No. 14 makes any speech on Item No. 16 unnecessary, I should like to say a few words in view of the statement made that unless the treaty or the agreement is implemented by the province the treaty or agreement must have no sanction and there is also a suggestion thrown out that adequate provision should be made in the Constitution on the lines of section 106 of the Government of India Act. I submit, Sir, that as has been pointed out by Sir B.L. Mitter, the reasons for the enactment of Section 106 of the Government of India Act no longer exist and the Central Legislature must have the power to implement the treaty or the agreement that has been entered into with foreign powers. There is nothing novel in a provision of that description. Almost in every federal constitution in spite of any division of powers between the Centre and the Provinces, notwithstanding the fact that the treaty may encroach upon what might otherwise be a provincial power, the treaty perforce has a binding force and the Centre has the power to implement the treaties notwithstanding the fact that but for the treaty the subject-matter would be in the domain of the Provinces.

I would only refer to a few parallels. In the American constitution also, there is a division of powers between the Centre and the States. The residuary power is in the States and yet it has been uniformly held that if in the exercise of the treaty-making power the United States Central Government enters into a treaty with a foreign power, the treaty is binding on the States notwithstanding the fact that the subject-matter of the treaty may otherwise fall within the domain of the States. In fact, the provision in the American constitution goes to the extent of stating that the treaty shall be the supreme law of the land. That is the position in America.

In Australia also, the residuary power in the States and the powers of the centre are confined to a few specific matters. And yet, if the Centre enters into a treaty or an arrangement with a foreign

power in the exercise of its power under External Affairs, the treaty is perforce binding upon the States and it is not open to a State to challenge the treaty or the law implementing the treaty on the ground that in the normal course of things, it would fall within the purview of the States.

In Canada, there has been a sharp difference of opinion in the decisions of the Judicial Committee in appeals from Canada. But the preponderance of Canadian national opinion is in favour of the view that the Centre must be in a position to implement the treaties entered into by the Dominion as a member of International Society and it is not open to the province to say that because particular matters are in the normal course within the provincial sphere, the treaty is not binding on the provinces. So far as the decisions are concerned, there is no doubt a difference of opinion. But, as I have stated, the preponderance of influential and national opinion in Canada is in favour of giving force to the treaty.

In these circumstances, having regard to the peculiar nature of Indian conditions, the multifarious States that exist and the number of Units that are going to comprise this Union, this country must have a right to enter into a treaty and implement that treaty. But, of course, our statesmen must be on the guard in entering into an unconditional treaty. They must make the necessary reservation and they must see that until our legislature implements the treaty, it shall not be binding or they may make other reservations in consultation with the Governments of the Provinces and of the Centre. Otherwise, the Centre will be stultifying itself in any treaty arrangement. I am making these observations in view of the frequent references that were made to section 106. In supporting the retention of this item I proceed on the footing that there will be no such provision as section 106. Apart from treaties, the case of international conferences or what might be called a kind of agreements entered into in international conferences may stand on a different footing.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, I was also of the view that a provision should be made in the constitution in terms of section 106 of the Government of India Act. But, on reconsideration, I find that it will involve this country in a series of troubles; they will not be able to represent our case in international conferences and even with respect to foreign countries where we have entered into treaties or agreements. There is no doubt danger in allowing the Centre a free hand in this matter without consulting or taking the consent of the various provinces or units. The Units may be too large in number and it may not be possible to consult every one of them or take their consent before the decisions are implemented. These are the two sides of the picture. A middle course must always be found and that can be done by way of a convention.

I find, Sir, that all treaties and agreements that are entered into, except those which are entered into with foreign countries on political matters. The other agreements trade agreements and decisions by international conferences are all, before implementation, brought before the Central legislature and without its consent, or ratification they are not given the sanction of law. Therefore, there is at least one

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legislature in this country which accepts these decisions and gives them the sanction or force of law. The only question is whether with respect to provincial matters, the provincial legislatures must have a voice or not. That will be impossible having regard to the fact that the number of units is too large. There is the International Conference on Food and Agriculture in Geneva. I know as a matter of fact the provinces have not been consulted, one at least of the provinces has not been consulted, regarding the representatives that had to go and what instructions had to be given. If, over the head of the provinces representatives are sent to these international conferences, without the consent of the provinces and without the provinces giving any particular directions to these representatives as to what these representatives should press at these conferences, it is practically ignoring them both in the beginning and in the end, before the representatives are sent and after decisions are taken. This difficulty arises only with respect to provincial subjects. If the provinces are treated with scant courtesy in the matter of choosing representatives and in giving directions to the representatives, and, after the representatives come back with particular decisions which have been taken at these international conferences, the provinces or units have no say in this matter, it is regrettable matter. In practice, the Centre does not consult the various units. I do not want a legislative provision tying up the hands of the Centre and preventing it from implementing the decisions. If there is to be such a provision, the Centre will be stultifying itself before the eyes of the world and to that extent I agree that this amendment ought not to be allowed.

But, in practice what ought to happen is this. An Inter-provincial Council or an All India Council must be established with respect to these matters where international conferences are generally held, health, education, labour and other matters. Whenever representatives are asked to be sent to conferences, this council must have a voice. There must be representatives of provincial Governments and units. They must be consulted in the choice of representatives. The representatives must consult them and obtain directions as to what they should say on behalf of the Government and on behalf of the various provincial Governments also with a united voice. After they return, they must report to this inter-provincial or All India Council and take their decision. After the decision is arrived at that decision must be implemented by the Centre. This would avoid a number of inconveniences which would arise out of making a statutory provision for obtaining the consent of the units. It would not be desirable to ignore the Governments of the units and the various provinces altogether. A middle course must be adopted; but it need not be by statutory provision; it may be by a convention. For these reasons, Sir, I am not in favour of the amendment. Nor am I in favour of a provision like section 106 of the Government of India Act to be incorporated in the body of the Act. But the Centre must bear in mind that immediately an All-India Council, with respect to the various items or matters that come up in these international conferences and which are in the provincial list, must be established and this council must be consulted in the matter of sending representatives, in the matter of giving directions, and after the decisions are taken, in the matter of implementing them before they are ratified by the Central legislature.

Mr. N. Gopaldaswami Ayyangar: Sir, a good deal of what has to be said on the amendment before the House has been said already both during the debate on it and during the debate on item 14. I wish only to meet one point which was raised by Mr. Naziruddin Ahmad. It is this. He wanted that if this amendment was not accepted in relation to this item, some other provision should be made at least in the body of the constitution embodying the substance of this amendment. Now, Sir, in connection with the debate on item 14, I took the point that, if the proviso which was moved to that item as an amendment had to be considered at all, the substance of it, it should not be in connection with that item, but might be brought up as an amendment to the body of the constitution when that came before the House for consideration. I wish however to make it clear that that statement of mine was intended merely as an indication of the correct procedure that should be followed. I wonder if—I have been rather thinking that—in the minds of some members, there is a lurking feeling that I myself suggested the inclusion of something on the lines of section 106 in the body of the constitution. That was not my point. I only said that if such a thing happened it must be with reference to the text of the constitution. On the merits of putting in a provision of that sort in the body of the constitution I have absolutely no doubt in my mind that so far as item 16 is concerned there is no case for such a provision in the conditions of this country. I agree with Mr. Alladi Krishnaswami Ayyar in the point he made on that question. That being so I am afraid I must oppose Mr. Naziruddin Ahmad's amendment, and I cannot hold out before him any prospect of my agreeing to accept an amendment even to the text of the constitution on the lines of his amendment here or on the lines of Section 106 of the Government of India Act, 1935.

Mr. President: I will now put the amendment to vote.

The question is:

“That in item 16 the following be added at the end:

“on matters within its legislative competence and other matters affecting a province or a State, with the express consent of such State.”

The amendment was negatived.

Mr. President: The question is:

“That item No. 16 be adopted.”

The motion was adopted.

ITEM 17

Mr. President: There are two amendments of which I have notice and both of them are to the effect that the item be deleted.

Sir V. T. Krishnamachari: I am not moving my amendment.

Mr. Naziruddin Ahmad: I am not moving my amendment.

Mr. President: The question is:

“That item No. 17 be adopted.”

The motion was adopted.

ITEM 18

Mr. President: Mr. Madhava Rau.

Mr. N. Madhava Rau: I am not moving my amendment.

Shri Himmat Singh K. Maheshwari: Mr. President, Sir, I beg to move :

“That in item 18 the following be inserted at the end:

‘raised by the Federation’.”

The object of this amendment is to have the position made clear whether foreign loans referred to in this item will be loans raised by the Federation only or whether it is intended that units or private concerns or private individuals should have no right whatsoever to raise a loan in a foreign country. The item as it stands does not make its scope clear. I shall therefore be grateful if some light is thrown on the exact scope of this item.

Mr. A. P. Pattani (Western India States Group) : Mr. President, the amendment that has been moved, as far as I can understand, suggests that not only the Federal or Central Government but the units should be able to raise foreign loans. I think that is a very dangerous power to give to the units, especially in the light of the previous item on the Federal List where the Federal Government is taking responsibility to meet grave economic crises in any part of the country. If a unit, that is to say a Province or a State, is permitted to raise loans in any foreign country and create economic difficulties for the Federation it will be very hard on the Federal Government. I therefore request the mover of the amendment kindly to withdraw it.

Mr. N. Gopaldaswami Ayyangar: Sir, the mover of the amendment wanted some elucidation of what was covered by this particular item. The words ‘foreign loans’, I think, are a fairly clear description of what is intended. Apparently the object of the amendment is that the power of the Federal Legislature to make laws should be confined to foreign loans raised by the Federation. I am afraid, Sir, that I cannot agree to that position. The Honourable the mover of the amendment was referring to the case of units being at liberty to raise such loans in foreign countries. I do not think the Centre can agree to a unit, without reference to the Centre, proceeding to raise a loan in a foreign country. If it has to do so, it must get the consent of the Centre and perhaps must Act through the Centre in raising such a loan, if it is otherwise unobjectionable. This item is intended to give complete power to the Federation to control the raising of foreign loans.

Shri Himmat Singh K. Maheshwari: What about a private concern or a private individual?

Mr. N. Gopaldaswami Ayyangar : If the Federal Legislature considers it necessary to place restrictions or regulate the raising even of such loans, the power will be there. But whether it should be exercised at all, or whether it should be exercised in certain circumstances will be a matter for decision by the Federal Legislature.

Mr. President: I shall put the amendment to vote.

The question is:

“That in item 18 the following be added at the end:

‘raised by the Federation’.”

The amendment was negatived.

Mr. President: The question is:

“That item No. 19 be adopted.”

The motion was adopted.

ITEM 19

(*Mr. Krishnamoorthy Rao and Shri Omeo Kumar Das did not move their amendments.*)

Mr. President: The question is:

“That item No. 16 be adopted.”

The motion was adopted.

ITEM 20

Shri Himmat Singh K. Maheshwari: Sir, I move:

“That in item 20 the following be added at the end:

‘subject to existing agreements between one Unit and another’.”

The subject of extradition formed part of Item No. 3 of the Government of India Act, 1935 relating to External Affairs. The exact item stood thus :

“External Affairs: The implementing of treaties and agreements with other countries: extradition, including the surrender of criminals and accused persons to parts of His Majesty’s Dominions outside India.”

In this context, Sir, extradition apparently related only to extradition from and to foreign countries. In the present List, Sir, the subject of extradition has been separated from other subjects dealing with foreign affairs. For instance, we have item No. 11 dealing with foreign affairs and we have item 14, 16 and others dealing with foreign matters. By putting this subject “Extradition” into a separate item the implication is that the Federal Legislature will have the right to legislate not only regarding extradition from and to foreign countries but also in matters relating to Units, *i.e.* that existing agreements between Units, between States and Provinces, between one Province and another will be affected adversely. I am not sure what the intention was in putting this as a separate item. But I imagine it cannot be that the existing arrangements between States and Provinces are going to be replaced or disturbed by taking over the subject as a Federal subject. In any case, Sir, I would like to have light thrown on this.

Mr. President: Does any one wish to speak about this ?

Mr. Naziruddin Ahmad: Mr. President, Sir, I should think that one point requires clarification. Extradition is a subject on which it seems to me that the States are not acceding. In that case, when any legislation or any executive action is intended, the question arises as to whether the States should be consulted or their consent taken. This is a matter which requires clarification.

Mr. N. Gopaldaswami Ayyangar: Sir, I do not think that there was any mysterious purpose behind the List on this item of extradition being separated from the group of items which are included in a single entry in the Federal List of the Government of India Act. As a matter of fact, that particular entry is so jumbled up that we thought that extradition, being an important matter in itself, should be separately listed.

As regard the point that was raised by the mover of this amendment, and also the question of clarification, that was raised by Mr. Naziruddin Ahmad, I have only to say this. Ordinarily speaking extradition arrangements are a matter between one State and another, the two States being in essential respects independent in the exercise of their respective jurisdictions. There are Federations in the world where extradition arrangements exist between one Unit and another inside the Federation. I believe there are Federations in the world where the question of the matters that should be provided for by extradition is dealt with in a much easier manner than the formal way in which extradition has to be accomplished as between one independent State and another. But whether it is the one or the other, extradition is really a matter of agreement between the two States which enter into these arrangements. The entry of extradition as an item in the federal list does not necessarily abrogate any agreements or arrangements that may exist. It is possible that, when a law is passed it will probably provide, as the present extradition enactments do provide, for the entering into of agreements between one State and another, and if extradition has to be provided for as between one Unit and another of the future Federation of India. I am sure that that law will make a similar provision. As to whether the power to make that law should be restricted by the words that the honourable the mover has suggested, namely, "subject to existing agreements between one Unit and another" that question is one as to which I am not prepared to give an affirmative answer. Those agreements will be entered into under the provisions of the law that may be made. I cannot anticipate what those provisions will be; that is a matter for the future. But whether existing agreements should continue or whether modified agreements should be entered into, should be left to the administration of the law that may be enacted in future. It may be taken for granted, however, that, when extradition is provided for, the States entering extradition arrangements have got to be consulted and it is only ordinarily by consent between the States entering into that arrangement that the arrangement can come into existence. This being so, Sir, I would suggest that the Hon'ble Mover of the amendment need not press his amendment.

Shri Himmat Singh K. Maheshwari: Sir, I beg leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That Item No. 20 be adopted."

The motion was adopted.

ITEM 21

Mr. President: We come to Item No. 21. I do not find there is any notice of amendment to this item. So I will put it to vote.

The motion was adopted.

ITEM 22

Mr. President: Item No. 22.

Sir V. T. Krishnamachari : Sir, the object in setting down this amendment (That Item No. 22 be deleted) on paper is to seek a clarification whether this means jurisdiction over nationals of this country in other countries, or whether it means anything more than that. That is the point on which we seek clarification.

Mr. President: There are two amendments of which I have notice, both to the same effect, one by Mr. Naziruddin Ahmad and the other by Mr. Himmat Singh Maheshwari.

Shri Himmat Singh K. Maheshwari: Sir, I have nothing to add to what Sir V. T. Krishnamachari has said.

Mr. N. Gopalaswami Ayyangar: Sir, my answer to Sir V. T. Krishnamachari's question is that foreign jurisdiction is jurisdiction exercised in another country over the nationals of this country. Not merely that. The power to exercise the jurisdiction can be taken only if we have the consent of the government of that foreign country. Therefore, what this item really means is that, when we have the permission of that foreign country to exercise jurisdiction over our own nationals in that country, we make laws for the purpose of governing the relations between our own nationals who happen to be in that country.

Sir V. T. Krishnamachari: Sir, in view of what Mr. Gopalaswami Ayyangar has said, I beg leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Then I put this item to vote.

The motion was adopted.

ITEM 23

Mr. President: We now come to item No. 23. I do not find there is, any amendment to this item.

Shri M. Ananthasayanam Ayyangar: I only want to make a suggestion. Item 23 says:—

“Piracies, felonies committed on the high seas and offences committed in the air against the law of nations.”

I want to suggest the deletion of the words “in the air”. Sir, this entry was lifted bodily from a similar article in Section 8 of the American constitution where the words are the same item by item and word for word. But in that article there is reference to piracies, felonies committed in the high seas and offences against the law of nations. There is no restriction to offences committed in the air. There is no reason to discriminate against the offences committed on the high seas against nations and

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offences committed in the air. I believe these words have been put in by inadvertence, and may be omitted and this item may fall in line with the similar provision in the United States of America constitution. I would place this suggestion before the Assembly for its consideration.

Mr. N. Gopaldaswami Ayyangar: Sir, I see the point that was attempted to be made by Mr. Ananthasayanam Ayyangar; but I am not so sure that we should keep entirely to the language of a constitution that was made, I believe, 160 years ago. So I think I would meet his main object if he will agree to the alteration of this item as follows:

“Piracies, felonies and offences against the law of nations committed on the high seas or in the air.”

Shri M. Ananthasayanam Ayyangar: That will meet my point.

Mr. President: I take it that the House will permit Mr. Gopaldaswami Ayyangar to recast this item in the way he has just now suggested.

Then I put this item, in the form he has put it, to the vote of the Assembly.

Item 23, as amended, was adopted.

ITEM 24

Shri Himmat Singh K. Maheshwari: Mr. President, Sir, I beg to move that for item 24 the following be substituted:—

“Subject to the existing laws of a Federated State, admission into, and emigration and expulsion from, the territories of the Federation, pilgrimages to places outside the boundaries of India as they stood before the 15th August 1947.”

Sir, I have two objects in view in moving this amendment. Firstly, certain States have got laws in existence for regulating the admission of foreigners into and emigration and expulsion from their territories. If the Federation takes over this subject completely, that is to say, to the exclusion of the jurisdiction of the Unit, then the power of the Unit to take prompt action will be removed, much to the detriment of the maintenance of law and order. Whatever provision, therefore, Sir, is made to give the Centre power to direct the admission and emigration and expulsion from the territories of the Federation, I think it has got to be subject to one condition, namely, that the discretion of the federating State in this matter should not be interfered with.

The second point that I want to make is that pilgrimages to certain places like the Gurudwaras in Pakistan and the Shrine of Khwaja Moinuddin Chishti in Ajmer are not subjects which need be dealt with by means of legislation by the Centre.

After all, a gurudwara may be only ten miles away from a village in India and it would be, I hope, a very common occurrence in future for people from one Dominion to cross over into the other for a religious purpose like this without let or hindrance. Similarly, I don't see why there should be any restrictions placed on the visit to a place like Ajmer of Muslims living in Pakistan. I therefore hope, Sir, that these two

points will be very carefully considered and that the reply of the framers of the Report will be reassuring on the subject.

Mr. Mohd. Tahir (Bihar: Muslim) : Mr. President, Sir, I beg to move:

“That in item 24, the words ‘pilgrimages to places beyond India’ be numbered separately as one specific item, namely, item 88, or that it may be added as 24-A.”

Now, Sir, this is an amendment which is very simple, modest and innocent. To me, Sir, it appears that this aspect is the most important aspect of our constitution. But unfortunately it has been given a very insignificant place in the constitution. I therefore request the Hon’ble Mover to agree to it, as has been rightly done in the provincial list, item 14. And in doing so, Sir, I think the Hon’ble Member will not have any difficulty because we have also done it as regards item 27 of the provincial list. In the Government of India Act, the matters referred to in item 26 and 27 have been included in once, *i.e.* item 27, and it has been separated here in the provincial list. I therefore submit that if this matter, *i.e.* the pilgrimages to places outside India is given as a specific item, there will be no difficulty. Lastly, I submit that in item 24, the first part of it has got no concern whatsoever with the second part, to which my amendment refers. With these few words, I request the Hon’ble Mover to make his heart, and mind more flexible towards this amendment and accept it.

Mr. A. P. Pattani: Mr. President, the powers sought under item 24, as I understand, relate very much to powers taken under item 21 also. It will be very necessary, I believe for the Union Government to regulate movements of aliens in our country and there is a suggestion I would like to add to this item 24 as it stands. This item refers to “admission into and expulsion or emigration from the territories of the Federation.” My suggestion relates only to questions of “admission into and expulsion from.” It is possible there may be some areas of the country, or rather States, that have not acceded to the Federation. I suggest, Sir, that Mr. Gopalaswamy Ayyangar may kindly note that in any agreements that are arrived at with such States, provision should be made that aliens should be excluded or expelled if they are undesirable to the Federation. I say this because, the old Government, under paramountcy, had taken power to exclude such aliens from India should they seek asylum in Indian States. We are always anxious to speak much against paramountcy, and I did not like it myself, but it is a thing that arises of its own accord for the defence: or rather for the proper looking after of our own country. So, I request a note be made that in making any agreements with States that have not acceded to the Union, there shall be provision to exclude aliens not merely from the territories of the Federation but from India if those aliens are undesirable to the Union.

Mr. N. Gopalaswami Ayyangar: Sir, as regards Mr. Himmat Singh’s amendment, I have not very much to say, but it is important, I think that the power of the Federation to make laws in respect of “admission into, emigration or expulsion from the Federation” should be absolute. The main reason why that is necessary is that the Federation is responsible for maintaining the integrity of India, preserving its internal security, providing for its defence and so on. An authority charged with these heavy responsibilities should have absolute power to make laws controlling-immigration and expulsion from the territory

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Mr. Pattani drew my attention to the fact that it is possible that some of the States might not have acceded and that it is important, in entering into any political relations with them, to make sure that a condition is imposed upon them in the terms more or less of this particular item.

I am sure, Sir, that those in the Government of this country who will be responsible for relations with Indian States in the future, whether acceding or non-acceding States, will keep this very important point in mind and make the necessary provision.

Sir, the other amendment by Mr. Mohammad Tahir is purely a question of cutting up this item into two. What he has argued is that pilgrimages to places beyond India have very little relation to the rest of this item. One possible justification for lumping these two things together would be that pilgrimages outside India are a form of temporary emigration but I do concede that it is not necessarily a matter which should go with the rest of this particular item. I am quite willing to have it listed as a separate item though I hope the House would forgive the framers of this list of Union Powers if that means an addition to the 87 items that already exist.

Mr. President: I put these two amendments to vote, one after another.

Mr. Mohd. Tahir: I withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: There is one by Mr. Himmat Singh Maheshwari as follows:—

“Subject to the existing laws of a Federated State admission into, and emigration and expulsion from, the territories of the Federation pilgrimages to place outside the boundaries of India as they stood before the 15th August, 1947.”

I put it to vote.

The amendment was negatived.

Mr. President: Now I put item 24 to vote.

The motion was adopted.

ITEM 25

Mr. President: Now, we will go to item 25. (Messrs R. K. Sidhwa, M. S. Aney, and Naziruddin Ahmad did not move their amendments). Then there is no amendment to item 25, and I put it to vote.

The motion was adopted.

ITEM 26

Mr. President: Now we take item No. 26. There is only one amendment by Mr. Himmat Singh Maheshwari.

Shri Himmat Singh K. Maheshwari: Mr. President, Sir, I beg to move that in item 26 the following words be inserted at the end:—

“Subject to the right of a Federated State to levy and to vary from time to time customs duties on its own frontier.”

Customs duties in most States form a very substantial part of the

income of the States and if the intention is that States should not levy any customs duty, I can say without hesitation that the power of the States to efficiently administer their area will be completely lost. Without finances no State will be able to run its schools and hospitals and if this important item disappears, I am afraid the finances of most of the States, even the bigger ones, are likely to collapse. I hope therefore that this amendment will receive serious consideration and be accepted.

Mr. N. Gopaldaswami Ayyangar: Sir, there are two items in this list which are relevant to be considered in connection with the amendment that has been moved. The first is item 26 which we are considering now. The other one is item 71 'Duties of Customs including export duties.' Now Sir, if the amendment has reference only to the right of a Federated State, situated on the frontier of the Federation, to continue to levy its own customs duties, this particular amendment would more relevantly come up for consideration under item 71. I should say, Sir, that item 26 refers only to legislation which has reference to import and export across customs frontiers. As there is a separate item relating to the levy of duties of customs, I take it that any Court will interpret this item 26 as not covering the levy of duties of customs, assuming that item 71 is also going to remain in our list. So, on that ground, this amendment does not call for consideration at the present moment. Mr. Himmat Singh, however, raised another issue of some importance and that was the right of a Federated State to levy and to vary from time to time customs duties on its own frontier. These frontiers may not be the frontiers of the Federation. They might merely be frontiers between one State and another or one State and the rest of India. With regard to the continuance of these rights, the whole thing will depend upon what conclusions we reach as regards the distribution of financial resources between the Federal Centre and the Federal units. That also will come up later for consideration in connection with this report. I might say, in order to remove any possible misapprehensions that may be in the minds of representatives of States, that, if on account of powers taken by the Federation as regards customs duties in general, even customs duties between the frontiers of one unit and another, the financial equilibrium of a unit gets upset, the Federation is not likely to run away from the responsibility of making that unit solvent. That is as much as it is necessary for me to say at the present moment. If any proposals of this kind should be made at the time we come to consider the distribution of financial resources, I shall elaborate this particular point. In view of this I hope Mr. Himmat Singh K. Maheshwari will not press his amendment.

Mr. Himmat Singh K. Maheshwari: As this subject is to come up again, I do not press my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That item 26 be adopted."

The motion was adopted.

Mr. President: I have received a letter from two Members asking for an opportunity to discuss the situation that has arisen in some parts of the country in the Punjab. There is a suggestion in that letter that the Report of the Committee, which was appointed the other day

[Mr. President]

to define the scope of the working of the Constituent Assembly and the Legislative Assembly, has been made to me and that I am not bringing it up before the House. I desire to assure Members that I have not received the report, whatever may have appeared in the newspapers. Therefore I am not in a position yet to decide how the Assembly can function in its two aspects. As soon as I get the report, I shall give an opportunity to the House to discuss it and therefore we shall take such action as may be considered necessary in the light of the Report.

The House stands adjourned to Ten of the clock tomorrow morning.

The Assembly then adjourned till Ten of the Clock on Tuesday the 26th August 1947.

CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 26th August 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

TAKING OF THE PLEDGE

The following member took the pledge:

Mr. S. K. Patil.

Mr. President: We shall now take up the consideration of the item of List I.

Mr. H. V. Kamath (C. P. & Berar : General): Mr. President permit me, Sir, to invite your attention to an incident which took place on the historic midsummer night of August 14-15. I must apologise to you, Sir, and to the House for harking back on old times, but in view of the intrinsic importance of the matter, I will request you to condone the delay in bringing it to your notice. You will be pleased to recollect, Sir, that on the night of the Assumption of Power Ceremony, the first item of the agenda was the singing of the *Vande Mataram*. Some of us in this House noticed that a number of our Honourable friends entered the Assembly Chamber—I would almost say trooped into this Hall—after the song had been sung. I would request you, Sir, to look into this matter, because there are certain considerations which arise from this action of theirs. They entered the Hall simultaneously, so simultaneously that it gave the appearance of the act having been performed not so much by accident as by design. You will be pleased to remember that the Assembly had resolved to leave this matter of programme entirely in your hands and they were in duty bound as members of this House to participate in the programme. My friends all very well know that this song, though it has not been adopted by this House as our National Anthem, yet it is a song, Sir, which has been hallowed, which has been consecrated, sanctified by the suffering and sacrifice, blood and tears, and the martyrdom of thousands of our countrymen and women. I shall be happy to hear from those members who came after the National Song had been sung that they did so not by design, but only by accident. Thank you.

Shri Balkrishna Sharma (United Provinces : General): Mr. President, I am really pained to see this matter being raised by an honourable friend of mine for whom I have great respect and love. As a matter of fact, Sir, most of us did feel that the behaviour of some of our colleagues in this House was not quite in the fitness of things. Yet, we here cannot force anybody....

Shri L. Krishnaswami Bharathi (Madras : General): May I rise to a point of order, Sir? I do not know what we are talking about. I have found on many occasions some members stand up without any motion before the House. You have been so good, Sir, as to permit that kind of thing. But I do not know if it is proper for a member to stand up and talk without being called by you. There must be a definite motion before the House on which we can talk. Therefore, I think it is a most improper procedure for some members to stand up without any motion before the House and therefore, I want your ruling on this.

Some Honourable Members: Order, order.

Mr. President: I think the matter should now be closed. We have heard from Mr. Kamath what he had to say. We have also heard something from Mr. Balkrishna Sharma. I do not know what can be done by pursuing the matter further. I think we had better drop it there.

We shall take up now the items. The next item is Item No. 27.

UNION POWERS COMMITTEE REPORT—*contd.*

ITEM No. 27

Shri K. Santhanam (Madras : General) : Sir, I beg to move the amendment in my name in list No. VII, rather than the one list No. 1. I have given a revised amendment.

Mr. President : Yes.

Shri K. Santhanam : I beg to move:

“That in item 27 after the words ‘other institution’ the words ‘financed by the Federation wholly or in part and’ be inserted.”

The reason for this amendment is that the Central Government is authorised by this item to declare by federal law any institution to be an institution of national importance. There may be many institutions built up wholly by private or provincial funds. It will not be fair for the Central Government to come down on one of them and say that it is going to be an institution of national importance. The consequences of that declaration may be that while that institution is serving the needs of a particular locality or a particular section of the population, it will become an all India institution available to the whole country. I realise there may be an advantage in such declaration with respect to certain institutions. But this power should be confined to those institutions which have been financed wholly or partly by the Central Government. It is only then that the Central Government will be entitled to declare the institution to be an institution of national importance. I beg to move the amendment, Sir.

Mr. President: Mr. Pataskar, you have got an amendment exactly in the same terms.

Mr. H. V. Pataskar (Bombay : General) : Sir, in view of the amendment moved by Mr. Santhanam, I do not propose to move mine. If I may be allowed to point out this item 27 corresponds to item 11 in the Government of India Act, 1935. There also it was provided that any such institution must be financed by the federation.

(I support the amendment, and do not move mine.)

Mr. Naziruddin Ahmad (West Bengal : Muslim): Mr. President, Sir, I beg to move:

“That in item 27 after the words “and any other” the word “similar” be inserted, and for the words “declared by Federal Law to be an institution of national importance”, the words “controlled or financed by the Federation” be substituted.”

Sir, the effect of this amendment would be to bring it exactly on the same basis as item No. 11 of List I in the Government of India Act from which the idea has been taken. Some changes have been made here. But I should submit that the text as given in the Government of India Act is slightly better. The effect of my amendment would be that it would extend the operation of the item to any other similar institutions. The word 'similar' is very important as it will give some idea as to the nature of the institutions which can be brought into operation of this item by the Federal authority.

The next change I desire to affect is to the effect that I want to delete the words "declared by federal law to be an institution of national importance" and instead of that, I want to substitute "institutions controlled and financed by the Federation". I submit the requirement of a declaration by Federal Law is unnecessary. As the item is included in List I, the Federation will have automatically the power to make laws. So, the provision that a thing has to be declared by the Federal law seems to be unnecessary because the power to legislate on this item would be implied. Instead of that, the words "controlled and financed by the Federation" would be better because that would be more appropriate. This is the effect of the amendment. This is clearly of a drafting nature and it does not seriously alter the purpose and scope of the item. With regard to Mr. Santhanam's amendment, I am in agreement with the spirit of the amendment.

Mr. Himmat Singh K. Maheshwari (Sikkim and Cooch Behar States):
Mr. President, Sir, I beg to move :

"That in item 27 after the words "any other institution" the words "in a province" be inserted."

I suggest, Sir, that institutions of this kind in Indian States should be left alone. Otherwise, there will be no end to the amount of interference that can be practised under cover of an innocent looking provision like this.

Mr. President : These are the amendments I have notice of. The amendments and the original item are now open to discussion.

(No Member rose to speak.)

Mr. President: It seems nobody else wants to speak. Mr. Gopaldaswami Ayyangar, do you wish to say anything ?

Mr. N. Gopaldaswami Ayyangar (Madras : General): Sir, I accept Mr. Santhanam's amendment to the effect "that after the words 'other institution' the words 'financed by the Federation wholly or in part and' " be inserted.

With regard to Mr. Naziruddin Ahmad's amendment I might say that the word "similar" was changed into the words "any other" deliberately, because the institutions referred to in item 27 specifically are the Imperial Library, the Indian Museum, the Imperial War Museum and the Victoria Memorial. These, it was considered, were not sufficiently indicative of the kind of institutions that the Federation might choose to help financially and which the Federal Legislature might consider to be institutions of national importance. It is necessary, Sir, that we should not have the restrictive adjective "similar" in this connection.

The other point in Mr. Naziruddin Ahmad's amendment is that the language used in the Government of India Act, Item 11, is more appropriate. The difference between that language and the one which has been used in this item is that instead of saying "financed wholly or in

[Mr. N. Gopaldaswami Ayyangar]

part by the Federation” you will have the words “controlled or financed by the Federation”. So far as the latter part is concerned, it is practically the same as Mr. Santhanam’s amendment. The use of the words “controlled or” would bring into the purview of this item institutions which may not be financed either wholly or in part by the Federation but which the Federation might seek merely to control. The whole idea behind Mr. Santhanam’s amendment is that the Federation should not legislate about any institutions of the kind which are not financed wholly or in part by the Federation. Therefore, it seems to me that in order to subserve the object of the amendment which has been accepted it is not possible for me to accept the language used in the Government of India Act.

As regards Mr. Himmat Singh Maheshwari’s amendment I am afraid he is unduly sensitive about the Federation encroaching on the province of the Indian States. I would ask him to realise how much he may stand to lose in Indian States if we excepted institutions of the kind located in Indian States from the financial help that such institutions may expect from the Federation, if the item stood as it is. I may assure him that there is no attempt behind this item to clutch jurisdiction over institutions in Indian States; if the rulers and the peoples of the Indian States are willing to run institutions of this kind and finance them wholly themselves, I do not think the Federation will be anxious to exercise any jurisdiction over those institutions. But it may be that the people of the Indian States would stand to benefit greatly by looking for help to the Centre in regard to institutions of national importance which neither they nor their rulers have got the financial capacity to maintain at the proper standard. I think, Sir, it will be to the benefit of the Indian State that they allow this item to remain as it is.

Mr. President: The first amendment which has been moved and accepted by Mr. Gopaldaswami Ayyangar is Mr. Santhanam’s.

The question is :

“That in item 27 after the words ‘other institution’ the words ‘financed by the Federation wholly or in part and’ be inserted.”

The motion was adopted.

Mr. Naziruddin Ahmad: Sir, may I be permitted to withdraw my amendment ?

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Then there is Mr. Himmat Singh Maheshwari’s amendment. The question is:

“That 27 after the words ‘any other institution’ the words ‘in a Province’ be inserted.”

The amendment was negatived.

Mr. President: The question is:

“That item 27, as amended by Mr. Santhanam’s amendment, be accepted.”

The motion was adopted.

ITEM NO. 28

(No amendment to Item 28 was moved.)

Mr. President: The question is:

“That item 28 be adopted.”

The motion was adopted.

Mr. President: There is a motion in the name of Mrs. Renuka Ray that after item 28 a new item 28(A) be added.

Mrs. Renuka Ray (West Bengal : General) : Sir, I do not desire to move my amendment.

ITEM NO. 29

Mr. Himmat Singh K. Maheshwari: Sir, I beg to move:

That for item 29 the following be substituted:

“Airways, Subject to the right of a federated State to develop air communications within it.”

As the House is perhaps aware, the States have the right at present to develop air communications within their areas. I want to know definitely whether the intention is to leave them this freedom or in future to take over the landing grounds and air communications in the States under the control of the Federation.

Mr. N. Gopaldaswami Ayyangar: Sir, the item is a general description which provides for legislation being undertaken as regards airways. That by itself does not connote the elimination of Indian States altogether from engaging themselves in enterprises which provide air communication between one point in their States and another. The whole thing is to depend upon what is decided to be put into the federal law when it comes to be made. I have no doubt that such legitimate interests of Indian States, as deserve to be catered for, will be provided for in that law. After all, in regard to the question of airways in general, everybody should agree that the legislation regarding air communications, routes, etc., should be regulated and controlled by the centre. I do not think that what Mr. Himmat Singh apprehends will necessarily come to happen. There is no need to make an exception because, even in regard to airways operated by Indian States within their own limits, in respect of certain aspects of control, it would be necessary to vest power in the centre.

Mr. President: The question is:

That for item 29 the following be substituted:

“Airways, subject to the right of a federated State to develop air communications within it.”

The motion was negatived.

Mr. President: The question is:

“That item 29 be adopted.”

The motion was adopted.

ITEM NO. 30

Mr. H. V. Pataskar: Sir, I beg to move:

“That in item 30 for the word “Federal” where it occurs for the second time the word “national” be substituted.”

Item 17 of the provincial list refers to provincial highways and waterways, and for that reason it seems to be proper to mention them here as national highways and waterways. I hope it will be accepted. Sir, I move.

Mr. Alladi Krishnaswami Ayyar (Madras : General) : Sir, I beg to move:

“That in item 30 the words ‘and waterways’ be deleted, and for the words ‘Federal Government’ the words ‘Federal law’ be substituted.”

The reason why I move this is that in item 31 you are providing for “shipping and navigation on inland waterways declared by the Federal Government to be Federal waterways”. Therefore, if you retain waterways here there will be a certain overlap between items 30 and 31.

[Mr. Alladi Krishnaswami Ayyar]

Secondly, if you use the general expression "waterways" it will be susceptible to the construction that the entire control over the waterways including irrigation and other rights may be taken over by the centre, which is certainly not the object of the original item. So in order to show that it must have a restrictive operation it is much better that waterways should be omitted from item 30 and brought under item 31. And later on for the development of waterways special provision is made. The idea is to preserve in their integrity all the other rights of the provinces in regard to waterways. For all these reasons I move this amendment.

I have no objection to Mr. Pataskar's amendment which seeks to substitute "national highways" for Federal highways. Sir, I move.

Mr. N. Madhava Rao (Eastern States): Sir, my only object in proposing to move an amendment* to this item is to emphasise what must have been in the minds of the authors of this list. Highways and waterways fall generally within the sphere of the Units, and if they are to be declared as federal in any particular case, it is reasonable to assume that the Government of the Unit or the Units concerned would be consulted, and their opinions given due weight. If the Federation makes such a declaration, it will be for improving the highway or waterway in question and maintaining it at a higher standard than the resources of the Units permit. Such being the case, it is most unlikely that any Unit would raise any objection unless the proposal was coupled with very unacceptable conditions. Several of the entries in the Federal List read as if unilateral action by the Federal Government was contemplated, although I am sure the real intention was quite different. It is expedient to remove this impression. I would not have really moved this amendment Sir. To save time I might have taken it for granted that before a declaration like this was made, the Units concerned would be consulted. But after Mr. Alladi Krishnaswami Ayyar's amendment, I feel a little confused as to what exactly is the object and import of this item. Is it mainly concerned with the construction and improvement of highways and their maintenance in a proper and efficient condition? Or is it meant to empower the Federal Parliament to legislate in regard to the carriage of goods and passengers? Both items 30 and 31, as they stand, are to me fairly clear. It is the amendment proposed by Mr. Alladi Krishnaswami Ayyar, that has aroused some doubt. I should like to have some enlightenment as to what exactly is the object of the amendments and how the entry would read with the amendments now proposed and what its effect would be on the powers and responsibilities of the Centre *re* (a) the maintenance of highways and (b) control of passengers and goods traffic on such highways.

Mr. Hussain Imam (Bihar : Muslim) : Mr. President, I should like to express certain opinions for the consideration of the House and for the guidance of the draftsman if my suggestions are approved of. I am referring to a particular matter as far as waterways are concerned. We agree that as far as the control of shipping is concerned, it is covered by item 31 and there is no need for its inclusion in item 30. But there is another aspect of waterways with which we are at the present moment concerned, namely, the development of power and irrigation as a consequence thereof. We have this scheme of the Damodar Valley in which

*No. 19—That in Item 30 after the words "declared by the Federal Government the words in consultation with the Government of the Unit or each of the Units concerned" be inserted.

two Provinces are interested—Bihar and Western Bengal. Now, because of the present set-up, the Central Government could not legislate on that without the concurrence of the two Provinces concerned. Similarly there is the Rihand Valley Project between Mirzapur District of U.P. and Palamau District of Bihar. The development of this project is dependent on the concurrence of the two Provinces concerned. I think that now that we are legislating anew, it is necessary that provision be made to distinguish between the two functions—the irrigational and power development aspects. In the smaller rivers, or rather in the case of rivers in which only one Province is concerned, it could remain as at present a Provincial subject. But where large rivers are concerned, in which two or more provinces are concerned or interested, it is only proper that these should remain a Central or Federal subject so that the present difficulties which we have to encounter of getting the concurrence of the Provinces asking them to bear some part of the expenses and cost thereof all these create difficulties—may be avoided. The Provinces are notoriously poor. Their resources are very meagre. Take for instance the Mahanadi Project in Orissa. It is impossible for that Province to finance this project out of their own resources. I therefore suggest that in framing this item, care should be taken to see that there is no encroaching on Provincial rights, as far as rivers, in which only one Province is interested, are concerned. But where more than one Province is interested in a River, and the work is of a major nature involving power development together with irrigation, it should remain a Federal subject. I am making this suggestion for the consideration of the House. I have, therefore, not put in any amendment; but if the House approves of this idea it may be incorporated by the draftsman when preparing the Bill.

Shri M. Ananthasayanam Ayyangar (Madras : General): Sir, the difficulty anticipated by the previous speaker can be fully overcome by the provision of the Government of India Act enabling the Federal Legislature to pass laws for more than one Unit wherever two or more Units are interested even in a Provincial subject. It does not need any alteration of the present item, and it need not be included in list I, it is not necessary to clothe the Federal Legislature with all the power, irrespective of whether a particular Unit wants the power to be exercised in their favour or not. That is my first point.

Then, as regards the amendment moved by Mr. Madhava Rao, there is some meaning in what he said. If highways are vested in the Central Government and included in the Federal List, without any qualifications, the regulation of traffic over the highways also will be a Central subject. Highways naturally pass through many units. There is no highway which does not pass through Units, and so far as roads are concerned, they are a Provincial subject. Therefore, he justly asks if it is the intention of the Centre to exclude these from the operation of the Provincial Legislature so, far as the road traffic is concerned. My view is that it is necessary that it must be exclusively with the Centre. There may be occasions when the traffic on these roads may have to be controlled in the interests of the Federation. But the ordinary kind of traffic may be left to the Provinces. In the Centre we are accustomed to such legislation as the Motor Vehicles Legislation. There is the Motor Vehicles Act passed by the Central Government which also gives power to create Provincial

[Shri M. Ananthasayanam Ayyangar]

Traffic Boards to deal with the traffic in the Provinces. Likewise though highways are included in List I, provision may be made to reserve certain powers to the Centre as in times of emergency for the regulation of traffic-, though the ordinary maintenance of traffic may be entrusted to the Provinces. Therefore, there is no need to accept the amendment suggested by Mr. Madhava Rao, and the present item may be left as it stands.

Mr. N. Gopaldaswami Ayyangar: Sir, for the very good reasons adduced by Mr. Alladi Krishnaswami Ayyar, I accept his suggestion that we drop "waterways" from item 30. If we retain it there, it would lead to a certain amount of overlapping between items 30 and 31, not to speak of other items relating to waterways in the rest of the list. The actual amendment proposed by him was originally "Highways declared to be such by Federal law", and we have an amendment moved by Mr. Pataskar that, for the words "Federal highways and waterways" the words "national highways and waterways" be substituted. I have already said that we are omitting "waterways" from this item, but I think it would meet the points of view of both these Honourable Members if I suggest that the item may read as follows :

"National highways declared to be such by Federal law."

If the House agrees to that small amendment, we may get through with it.

The next amendment that was moved was by Mr. Madhava Rao. I think he himself conceded that no highways are likely to be declared "national highways" without previous consultation with the units. That is a matter of administrative routine and I do not think it is necessary that we should insert the words that he has suggested in item 30. He wanted, however, some clarification as to what exactly was meant by the item as it stands, whether it would include, for instance, power being taken by the Federal Legislature to control traffic on the roads. What I would like him to realise is that the item as it stands primarily refers to the construction and maintenance of national highways. As regards the question of the regulation of traffic thereon, we are not giving any specific power to the Centre. As a matter of fact, in regard to other forms of communications like waterways and railways and, I believe, airways, we have specifically provided in this list for the Centre taking power to control carriage of passengers. We have not made any such provision here. I should therefore suggest to him that the powers that the unit may possess for the control of such traffic even on national highways, it will not be deprived of.

The next point that I wish to refer to is the one mentioned by my Honourable friend Mr. Hussain Imam. He referred to waterways. But, as I have said, we propose to omit waterways from this item. Apart from that, on the merits of what he said, some argument has been advanced on the other side by Mr. Ananthasayanam Ayyangar to the effect that in the constitution there will be provision for two units concerned with the same waterway applying to the Centre for legislation to regulate and control it. Apart from that provision which will certainly be made, I would refer Mr. Hussain Imam to item 83 in the Federal List itself, which refers to the development of inter-unit waterways for purposes of flood control irrigation, navigation and hydro-electric power. That ought to satisfy him to the full.

Shri Ananthasayanam Ayyangar: May I ask one question of Mr. Gopaldaswami Ayyangar ? He said that “national highways” without any further qualification would only mean construction and maintenance of national highways and he said that item 31 provides for “carriage of passengers and goods on such waterways”. These according to him are not restricted by the powers conferred on the Centre. Without that the Centre will not have such power. On the other hand, can it not be taken as restricting the powers of the Centre, and if that is so, is it not necessary to accept in some form Mr. Madhava Rao’s amendment ?

Mr. N. Gopaldaswami Ayyangar: Sir, my answer is this. In the remarks I made I was rather deliberate. I skated over rather thin ice from a legal point of view. “Highways” left as highways only in this item would cover power to make regulations even as regards traffic. I did not say in my remarks that the Centre would not have that power. What I really intended to convey was that we are not giving the Centre *exclusive* power—which is what is meant by inclusion of the item in this list—to regulate the traffic on even national highways. What I told Mr. Madhava Rao was that, even if the item were left to stand as it is, there is no specific taking away of the power in the units to make any regulations they may like. I think there is a certain amount of delicate interpretation of the wording of these items involved in what I said, but I believe the substance is clear from what I have said.

Mr. President: Mr. Gopaldaswami Ayyangar has in effect accepted the amendment moved by Mr Alladi Krishnaswami Ayyar and the one moved by Mr. Pataskar. So I will put both these amendments in the way in which he intended them to be put, namely.

For item 30, the following be Substituted:—

“National highways declared to be such by Federal law.”

The amendment was adopted.

Mr. President: Now there is Mr. Madhava Rao’s amendment.

Mr. Madhava Rao: I withdraw my amendment, Sir.

Mr. President: Mr. Madhava Rao has withdrawn his amendment.

I hope the House gives him leave to withdraw his amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: I shall now put the item, as recast, to vote, namely

“30. National highways declared to be such by Federal law.”

The motion was adopted.

ITEM No. 31

Mr. President: Item 31. There is an amendment by Mr. Alladi Krishnaswami Ayyar.

Mr. Alladi Krishnaswami Ayyar: Sir, as item 30 has been carried, 31 may be retained with this change. I would suggest the substitution of the words ‘Federal law’ for the words ‘Federal Government’ in item 31. The item, as amended, will read thus:—

“Shipping and navigation on inland waterways, declared by the Federal law to be Federal waterways, as regards mechanically propelled vessels, and the rule of the road on such waterways, etc.”

This will bring item 31 in line with 30.

Mr. Naziruddin Ahmad: Mr. President, Sir, the amendment which stands in my name is in the alternative form. I do not wish to move the first part. I wish to take up only the alternative part. The alternative part is again divided into two parts. I gave notice of it in two separate portions but they have been printed together. I only wish to move the last portion of the alternative amendment. The portion I beg to move runs thus :-

“That in item 31 for the words ‘on such waterways’, the words ‘in such waterways’ be substituted.”

I submit, Sir, that this is only a drafting amendment. When speaking of roadways we say ‘on’ such roadways but when speaking of waterways, I should think that it should be ‘in’ such waterways. While travelling on the road you move on the road but when passing in the waterways, the vessels go at least partly under the surface. This is the impression which I have got on the subject. As I have submitted it is purely a drafting amendment and I hope the Honourable Mover may consider the advisability of accepting it.

Mr. N. Gopaldaswami Ayyangar: Sir, I accept Mr. Alladi’s amendment to substitute ‘Federal law’ for the words the ‘Federal Government’ in item 31.

As regards the amendment moved by Mr. Naziruddin Ahmad, it is a matter of what would be correct English. After all what this refers to is movement. We move on the road—that seems to be conceded. I do not know if it is right to say we move in the water. I think it is not necessarily wrong. I cannot accept the amendment straightaway but I shall ask the draftsman to have the English examined very carefully and decide between *on* and *in*.

Shri R. V. Dhulekar: (United Provinces : General) *[Mr. President, this amendment of Mr. Naziruddin Ahmad is out of order, regarding the use of “on” or “in”. Englishmen may be able to decide that and they may do what they like. As this constitution will be drafted in Hindi there is no need of such discussions.]*

Mr. President: *[We shall see to it when there is Hindi.]*

Mr. President: The first amendment is by Mr. Alladi Krishnaswami Ayyar. That has been accepted by Mr. Gopaldaswami Ayyangar. I take it that the House accepts it.

The amendment was adopted.

Mr. Naziruddin Ahmad: I withdraw my amendment.

Mr. President: I hope the House agrees to the withdrawal of the second amendment by Mr. Naziruddin Ahmad.

The amendment was, by leave of the Assembly, withdrawn.

*[]*English translation of Hindustani Speech.

Mr. President : I put the item to vote.

Item 31, as amended, was adopted.

ITEM NO. 32

Mr. President: We take item 32. There is an amendment by Sir V. T. Krishnamachari.

Sir V. T. Krishnamachari (Jaipur State): I do not move it.

Shri K. Santhanam: Sir, I beg to move—

“That in paragraph (b) of item 32, the word ‘broadcasting’ be deleted and the following be added at the end:

‘Federal broadcasting and law and regulation of broadcasting’.”

I was expecting that amendment No. 32 will be moved and if it was moved I was going to support it. The item as it stands gives not only law but also actual owning and regulation for telephones, wireless, broadcasting and other forms of communications whether owned by the Federation or not, to the control of the Centre. So far as law or regulation of these communications are concerned, there is no doubt that it should be a central power but whether the unit should possess these forms of communications as supplementary to the central lines of communication is a point which requires careful consideration; in such a big country as this, with all kinds of difficulties and many languages, it is essential that the line should not be drawn too tightly. I think at least so far as broadcasting is concerned, it is essential that every linguistic unit should be allowed to have its own broadcasting arrangements, subject of course to the regulation of the Centre for law and other matters which require to be regulated. I wish that the other matters also—telephones and other communications also—had been brought in but as that amendment is not moved, I am moving my amendment so that at least the broadcasting is brought in. Sir, I move the amendment.

Mr. A.P. Pattani: (Western India States Group 4) : Mr. President, the amendment which I wish to submit reads as follows:—

“That for paragraph (b) of item 32 the following be substituted:

‘Telephones, wireless, broadcasting and other like forms of communications owned by the Federation; and regulation of similar forms of communications owned by provinces or States’.”

The States, Sir, have agreed to federate—to Join the Union on the three subjects of Defence, Communications and Foreign Affairs. If I am correct in my interpretation, they are whole-heartedly prepared to co-operate with the Union in these subjects.

They do not wish to make more reservations than are necessary. Defence and Communications are interdependent subjects. Defence will be possible only if there are proper communications. My amendment, therefore, Sir, does not wish to restrict the powers of the Union. All I wish to suggest is that there should be a distinction between Federal telephones,

[Mr. A.P. Pattani]

wireless, broadcasting, etc. and similar forms of communications owned by Provinces and States. The latter should be regulated only by the Federation. I only want to make a distinction between the two ownerships and nothing more. So I submit the amendment.

Mr. N. Madhava Rao: Mr. President, Sir, these are amendments which I have tabled more with a view to elicit information than to make any positive contribution to the proper drafting of this item. I shall explain my object.

In the first sub-item, Posts and Telegraphs, it has been stated:

“Provided that the rights existing in favour of any individual State Unit at the commencement of this Constitution shall be prescribed to the Unit until they are modified or extinguished” etc.

Now, with regard to posts and telegraphs, there are certain rights more or less of a contractual character which subsist in favour of certain States. I am not aware that there are any with regard to telegraphs. With regard to telephones there is an understanding that the States are at liberty to erect and operate systems which are internal to the State. The Indian States are entitled to set up and maintain telephone systems, open them to the public and work them for gain or grant licences to private companies and persons for the same provided the lines do not go beyond the limits of the State into British India or into another State.

Now, I would like to know how this assurance that has been given in the past is likely to be affected by the adoption of this item of the Federal Legislative List.

Then again, Sir, with regard to Savings Bank, this is not really an item under communications at all. Merely because the Savings Bank is operated by the Postal Department this item is mentioned here. This question of Savings Bank was raised before the Davidson Committee. The Government of India, who were consulted by the committee, expressed their opinion as follows:—

“These operations which take the form of savings bank account and the sale of cash certificates represent a form of commercial exchange from which each party concerned derives some benefit which is fairly balanced by the consideration given.....We admit, however, that it would be a new and unjustifiable principle of political practice to hold that the Paramount Power is entitled to carry on these transactions in the States against the wishes of the Rulers and, in some cases, in competition with the Durbar’s own local arrangements. We are prepared therefore to arrange for their complete cessation in the territory of any State that definitely asks for it.”

Now, some States I know of are thinking of establishing their own savings banks and it is quite likely that for their proper working it would be necessary to ask the Postal Department to withdraw its own savings bank system. Now, whether the assurance conveyed in the passage which I have now read out is still valid or is to be regarded as a matter of ephemeral policy which may be altered at any time is a matter on which I should be very grateful for elucidation.

Thirdly, with regard to wireless and broadcasting, there is a provision in section 129 of the Government of India Act. I wish to know whether

anything corresponding to this would be reproduced in the new Constitution. It is for the sake of ascertaining these particulars that I am moving these three amendments, viz.,

“That in paragraph (a) of item 32, after the words ‘Posts and Telegraphs’ the words, ‘telephones; post-office Savings Bank’ be inserted.”

“That in paragraph (b) of item 32, the word ‘telephones’ be deleted, and the following be added at the end:

‘subject to the provision of the Constitution corresponding to Section 129 of the Government of India Act, 1935’.”

“That paragraph (c) of item 32 be deleted.”

Mr. Naziruddin Ahmad: I beg to move—That in item 32, the following new para. be added after para. (b) :—

“That in item 32, the following new para. be added after para. (b):

‘(bb) other like forms of communications’.”

This is practically an amendment of a drafting nature because it only seeks to make the enumeration complete. There are in clause (a) the Posts and Telegraphs owned and managed by the Government. In clause (b), telephones, wireless and broadcasting are mentioned. The sub-paragraph which I wish to add is to include within this list. “Other like forms of communications”. There may be private postal undertakings by private individuals. The Government of India have the monopoly for carrying on postal communications. So, in order to guard against any loophole enabling private persons to undertake a parallel postal service. I have suggested that this sub-clause may be added. It is only a suggestion to the Drafting Committee to take note of and to do the needful that I have made in this amendment.

With regard to Mr. Madhava Rao’s amendment in the matter of postal savings bank I think that though it is connected historically with the Postal Department, it does not form part of the “Communications” to which the States have acceded. I should therefore think that before dealing with the law relating to Postal Savings Banks, some consultation with the States’ authorities may be undertaken. That is all I have to submit in this respect.

Mr. Himmat Singh K. Maheshwari: Mr. President, Sir, I beg to move that in para (a) of item 32 the words “or are acquired by the Federation” be deleted and at the end of para (c) of item 32 the words “in a Province” be inserted.

Sir, in connection with other amendments which I had the temerity to move earlier this morning I have been accused of being sensitive and also of being unduly apprehensive. I plead guilty to these accusations and I must say that my apprehensions regarding the acquisitive tendency of the Centre are not removed by the wording of item 32 or by any sub-item of this item. I have moved amendments only in respect of sub-items (a) and (c), but I am in full agreement with the amendment moved also in respect of clause (b) of item 32.

In this connection, Sir, I would like to draw the attention of the House to item 4, sub-clause (a) of clause C of the Report submitted to this House in April 1947. At that time, Sir, there was no intention on the part of the authors of the Report to acquire the rights of the States in regard to Posts and Telegraphs. This intention to acquire those rights seems therefore to be a later development.

With regard to clause (b) item 4 of clause (c) of the April Report may again be referred to. It was then intended to deal with Union Telephones, Union Broadcasting, Union Wireless and not with telephones.

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wireless and broadcasting owned or controlled by States. The intention evidently was only to regulate wireless and broadcasting and other such means of communications owned by the States but not control them. The present item on the other hand seeks to control all telephones, all wireless stations, all broadcasting stations and other like forms of communication whether owned by the Federation or not. To my mind this is clearly an extension of the principle that was in mind when the earlier April Report was drafted.

Then again, Sir, with reference to clause (c) it has been pointed out already by other speakers that the Post Office Savings Bank does not form part of the subject of communications which is one of the three subjects in respect of which the States have acceded or propose to accede to the Federation in future. In practice, Sir, the business conducted by the Post Office does mean a certain amount of profit to the Post Office and it is only legitimate that Indian States which have established banks of their own should be permitted to deal with the savings bank business and that the Post Office should cease to do this work in future in Indian States.

Prof. Shibbanlal Saksena (United Provinces : General) : Mr. President, Sir, my amendment is as follows:—

“That for para. (b) of item 32 the following be substituted:

‘(b) Telephones, wireless, broadcasting and other like forms of communication. Acquirement when such systems of communication are not owned by the Federation at present.’”

Sir, there are three subjects on which the States have acceded and they are Defence, Communications and Foreign Affairs. In regard to Foreign Affairs, Sir, the list of Federal subjects will show that the entire jurisdiction is with the Federal Government. As for Defence, there, too the entire control is with the Federal Government. In fact there is provision in item 5 allowing the States to keep their armies, though the strength organisation and control of these will be by the Federation. But I wish that this provision were not there, and no separate armies were allowed to be kept by any unit. Similarly in regard to Communications, I think that no defence system can work unless the communications are completely owned by the Federation. We had the experience of the last war and we know how the Fifth Columnists used to employ wireless transmitters and other things for purposes of espionage. We can conceive of another war. In that case, until the Federation has full control over the system of communications, it cannot adequately discharge its responsibilities for defence. So, I think, that so far as communications are concerned, the Federation must have complete ownership. Of course, I visualise that our Federation will trust its units and will in normal times delegate its powers to them and grant full autonomy by federal laws, but it must have the power in times of emergency to take away all control and be fully prepared to meet emergencies. For if we have no power of ownership of these means of communication, we cannot own them.

This is only possible by providing in this Federal list complete ownership of all the means of communication by the Federation and the power of acquirement by the Federation of all systems which are not owned by it at present. I therefore think that all members from the States will see that by accepting this amendment they will not in any way be losing their right to have their systems of broadcasting in their own States in their own languages. Only they will be giving the Federation the right in times of war to take complete control of all systems of broadcasting. Therefore, I have suggested that “Acquirement when such

systems of communication are not owned by the Federation at present”, be added to the present clause after the deletion of the words “whether owned by the Federation or not” at the end of the present clause. Because there are some States which have got their own systems of communication. I want the Federation should have the right to acquire them at least during the time of emergency and to that I think, nobody should object.

Shri M. Ananthasayanam Ayyangar: Sir, I support Mr. Santhanam’s amendment. We are all agreed that the Central Government must have control over broadcasting. Even the amendments that have been suggested by the States Ministers did not try to take away the control in the last resort of the Federal Government. All that I am able to read from their amendments is that they should be permitted to establish their own broadcasting stations and to some extent exercise control over them. I am sure that in the body of the Act a provision similar to the existing provision in section 129 of the Government of India Act will be enacted. There, reference is made to treaties and obligations between the Central or Federal Government and the States or Rulers of States regarding the manner in which the powers should be exercised and also in cases of emergency the Governor-General should have power to take charge of the entire broadcasting system in the whole country, whether the broadcasting station is within the ambit of a State or in a province. A similar provision clothing the Central Government with power to take charge in case of emergency will also, I am sure, be made. This provision is adequately made in the amendment of Mr. Santhanam who recognises that both the provinces and the States may be allowed to have their own broadcasting stations subject to laws and regulations to be made by the Centre.

Then I find Mr. Maheshwari takes objection to one thing in clause (a) of item 32, that is acquisition of broadcasting stations, and posts and telegraphs within the ambit of a State. It is true that it is not there in Entry No. 7 in List I in the Government of India Act. For the sake of uniformity, Sir, if a State is prepared to sell away the posts and telegraphs communications there, it must be open to the Federation to acquire them. Acquisition means not only voluntary acquisition or agreement between the parties, but compulsory acquisition also. The only thing to which they are taking exception is compulsory acquisition.

So far as the railways are concerned, there has been an attempt to centralise all the railway systems for the benefit of the entire State. I am not talking of the States who are not acceding. Those States who are acceding, originally even under the Cabinet Mission Plan, it was intended, should concede the three subjects Defence, External Affairs and Communications. Communications are practically the arteries of defence and in referring to defence, we think in terms of emergency. Therefore, Communications must be a federal subject and there ought to be no deflection from that. The States ought not to stand on respect or prestige in this matter. They must concede the power to the Central Government to acquire the posts and telegraphs within the ambit of a State whether voluntarily or by agreement or even by compulsion.

I support the amendment moved by my honourable friend Mr. Santhanam and oppose the other amendments.

Mr. S. V. Krishnamoorthy Rao (Mysore State) : Sir, I do not think clause 32 excludes the right of a Unit to own broadcasting, wireless, telephones, because it says in clause (b), telephones, wireless, broadcasting and other forms of communication, whether owned by the Federation

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or not. So, all that this clause does is to empower the Federal legislature to legislate, whether these forms of communication are owned by the Federation, or not. Especially, in a country like India, in times of war and emergency, communications are closely allied with defence and so the power to regulate and legislate for these communications should rest with the Centre and the Centre alone.

I also oppose the amendment to exclude the Savings Bank from the Post offices, because these Savings Banks are a normal function of the post offices. No State so far as I know can afford the service that these Post office Savings Banks are doing, especially in the rural areas. Almost every State has got its own Savings Bank in the Treasuries and also the Banks financed or partially run by the State. But these post offices are situated in rural areas in small villages and I do not think any State or province can afford to start savings banks in rural areas. This work can be done and it is being done very usefully by these post offices, even branch post offices and therefore I oppose the amendment to exclude the savings banks from the purview of the post office.

I oppose all the amendments and support the original clause as it is.

Shri Gopikrishna Vijayavargiya (Gwalior State) *[Mr. President, I am of the opinion that broadcasting should be included in Communications. Broadcasting is also one of the means of communicating one's ideas and therefore this should also be a federal subject. The objections raised against it are not sound. The amendment of Mr. Santhanam in this connection is appropriate and broadcasting should be a federal subject. Many States today are pressing the view that this right should remain with them. In this connection, what I have to say is that when we are all jointly making the Federation, it is not proper to say that this right belongs to the States and that the Federal Centre should not interfere with it. I think that this is not in good spirit. We are framing the Federation in cooperation with the Princes and their representatives and therefore whatever few rights are being ceded in a few subjects must be surrendered without reservations. This includes Posts and Telegraphs. We must give them to the Federation.

It is my experience that in the small States where there are only State Post-offices, the States place a number of restrictions on people's liberties. Very often, in cooperation with post-offices, C.I.D., and many similar methods the States suppress the news that is sent out, and people's confidential letters are detained, intercepted and utilised against them in litigation. Therefore, the post-offices, etc., should be a little more independent, and the States should be given minimum rights over them, so that the service that can be rendered to the people through the Post offices, should be properly done. These (Post-offices) can escape intrigues and mismanagement of States only by recognition as a Federal subject.

Therefore this whole subject should be treated as suggested in the amendment of Mr. Santhanam.]*

Chaudhri Nihal Singh Takshak (Jind State) *[Mr. President, I rise to oppose one half of the amendment of Mr. Maheshwari. As an inhabitant of an Indian state, I have some experience of those States which

[] English translation of the Hindustani speech.

have their own postal arrangements, particularly the smaller States. The State-subjects have a number of difficulties there. Post offices are considered a source of state-revenue and therefore the States try to have as many post-offices and as few postmen as possible, whereas, in the provinces (of India) the mail is distributed in a village twice a week, in Indian States it is distributed hardly twice a month, not even once a week. The reason is the shortage of postmen.

One other particular difficulty is that the money-orders that are sent there are "exchanged" and the "exchange" takes place in the post-offices in British India. This takes a lot of time. Many a time it happens that due to shortage of money in State-treasuries, money-orders are delivered after many days and delayed even for months.

The third special difficulty is that in such States as have their own postal arrangements, when the pensions are paid from Indian Provinces the recipients have to go very long distances. Very often, I have seen how much inconvenience widows have to undergo when they go (to post offices) to receive pensions.

The other thing is that post office is included in the "item" but the Savings-Banks clause cannot be separated from it. In the States where there are local post-offices, Savings bank facilities are not given. Therefore, the words or acquired by the "Federation" should not be deleted. I would request this Assembly that as soon as the Constitution comes into operation, right from the very beginning the post offices must be a Federal-subject, so that the difficulties of State subjects may be removed.]*

Mr. A. P. Pattani: Mr. President, Sir, last honourable member's remarks about the States who wish to cooperate in every possible way, as I said as a member from the States, are something that I do not understand. What is the intrigue of the States he talks about ? We are asking you to take the communications that are necessary for the Union. We are requesting that communications that are necessary for the Union are requesting that communications which are owned by the provinces or States should only be regulated by the Centre. Where is the intrigue in this ? I do not understand, Sir, and I wish the honourable member will explain.

Shri Gopikrishna Vijayavargiya: The thing is this. The intrigue I was mentioning was not regarding the present affairs. But in some post offices, some letters were intercepted and other things done by the States. That was what I was referring to and not the present state of affairs.

Mr. N. Gopaldaswami Ayyangar: Sir, the first amendment that was moved to this particular item was that of Mr. Santhanam. I take it that he moved it because the previous amendment on the list had not been moved. I may say at once that, though that particular amendment was not moved by Sir V. T. Krishnamachari, an amendment in substance more or less the same as that amendment has been moved by Mr. Pattani; and, if the House will permit me, I propose to accept the substance of Mr. Pattani's amendment but in the language of Sir V. T. Krishnamachari's amendment which was not moved. The only verbal change that I would make in Sir V. T. Krishnamachari's draft is that I would substitute

] * English translation of the Hindustani speech.

[Mr. N. Gopaldaswami Ayyangar]

Federal for Union. It will read: "Federal telephones, wireless, broadcasting and other like forms of communication". That, I think, disposes of Mr. Santhanam's amendment. I will not accept it.

Shri K. Santhanam: I withdraw it.

Mr. N. Gopaldaswami Ayyangar : Then, Sir, I have to deal with the remarks of Mr. Madhava Rao in regard to certain points connected with the wording of this item. I may mention for his information that there is a State where there were agreements about telegraphs between the Paramount Power and the State. I refer to Kashmir. In addition to the Indian telegraph system which works in Kashmir, that State has also a State telegraph system, and the correlation and coordination of these two systems have been provided for by an agreement between the State and the Government of India. He referred also, Sir, to certain assurances and statements of policy made by the Crown Representative in respect of post offices, of telephones, of post office savings banks, and about wireless. Now I do not wish to go into all the statements of policy by the Paramount Power which is defunct today. But I would only say that any assurances of that sort were not supposed to be eternal. It is quite possible, even if the Paramount Power had continued in this country, for these arrangements being revised by agreement between the State and the Paramount Power. That procedure will still be available. The short answer to Mr. Madhava Rao as regards these matters is this. I would refer him to the terms of the Instrument of Accession which has been recently signed by all States which have acceded to the Dominion, and one of the items under Communications in respect of which they have agreed that the Federal Legislature should have power to make laws is worded as follows:—

"Posts and Telegraphs, including telephones, wireless, broadcasting, and otherlike forms of communication."

There is no limitation at all here. In actual fact this broadly worded item is limited by other arrangements. Now I was referring to agreements as regards these matters. We find in the standard Standstill Agreement which has been entered into between the States and the Government of India the clause that will apply to agreements is worded as follows:—

"Until new agreements in this behalf are made all agreements and administrative arrangements as to matters of common concern now existing between the Crown and any Indian State shall, in so far as may be appropriate, continue as between the Dominion of India or as the case may be the part thereof and the State."

So that, whatever assurances or agreements already exist will be continued until new arrangements are made. And such agreements, according to the schedule to that Standstill Agreement, could relate to Posts, Telegraphs and Telephones. There can be no quarrel then as regards the wording of the item in the Federal list in the Union Powers Committee Report. It really puts into the new constitution limitations on the power of the Federal Legislature which you do not find in the Instrument of Accession that you have already signed. And it preserves the right which exist in favour of any individual State at the commencement of this constitution. Those rights will be preserved until they are modified or extinguished by agreement between the Federation and the unit concerned. That, I hope, supplies the clarification which Mr. Madhava Rao sought.

There is one part of this item, clause (a) of item 32 to which some exception was taken in an amendment moved by my friend Mr. Himmat Singh. He thought that his apprehensions as regards the Centre were only fortified by the words which you find in this clause or are acquired by the "Federation". Now, I wish to put to the House this one point: Posts and Telegraphs are, according to the distribution of powers between the Centre and the Units, an item which should normally be under the exclusive control of the Federation. We recognize the fact that any arrangement that may exist with the States which accede should be continued until other arrangements are made. Now, take the case of the Federation deciding at some time in the future that, in the interests of the country as a whole it is necessary that the standard of postal administration of a particular State should be pulled up, that there was no hope of the State itself doing it, that therefore it is necessary for the Federation to take over the administration of Posts and Telegraphs in that particular State. I think, Sir, in the larger interests of India the Federation should have the power to acquire any rights that that particular State might have. When we say "or are acquired by the Federation" it means that for any rights in what is essentially a Federal subject—any vested interest—which an individual State may have, due compensation will be paid to that State on acquisition. No body who really appreciates a scheme of federation can object to the lodgement of such a power in the Centre.

Then, Sir, I would refer to the other amendment which was moved by Mr. Himmat Singh. He wants to restrict Post Office Savings Banks to Provinces. Apart from the merits of it, I think, if we do that, it will mean a tremendous unsettlement of the existing state of things. There are hundreds of States and thousands of Post Offices in such States which are now doing this work. Is it suggested that the Federation should not have anything to do with this sort of thing in any Indian State? The only thing we need provide for is that, in case any particular State makes out a case for running Savings Banks of its own, unconnected with the Post Office, then it will be a matter for negotiation between it and the Government of India as to whether the Post Offices in the State might be instructed from the administrative standpoint not to have any more Savings Bank work. That is quite possible and if a State makes out a case, I dare say the future Government of the Dominion will consider it. But to remove Post Office Savings Banks in all Indian States from the purview of the Federation will be an economic upsetting of conditions in Indian States which I for one will not recommend to the House.

Then, Sir, we have Mr. Shibbanlal Saksena's amendment which runs as follows:

"That for para. (b) of item 32 the following be substituted:

'(b) Telephones, wireless, broadcasting and other like forms of communication. Acquirement when such systems of communication are not owned by the Federation at present.'

I think, Sir, the amended form in which this item will appear as a result of what I have said already will cover the substance of what Mr. Shibbanlal Saksena wants.

The only other amendment I need refer to is that of Mr. Naziruddin Ahmad. He very rightly points out that the words "other like forms of communication" which now occur in clause (b) will only refer to forms of communication of the same type as telephones, wireless and broadcasting. He wanted that the Centre should have power also to regulate

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forms of communication such as Post Offices and Telegraphs. The only thing that I need say on this point is this: Posts and Telegraphs, in item (a), are a Federal subject. You will notice that even in the case of any postal or telegraph systems, which under the exceptional arrangements which exist with certain Indian States are continued, the Centre will have the power—the Federal Parliament will have the power—to make laws for their regulation and control.

In areas which are not covered by any such special arrangements the Federal Parliament will have exclusive power to prohibit any other kind of postal communication between individual and individual or groups of individuals and groups of individuals. As a matter of fact, I believe, there is in the existing Post Office Act a section which makes it an offence to circumvent the regular post by making any arrangement privately for the dispatch of letters between one area and another. That is an offence under the Post Office Act. I am sure that provision will be continued. Nobody can send a telegram except through the Government Telegraph Office at present. In view of this, I do not think he need press the addition of the item he wanted. Sir, I have nothing more to say. The result is that I accept Mr. Pattani's amendment in Sir, V.T. Krishnamachari's language, and oppose all the other amendments.

Mr. President: I will now put the amendments to vote, and I think the best course would be to take the item by paragraphs.

There is first the amendment of Mr. Madhava Rao.

“That in paragraph (a) of item 32, after the words ‘Posts and Telegraphs’ the word ‘telephones; post-office, Savings Bank;’ be inserted.”

(The amendment was negatived.)

Mr. President: Then there is the amendment of Mr. Himmat Singh.

“That in para. (a) of item 32, the words ‘or are acquired by the Federation’ be deleted.”

(The amendment was negatived.)

Mr. President: Then I take up the amendments to clause (b).

Shri K. Santhanam: In clause (a) I have an amendment about the words “State Unit”. These words are likely to cause confusion.

Mr. N. Gopaldaswami Ayyangar: Sir, he might leave the refining of the phrase to the draftsmen.

Shri K. Santhanam: The intention is the States?

Mr. N. Gopaldaswami Ayyangar: Yes.

Mr. President: To Item No. 32 (b) the first amendment is that of Mr. Pattani, in the language of Sir V. T. Krisnamachari.

The amendment was adopted.

Mr. President: Then I take it that Mr. Santhanam withdraws his amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: I do not think it is necessary to put Mr. Shibbanlal Saksena's amendment now separately.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Then we take Mr. Madhava Rao's amendment.

Mr. N. Madhava Rao: That is a consequential one and it drops, as also my amendment to 32(c).

Mr. President: Then we come to Mr. Himmat Singh's amendment.

"That at the end of para. (c) of Item 32, the words 'in a province' be inserted."

(The amendment was negatived.)

Mr. President: There is, I think, only one other amendment, that is the one by Mr. Naziruddin Ahmad.

"That in item 32, the following new para be added after para (b):
'(bb) other like forms of communications.'"

Mr. Naziruddin Ahmad: Sir, I withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : Then I put the item, as amended, to the vote of the Assembly.

Item No. 32, as amended, was adopted.

ITEM No. 33

Mr. Naziruddin Ahmad: Sir, I beg to move—

"That in item No. 33, the brackets enclosing the words 'other than minor railways' be deleted."

This is only drafting amendment. This item corresponds with item No. 20 in List I of the Government of India Act. It is exactly the same, except that the two brackets appear here which do not appear in the model. I submit that the brackets are unnecessary and without them the item would read better. In fact, to me it seems that the brackets are an eyesore and look like hurdles to impede the reader.

Mine is purely a drafting amendment and I suggest it to the House for consideration.

Mr. N. Gopaldaswami Ayyangar: Sir, I agree that a bracket is a crude thing in a list of this sort, and I accept the amendment. But, If Mr. Naziruddin does not consider it inappropriate, I would put a comma before and after that expression (*Laughter*).

Mr. Naziruddin Ahmad: Sir, I agree.

Mr. President: There is no other amendment to this item and that moved by Mr. Naziruddin Ahmad has been accepted by Mr. Gopaldaswami Ayyangar.

I now put this amendment to vote.

The amendment was adopted.

Mr. President: Now I put the item, as amended, to vote.

Item 33, as amended, was adopted.

ITEM NO. 34

Shri K. Santhanam: Sir I move that in item 34, the following be added at the end:—

“Provision of education and training for the mercantile marine and regulation of such education and training provided by units and other agencies.”

The need for the centralisation of the qualifications needed for engineers, pilots and other executive officers of the mercantile marine need not be dilated upon. It is essential that all the standards as well as the actual provision of education should be in the control of the Centre, but there is no reason why there should be any prohibition of the provision of such education by universities and other agencies. Only such education and training should conform to, the standard set up by the Centre. The actual amendment that I am moving provides both for central provision as well as central regulation of other provision, by universities and State agencies.

(Mr. G. L. Mehta and Prof. Shibbanlal Saksena did not move their amendments.)

Mr. N. Gopaldaswami Ayyangar: I accept Mr. Santhanam’s amendment, Sir.

Mr. President: The amendment moved by Mr. Santhanam has been accepted by Mr. Gopaldaswami Ayyangar, that in item 34 the following be added at the end:—

“Provision of education and training for the mercantile marine and regulation of such education and training provided by units and other agencies.”

I now put the amendment to vote.

The amendment was adopted.

Mr. President: The question is that item 34, as amended, be adopted.

Item 34, as amendment, was adopted.

ITEM NO. 35

Mr. President: There is no amendment to item 35. I put it to vote.

The item was adopted.

ITEM NO. 36

Mr. H. V. Pataskar: Sir, I beg to move that in item 36 the following be added at the end:—

“and the, constitution and powers of Port Authorities therein.”

Mr. R. K. Sidhwa (C. P. & Berar General) : Sir, until the Government of India Act, 1935, came into existence, all the major ports in India were controlled by the Provincial Governments, but before that period a wider franchise was given to the governing bodies of the various port trusts and therefore the non-official majorities were considerably increased. But the Government of India which was bureaucratic and was controlling those port trusts subsequently took away those powers from the Provincial Governments. I would have preferred not to burden the Central Government again with these major ports to be controlled by them. However, if it is felt that in the existing circumstances there should be a uniform law for all the major Ports I do not press my amendment to delete the item in this list and insert in List No. II.

Mr. A. P. Pattani: Mr. President, the only suggestion I have to make in this connection is that at the end the following proviso be added to this item:—

“Provided that for ports of federated maritime States such declaration or delimitation shall be made after consultation with the State concerned.”

I have only made this suggestion because in the past there has been a tendency on the part of the Central Government to take rather drastic action without consulting the States, and since we are coming into the Federation we should be consulted before suddenly delimitations of our ports are taken in hand. Of course, the same applies for declaration of a minor or a major port. Sir, I move.

Mr. Naziruddin Ahmad: Sir, I beg to move that for item 36, the following be substituted:—

“36. Major ports, that is to say, the declaration and delimitation of such ports and the constitution and powers of port authorities therein.”

Sir, the amendment is exactly a reproduction of item 22 in List I to the Government of India Act, from which the present item 36 has been taken. It is in substance the same; there is difference in the drafting. The amendment gives complete power to deal with the subject, *i.e.* to declare a port to be a major port. While the amendment emphasises the power to be given to the Federation the item under consideration emphasises the fact of declaration or the action taken under the item. I submit the amendment, would serve the purpose better. However, it is only a drafting amendment and it is submitted for the consideration of the Drafting Committee.

Shri Lakshminarayan Sahu (Orissa: General) : Mr. President, Sir I approve wholeheartedly of this item, but at the same time, I wish to add that there should be some provision for opening at least a new major port in every coastal province.

My amendment is:

“That the following be inserted at the end of item 36:

“and also opening of at least a new major port in every coastal province.”

My anxiety for my own province actuates me to suggest this amendment. The present province of Orissa is in a very wretched condition. Once it was very prosperous and the present poor condition of Orissa is due to want of a major port and that is why I want that there should be an insertion of such a clause so that we, the coastal provinces, may have at least one major port. Mr. Sidhwa on the other hand wants that it should not be a subject under the Federal List; but I must oppose that and say that unless it is under the Centre, it is not possible for the Province to develop a new port. My friend Mr. Naziruddin Ahmad has partly supported me by his amendment and I therefore hope that my amendment also will be passed. The once prosperous province of Orissa has been reduced to such penury that it is a shame for the whole Union; it will remain a shame for the whole Union unless and until it is developed and brought into line with other provinces. When you are going to start, so to say, a new altogether, all the provinces must be started on an even keel and that is why I am so particular that we must have a major port, so that trade and industry may flourish. We must have a channel through which we may be able to be prosperous. Once the policy of starting canals in Orissa was started: but it was a failure and that caused great inconvenience and cost to the people of Orissa. Again, the Railways were started and the Railways have also become so to say a failure in Orissa to a great

[Shri Lakshminarayan Sahu]

extent because there are not many openings and we get floods almost once in three years and we suffer terribly. The real prosperity of the coastal province lies in its ports and in former times Orissa was very prosperous only on account of her ports. In almost every district we had one or two ports; in Balasore we had the port of Pipli and Chandbali, and in Puri in olden times we had the famous port of Chelitola. All these ports are practically non-existent today and I therefore wish that our new Union will give us such help that we may be able to start at least one major port for the province of Orissa. To start with, the Andhra province—it is expected it will be a new province—will have Vizagapatam; but though our province has been created in 1936 and it is a coastal province, we have no major port. I therefore wish that this should be included in item 36. As regards the Language, I feel some difficulty in wording it properly but I hope that may be changed properly by those who are in charge of the drafting.

Mr. G. L. Mehta: (Western India States Group) : Mr. President, I am intervening in this debate to make clear a few points. So far as ports are concerned in this country they are not merely intimately connected with Communications which is a Central subject and must therefore be under Central control but they have also enormous strategic importance. Last year the Government of India appointed a Ports Development Committee which presented a valuable report and the Honourable Members of this House, if they study the report, will see that this Committee has realized and emphasised the vital importance of ports on the coast of India for strategic, defensive as well as commercial purposes. Ports, Sir, are also connected with Railways in the hinterland and Railways are a Central subject and therefore I would suggest that ports should be under Central control. Mr. Pataskar has given notice of an amendment that the constitution and powers of Port Authorities therein should also be included in the federal list. I think that is a reasonable amendment because if the delimitation of ports is included, naturally the constitution and powers of the port authorities should also be included in this list. Mr. Pattani has given an amendment that “Provided that for ports of federated maritime States such declaration shall be made after consultation with the State concerned”. I am sure, Sir, that will be exactly what will be done and I do not know if this provision should find a place in the Federal Legislative List. Mr. Gopalswamy Ayyangar will no doubt be able to enlighten the House in this matter. I would submit that the inclusion of this item in the Federal Legislative List is justified and if we had made a mistake before 1932, there is no reason why we should continue that mistake.

As regards the suggestion that there should be one major port in every province, that surely is a matter for detailed technical investigation and a question of the financial resources of the Province and of the country as a whole and is a subject of subsequent legislation, not a matter that should be put in the constitution itself or in the Federal Legislative list. If ports unduly compete with one another and if you want to stop that, it requires co-ordination and Central control. I therefore support the inclusion of this item in the Federal list as moved by Mr. N. Gopalswamy Ayyangar.

Shri M. Ananthasayanam Ayyangar: Sir, I agree with Mr. Lakshmi Narayan Sahu that power has to be given to the Centre to create and develop ports. As regards competition between ports, it is a central subject and therefore it is up to the Federal Legislature to pass regulations to avoid competition between one port and another. As Mr. Sahu said attempts to improve Railways etc. have failed so far as Orissa is concerned

and therefore the only other source that can possibly be had is by creating a major port where there is none. There is provision for development in the 1935 Act as also in the list that we are now considering. If there is already a major port, it is open to improve it; if there is a minor port it is open to the Federal Legislature to declare it to be a major port but it does not give to the Federal Government power to start a major port at a new place. I think provision must be made to create a major port where there is none. No development is mentioned there. Declaration and delimitation are the words used. That means the declaration and delimitation of major ports only. This no doubt gives ample power to the Centre to declare as major port any port developed by a Province. The Centre should help the provinces with finances to develop the ports. Therefore I would urge upon Mr. N. Gopaldaswami Ayyangar to accept the words "creation and development" along with the words 'declaration and delimitation'.

Shri T. T. Krishnamachari (Madras: General) Only one thing I would like to say in this connection and it is this : My friend Mr. Ananthasayanam Ayyangar said that the Provinces develop the ports and the Centre takes them over thereafter. That was not the case in my own province. My province has a special fund for minor ports in which over 60 lakhs had accumulated and a sum of Rs. 40 lakhs from this Minor Ports Fund was appropriated by the Provincial Government and put into the general revenues. It is not always the case therefore that the Provinces do the right thing in regard to ports under their control and the Centre the wrong thing.

Mr. N. Gopaldaswami Ayyangar: I accept Mr. Pataskar's amendment to insert at the end of item 36, the words "and the constitution and powers of port authorities therein." That is an obvious addition to make and that is in substance what Mr. Naziruddin Ahmad intended by his amendment. Mr. Naziruddin Ahmad has really copied out the item as it stands in the List under the Government of India Act. We have slightly elaborated that item, so far as the first part of it is concerned, in our description. Instead of 'Major ports', we have said, 'Ports' declared to be major ports by or under Federal law or the existing Indian law including their delimitation. Now, I do not think that there is any thing very strongly in favour of the Government of India Act so far as this item is concerned.

The other point that has been raised during the debate is that in certain provinces major ports do not exist or minor ports have not been sufficiently developed so as to enable their declaration as major ports. Now, Sir, so far as these are concerned, we have laws already and we shall have power to make laws in the future. In our Federal legislation we shall have to indicate the conditions which should be satisfied before the Federal Government can declare a port, to be a major port under that law. It would be wrong, I think, to put into the Constitution any provision that there should be at least one major port in every coastal Province. May be that the coast of a particular province does not admit of the creation or development of a major port. There is no point in going and wasting money, on a coast which does not permit of this sort of thing. I am sure that no province which has got the necessary conditions and facilities for having a major port will be denied the opportunity of developing a major port in the new order of things. It is sufficient, Sir, that we take power to create and develop such ports wherever, they are necessary and wherever they can be created and developed.

[Mr. N. Gopaldaswami Ayyangar]

One point I should refer to in the amendment proposed by Mr. Pattani. That provides for consultation with an acceding maritime State before any area in it is declared to be a major port. That consultation, as I have said in connection with the other items, will be a matter of routine in the future. I can understand Mr. Pattani's point that in the past certain things have been done which did not quite meet the legitimate wishes of particular Indian States which come under this description. I can well understand it. In the past, Indian States stood aloof constitutionally from the Centre. The question of major ports was one for the Government of India. Those States were, not in direct touch with the Government of India and had to negotiate through the Crown Representatives's Department. That was not always a healthy method of getting these questions settled to the satisfaction of both the Centre and of the State concerned. In the future, the States that have acceded to the Federation will become part of the Federation and, just as in the case of provinces previous consultation will take place before any area is declared to be a major port the same consultation will take place with the Units which are Indian States. There is also the fact that these Indian States will have representatives at the centre. I am sure there will be representatives in the Legislature and I am sure in the Government there will be some persons who will be there because of their connection with and experience of Indian States. Therefore, Sir what perhaps had happened in the past, Mr. Pattani may take for granted, will not necessarily happen in the future. If it does he has the means of pulling up the Federal Government in matters of this kind and seeing that that sort of thing is prevented.

Mr. A. P. Pattani: May I just say a word? Very often the interests of the different maritime States do not coincide under the present arrangements. Maritime States have their own particular interests and they should be able to place before the Government their case. It will not be possible for all to be represented by some one person or representative.

Mr. N. Gopaldaswami Ayyangar: My answer to that is, I think, that practically every maritime state of any importance will have individual representation in the future Federal Legislature. With regard to States which do not have such representation, they certainly do have representation in the sense that along with other States, they will have the right to send representatives to the Federal Legislature so that there can be no question of any acceding State not being represented in, the Federal Legislature at all.

I am sorry I omitted to refer to Mr. Ananthasayanam Ayyangar's suggestion. I think really that the Act as it stands covers the points that he has stated. It is certainly open to the Federation to declare ports to be major ports. It does not necessarily mean that you are given power only to declare a minor port to be a major port. You can take any area in the country and say that it is a major port and provide for the creation of the necessary agencies for its development and so on. I think this is wide enough to cover his point.

Mr. President: I will now put the amendments to vote. There is an amendment by Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: I withdraw my amendment.

The amendment was by leave of the Assembly, withdrawn.

Mr. President: I then put the amendment of Mr. Pataskar which has been accepted by Mr. Gopaldaswami Ayyangar, to vote:

“That the following be added at the end of item 36:

‘and the constitution and powers of Port Authorities therein’.”

The amendment was adopted.

Mr. President: The next amendment is by Mr. Pattani. That at the end of item 36, the following proviso be added:-

“Provided that for ports of federated maritime States such declaration or delimitation shall be made after consultation with the State concerned.”

Mr. A. P. Pattani: I withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Then there is an amendment by Mr. Lakshminarayan Sahu that the following be inserted at the end of item. 36:—

“and also opening of at least a new major port in every coastal province.”

The amendment was negatived.

Mr. President: The original item as amended by Mr. Pataskar’s amendment is now put to vote.

Item 36, as amended, was adopted.

ITEM NO. 37

Mr. President: Now we go to item 37.

(Shri K. Santhanam did not move his amendment).

Mr. G. L. Mehta: Mr. President, I beg to move that the following be added at the end of item 37 :—

“Provision for-aeronautical education and training and regulation of such education and training provided by Units, and other agencies.”

Sir, I need not take up the time of the House in commending this amendment to their acceptance. For reasons which were explained by Mr. Santhanam in regard to education and training in mercantile marine services, we need also Central control and co-ordination in education in aeronautical services. I should only like to add one point and that is that for such services as mercantile marine and aviation, we have to pool our resources and in the initial stages, it would be too optimistic to expect that every unit or every state could start similar institutions. We have dearth of technical talent and then we have also the difficulty of getting the necessary aircraft, equipment and so on and therefore, in the initial stages it will be necessary that there will have to be one Central institution. But there is no need to prevent the units from starting such institutions if they so desire, provided we evolve and maintain uniform standards of education and training and competence in such matters. Sir, I move this amendment.

(Mr. G. L. Mehta did not move his other amendment No. 16 in List II).

(Prof. Shibbanlal Saksena did not move his amendment.)

Mr. Naziruddin Ahmad: Mr. President, Sir, I beg to move:

“That in item 37 for the colon, a semi-colon be substituted, and for the comma, a semi-colon be substituted (*laughter*).”

I find, Sir I have created some amount of amusement in the House by this amendment, but it has a serious aspect. In fact item 37 consists of three different subjects. The first is Aircraft and air navigation. The second is the provision of aerodromes and the third is regulation and Organisation of air traffic and of aerodromes. I beg to submit that these three distinct items must each be separated by a semi-colon.

[Mr. Naziruddin Ahmad]

That has been the custom in drafting these items. In fact these three different sub-items should be separated by equal kinds of stops, but the separating punctuation between the first and the second is a colon. The reader here is suddenly halted. It acts almost like a full stop. But between the second and the third sub-items there is a comma. The reader is suddenly hurried from one subject to the other. I have carefully compared this item with Item No. 24 in List I in the Government of India Act to which item 37 corresponds. There the punctuation is exactly as I have suggested. I do not think that an intentional or conscious departure has been made here but this slight difference between the punctuation in the Government of India Act and this item probably is due to a clerical error. I submit this amendment, which is purely of drafting nature for the consideration of Mr. Gopaldaswami Ayyangar.

Mr. President: Mr. Santhanam, there is another amendment in your name.

Shri K. Santhanam: I do not propose to move it, Sir.

Mr. President: We have then two amendments now. Does anyone wish to say anything about them ?

Shri M. Ananthasayanam Ayyangar: Sir, as regards training, the amendment moved by Mr. Mehta—I have no objection to it—only elaborates the powers already conferred. As you know all that you do is to insist upon the pilots or drivers having particular qualifications and the schools will come of their own accord. Therefore even in respect of aeronautical training or navigation schools, none of them need be opened. By a stroke of legislation that a particular qualification should be possessed by seamen or navigators or air-pilots, the situation can be solved. Therefore, this particular amendment may not be necessary. All the same, there is no harm in its inclusion and I support that amendment.

There is a fundamental thing to which I would like to draw the attention of the House at this stage. So far as the road highways are concerned, there are national highways and provincial highways. So far as the railways are concerned, there are State railways, all India Railways and there are minor railways. Likewise, in waterways, there are inland waterways and waterways which are declared federal waterways. So far as the airways are concerned, I would like to say, Sir, that there may be a tendency on the part of the Centre to starve the provinces. So far as the airways are concerned, the highways may be reserved for the Centre. Branch lines or branch airways should be left to the provinces to develop as they are better capable of developing this traffic than the Centre. I am not opposing or even moving a formal amendment. But I would like this Assembly to take note at this stage, that the federal legislature, when an Act is passed, ought to provide, as in the case of road traffic boards, for provincial Air traffic Boards, so that air traffic in the provinces may be regulated, expanded, and new lines may be opened so as to feed the main lines or highways, or between one province and another.

There is this danger also. I find, though I am not opposed to centralised capital flowing in all channels and I welcome it, this will help to concentrate the wealth of the country in the hands of a few persons. It may be possible for the Centre to prefer those men with a fleet of aircraft to proceed even to the villages to the detriment of a few persons

who may wish to start small air navigation companies in the provinces and gather a few rupees there, so that the province as well may become wealthy. To avoid competition also, there must be an air traffic board—a provincial board established in the provinces.

These are the limitations that ought to be taken into consideration at the time when we pass a federal law to safeguard the interests of all. In view of this and under the impression that it will be acceptable to the general Assembly I am not proposing any amendment. I support the entry as it stands.

Mr. N. Gopaldaswami Ayyangar: Sir, I accept the addition proposed by Mr. Mehta at the end of this particular item which says, provision of aeronautical education and training and regulation of such education and training by Units and other agencies.

The other amendment was an amendment relating to the punctuation of this item. I entirely agree with Mr. Naziruddin Ahmad that the colon after “navigation” was a mistake for a semi-colon and I accept that amendment. I agree with him also, Sir, that after “aerodromes”, there should be a semi-colon instead of a comma.

Pursuing the same kind of mental process that should have instigated him to propose this amendment, I would suggest, if he approves, that the word “the” before “provision” be omitted. Or if he is not agreeable to that, after the second semi-colon, we should insert another “the”. I personally would prefer the dropping of “the” before “provision”, so that the item will read as follows:

“Aircraft and air navigation; provision of aerodromes; regulation and organisation on air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by units and other agencies.”

Mr. President: I now put the amendments to vote. The first amendment is by Mr. Mehta. I take it that it has been accepted by Mr. Gopaldaswami Ayyangar. I put that amendment to vote now:

That after item 37, the following new item be added.

“Training in various branches of aviation, civil and military.”

Those who are in favour of this addition will please say Aye.

Many Honourable Members: Aye.

Mr. N. Gopaldaswami Ayyangar: He has withdrawn that amendment.

Mr. President: I am sorry it is a mistake. I am sorry the vote has to be withdrawn. It was by a mistake that I put it to vote.

Now, I put this amendment to vote.

That at the end of item 37 the following be added.

“Provision for aeronautical education and training and regulation of such education and training provided by Units and other agencies.”

The amendment was adopted.

Shri M. Ananthasayanam Ayyangar: Sir, you are declaring according to the sense of the House, when we do not hear the eyes. At least the mover of an amendment must say Aye. Otherwise why should we accept it. It is as much the business of the mover as that of the House.

Mr. President: I take it that the mover has said Aye.

Now the amendment item with the semicolons is put to vote.

An Honourable Member: May the House know how it reads now!

[An Honourable Member]

Mr. President: "Aircraft and air navigation; provision of aerodromes; regulation and organisation of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by Units and other agencies."

The item, as amended, was adopted.

Mr. President: It is one O'clock now. The House will now adjourn till ten O'clock tomorrow.

The Assembly then adjourned till ten of the Clock on Wednesday, 27th August 1947.

THE CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 27th August 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

REPORT ON MINORITY RIGHTS

Mr. President: I propose that the House should now take up the Report of the Advisory Committee on Minorities.

With regard to the procedure that I propose to follow, it is this: A motion will be made for consideration of the Report and in that connection I find there are certain resolutions in the form of amendments that the consideration of the Report be postponed either until the next Session or until the consideration of the other Report, that is, the items which they have been considering, has been completed. I shall take those amendments along with the general discussion of the motion for consideration of the Report. When that has been disposed of I propose to go to the Appendix and take the items one by one with the relative amendments to those items, because that will then dispose of many of the amendments which are relevant to the general body of the Report which only summarises the recommendations contained in the Appendix. I think that will be the proper course and the most convenient way of dealing with the matter.

Mr. H. V. Kamath (C. P. and Berar: General): The loud speaker must be out of order because we have not heard a word over here.

Mr. President: In that case I shall have to repeat. What I have said is that the most convenient way of dealing with today's agenda is this: I propose to take up the consideration of the Report of the Advisory Committee on Minorities. A motion will be made for taking it into consideration. In that connection there are certain other motions of which I have notice that the consideration of the Report be postponed until the next Session or until we have disposed of the items on the List which we were considering yesterday. After this, I propose to go on the Appendix of the Report and take up each item. The relevant amendments to those items will be moved and disposed of, and when we have discussed the Appendix we may come to the general body of the Report which is nothing but a summary of what is contained in the Appendix.

I will now request Sardar Vallabhbhai Patel to move the consideration of the Report.

B. Pocker Sahib Bahadur (Madras: Muslim): The procedure prescribed by you is that all the matters in the Appendix may be taken up item by item. But I would submit that even as regards the amendments in each of the items in the Appendix, there are very many subjects each of which is of a different character. Therefore I would request you to dispose of the amendments of one and the same character on each item separately so that all the amendments of the same character on the same item could be taken up together and disposed of. Otherwise, if all are jumbled together, it would lead to difficulties.

Mr. President: That is what I have been thinking of doing—to take each item in the Appendix and all the relevant amendments thereto.

B. Pocker Sahib Bahadur: In disposing of the amendments, the character of the amendments might be taken into consideration, and each of the amendments of a particular character on each item might be disposed of before other amendments of another character on the same item are disposed of.

Mr. President: I do not understand what the Honourable Member mean by the character of the amendments. All relevant amendments will be taken into consideration in connection with each item.

The Honourable Sardar Vallabhbhai J. Patel (Bombay: General): Sir, on behalf of the Advisory Committee I beg leave to place this Report* on Minority Rights before the House. It has been drafted after considering the report of the Minority Committee and after considering all the points raised with regard to the safeguards for different minorities in this country. You all know that the question of safeguards for minorities has been discussed several times and considered in various committees, and there is no new point to be discussed. In one committee or other for several years past this question has been discussed, sometimes very minutely, sometimes generally. Sometimes its discussion has taken an acute form and sometimes it has resulted in a bitter controversy. But I am happy to say that this report has been the result of a general consensus of opinion between the minorities themselves and the majority. Therefore, although it is not possible to satisfy all, you will see that this report has been the result of agreement on many points; and wherever there has been disagreement the recommendations have been carried by a very large majority, so that except perhaps on one point the report is practically an agreed report. It may be that there are some who are not satisfied on some points, but we have to take into consideration all points of view and feelings and sentiments of the minorities, big and small. We have tried as far as possible to meet the wishes of all the minorities. The minorities among themselves are also divided; there are conflicting interests among them. We have not tried to take advantage of these differences among the minorities themselves; we have tried to see that the minorities also instead of being divided among themselves try to present a united front in order to safeguard their interests. But there are certain points on which the minorities cannot be united because there are minorities within minorities. So it is a difficult proposition. We have tried to solve this difficult problem without any bitterness and without any controversy which would create any ill-feeling or hitch; and I hope that this House also will be able to dispose of this question in a friendly spirit and in an atmosphere of goodwill. Let us hope that we will leave the legacy of bitterness behind and forget the past and begin with a clean slate. There is much that is happening round us which requires us to dispose of our business as quickly as possible; and we should do nothing in this House which will add to our difficulties or to the difficulties of our neighbours who are at present involved in bitter strife and when our hearts are bleeding with the wounds that are being inflicted on one of our best provinces in India. Therefore I trust that in this House in considering this question which affects all the minorities we will introduce no heat or argument which may lead to such controversy as would have a repercussion outside. I hope that we shall be able to dispose of this matter quickly and in a friendly spirit.

You will remember that we passed the Fundamental Rights Committee's Report which was sent by the Advisory Committee; the major part of those rights has been disposed of and accepted by this House. They cover a very wide range of the rights of minorities which give them ample protection; and yet there are certain political safeguards which have got to be specifically considered. An attempt has been made in this report to enumerate those safeguards which are matters of common knowledge, such as representation in legislatures, that is, joint *versus*

*See Appendix.

separate electorates. This is the question which has raised controversy for almost a decade and we have suffered and paid heavily for it. But fortunately we have been able to deal with this question in such a manner that there has been unanimity on the point that there should be no more separate electorates and we should have joint electorates hereafter. So that is a great gain.

Then again on the question of weightage we have agreed that there should be no weightage and with joint electorates the communities should be represented according to the proportion of their population. Then we have thought fit to agree to reservation in proportion to the population of the minorities. Some of the minorities gladly surrendered that right, and said that they wanted neither weightage nor separate electorates but in the general upheaval that is taking place they want to merge themselves in the nation and stand on their own legs. I congratulate those who have taken that stand but I also sympathise with those who still want some help to come up to the standard which we all expect of the nation. We have now also decided that in the public services a certain amount of reservation for certain communities is necessary—particularly the Anglo-Indian community and the Scheduled Castes in certain respects deserve special consideration. We have made recommendations in this respect I am glad to say that in this matter also there is unanimity between us and the communities whose interests are affected.

Then we have also provided for some sort of administrative machinery to see that whatever safeguards are provided are given effect to, so that it may not be felt by the communities concerned that these are paper safeguards. There should be continuous vigilance and watch kept over the safeguards that have been provided in the working of the Government machinery in different provinces, and it shall be the business of the officer or administrative machinery concerned to bring to the notice of the legislatures or the Government; the defects or drawbacks in the protection of the rights of minority communities.

We have divided the minorities according to their strength or according to their population. In the Schedule the three parts are set out and dealt with separately because they require separate consideration in proportion to their strength.

The Anglo-Indians have special rights or rather special privileges or special concessions which they have been enjoying in certain types of services, such as the railways and some one or two other services. Now, suddenly to withdraw these concessions and to ask them to abandon these claims or these concessions and to stand with the general standard would put them perhaps in a difficult position. They may not be prepared for that at present and it is better that we give them time for adjustment. They now know that they have to prepare themselves for this. They have ample notice and I am glad to say that they have agreed that they take this notice. The gradual reduction of these concessions has been agreed to by them. Similar concessions have been given to them in the matter of education. In certain educational institutions they get special grants. These educational institutions are open also to students of other communities, but they are generally meant for the Anglo-Indian community and they get certain concessions in the matter of financial assistance. It is proposed to continue this assistance for some time and by a process of gradual reduction to prepare them for a stage when they can be prepared to come to the general level of the other communities and to share the financial burdens, obligations and difficulties. So there also we have solved this problem by agreement.

Then about representation in the Legislatures. In their case it is difficult. It is a small community of a lakh of people or more, but very substantially small, spread all over India and not located in a particular Province. It is difficult for them, to get seats in a general election. Therefore, if they fail in getting representation by, the normal process of election

[The Honourable Sardar Vallabhbhai J. Patel]

in some Provinces or in the Centre, provision has been made for their being nominated, if they are not properly or adequately represented, and that power of nomination is given to the Governor or the Governor General as the case may be.

Then in other cases, that of the Parsis, they have themselves voluntarily abandoned any concessions that may be given to them and wisely they have done so. Besides, it is well-known that though small, it is a very powerful community and perhaps very wise. They know that any concessions that they may get would perhaps do more harm to them than any good, because they can make their way anywhere, and make their way in such a manner that they would get more than they would get by any reservation or by any separate process of elections. Either in the legislature or in the services, they stand so high in the general standard of the nation that they have disclaimed any concessions and I congratulate them on their decision.

Then comes the Christian community. This community is more populous in two or three Provinces; and in other Provinces they are not so located as to have any direct representation by the process of election. Still they have agreed to have reservation according to their population and to abandon the claim for separate electorate; there is no other safeguard that they have claimed.

We have, so far as the Cabinet representation is concerned also adopted the formula that exists today in the 1935 Act which is considered constitutionally proper and, therefore, it has also been accepted unanimously.

Then comes representation in the services. The general standard that we have accepted is that ordinarily competitive posts must go by merit and if we are to depart from this, the general administration would suffer immensely. It is well-known that since this departure has been introduced in the matter of services our administration has suffered considerably. Now that we begin a fresh, we must see that where we have to fill some administrative posts of a higher level, these posts have to be filled by competition, *i.e.* by competitive examination and competitive tests. We have made some concessions in the matter of certain communities which require a little help.

On the whole, this report is the result of careful shifting of facts on both sides.

One thing I wish to point out. Apart from representation in the Legislature and the reservation of seats according to population, a provision has been made allowing the minorities to contest any general seat also. There was much controversy about it, both in the Advisory Committee and in the Minorities Committee; but it has been passed by a majority. There was also another point which was a matter of controversy, and that was on behalf of the Muslim League and a section of the Scheduled Castes. The point was raised that a certain percentage of votes should be considered necessary for a successful candidate. This was a matter of controversy and amongst the Scheduled Castes themselves a very large majority sent me a representation yesterday saying they were against this. But in the Advisory Committee it was discussed and it was thrown out by a large majority.

Now, this is in substance the Report. But it is possible that when we take the Schedule item by item, it may be necessary to modify the Report as and when the items are considered and passed. Therefore, as the President has urged, we may take the Schedule item by item and the Report may be modified accordingly as and when the items are passed.

Mr. President: There are two motions, of which I have notice, which are for adjourning the discussion of this Resolution. I would ask those Honourable members to move their motions.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): Not moving.

Mr. Naziruddin Ahmad (East Bengal: Muslim): Also not moving.

Mr. President: Then the general motion that the report be taken into consideration is open for discussion.

Dr. P. S. Deshmukh (C. P. & Berar: General): Mr. President, Sir, the worthy and able Chairman of the Advisory Committee on Minorities and the members of this Committee deserve our sincere thanks for the highly satisfactory report that they have produced on the question of the rights and representation of the minorities in India. In my opinion, there is no more monstrous word in the history of Indian politics than the word "minority". Even since India emerged out of its political infancy, the demon of the interests of minorities and their protection stood before us and appeared to bar the progress of the country. It is a matter of history that this was a creation of the British policy, but it succeeded so well that it is, in my view, essentially the work of the Satan of minority that our beloved country united for over a century has been divided into more parts than one. That this monster should at long last have been shorn of its terrors is an achievement worthy of note. I believe, Sir, that the Members of the Advisory Committee have in this respect a great achievement to their credit. I therefore offer them my hearty congratulations.

First and foremost, they have discontinued separate electorates. Secondly the none too just system of weightages has been given up. The composition of Cabinets is not going to be hampered by insurmountable difficulties of taking minority representatives as of legal and constitutional right nor are our percentages of recruitment going to be worked up to the second decimal as would certainly have been the case had the various representatives of the minorities insisted upon reservation in those spheres also. I believe I voice the feeling of a large section of this House when I say that the representatives of these minorities have taken a long and nationalistic view of the whole matter and provided they do not do anything to spoil the good effect, I would like to assure them on behalf of us all that they will never have any occasion to repent what they have conceded. It should always be remembered that we are, speaking the bare truth, a highly charitable and liberal-minded people. Some of our Muslim friends, mostly as a result of the British policy, painted us as tyrants and majority-made oppressors. I have never found any justification for such an accusation, but an unjust and untrue charge was repeated *ad nauseum* and somehow sustained throughout the last so many years. It is upon those false foundations that Pakistan was demanded and conceded. Very few showed patience to analyse the facts. Rather than tyrannize the minorities, the fact was that in most places the minorities tyrannized the majority. The Muslims have almost everywhere enjoyed privileges far in excess of what may be called just or fair. In my own curious Province, Muslims still enjoy a position which is even today denied to over 60 per cent of the peasants and workers by our own Hindu rulers.

This is not an occasion on which I would like to go further into the matter than this. I am content that no minority is going to try any more to deprive others of what legitimately belongs to them. For many years past, it was the majority that has been tyrannized. Unfortunately, the so-called majority is dumb and deaf and although many of us try always to speak in their name, I have no hesitation in stating that we have completely failed in translating our words into action. May I ask, Sir, what place has been given to the millions of Jats, million, of Ahirs, Gujars, Kurmis, Kunbis, the Adibasis and millions of others. Have we not been a little too engrossed in our own exploits and have given inadequate thought to the thousands of these poor people who have sacrificed their lives to give us the present freedom. What place have we assigned to them except to visualize that they will as heretofore blindly, meekly and religiously vote for any one we will choose for them. From this point of view, the situation is gloomy even today. It is up to our present rulers to examine

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and consider, if they are so inclined and to understand all that I mean. If they do not do this, nothing but trouble and destruction will lie ahead. I therefore urge that at least when the minorities are content to have only their fair share of power in the, Cabinets and a reasonable proportion in Government services, our rulers will pay some attention to the oppressed and neglected rural population which has even under the sacred name of the Congress been more undone than assisted. Pressed by political considerations, microscopic minority interests have been advocated by the greatest of democrats. They enjoyed posts and privileges which they had no right to enjoy. It is self-evident that if anybody enjoys more than he deserves, he must of necessity deprive someone else of his legitimate share. Let this be borne in mind in distributing power and posts among the various Hindu communities and let the policy of the Devil take the hindmost cease, at least from now.

Shri V. I. Muniswami Pillai (Madras: General): Mr. President, Sir, I feel today is a red letter day for the welfare of the minority communities that inhabit this great land. Before I proceed, I have to congratulate the Honourable Sardar Vallabhbhai Patel for this great tact and ability in bringing a report to the satisfaction of the majority and minority communities of this land. The document that has been produced by the Advisory Committee, I consider to be the Magna Charta for the welfare of the Harijans of this land. Sir, as has been previously said by my friend, it was due to the third man residing in this country that brought out several minority communities. I do admit that, but, Sir, it was given to Mahatma Gandhi as a great *Avathar* to find the disabilities of a section of the Hindus, namely, depressed classes known by various names, to come to their rescue and to take that great epoch-making fast which evoked all the Caste Hindus in the whole realm of India to think what is 'Untouchables', what is 'Depressed Classes', what is, 'Scheduled Castes' and what should be done for them. It was that Poona Pact to which you yourself have been a signatory along with me and Dr. Ambedkar, that produced a great awakening in this country. Then, Sir, one question was in the mind of everybody, whether the Poona Pact will show signs of a change of heart by caste Hindus in this country. Today I may assure you, Sir, that that change has come, though not full 100 per cent, at least more than 50 per cent. I may give you instances here. The very inclusion of Dr. Ambedkar in the present Dominion Cabinet is a change of heart of the Caste Hindus that the Harijans are not any more to be neglected. In my own Province, Sir, I may tell you the former Premier, Mr. Prakasam, has made a provision of a crore of rupees for the amelioration of the condition of the Depressed Classes (*Hear, hear*) and the present Premier Mr. Omandur Ramaswami Reddiar has set up a big Committee to investigate and bring a 5-year plan to ameliorate the condition of the Depressed Classes.

Now, Sir, coming to the very proposition of the consideration of this Report, I may say that any constitution that is made for the 300 millions of this country must have proper safeguards. Some may be thinking in their hearts whether they are not a minority of this land. Specially, Sir, the Untouchables who form one-sixth of the population of this subcontinent are a minority community, because their social, political and educational advancement is in a very low state. Sir, after Poona Pact we are coming to the second stage. Actually this is the second stage because the untouchables, the Scheduled Castes are given certain facilities according to this report that has been presented in this House. One great point, Sir, which I would like to tell this House is, that we got rid of the harmful mode of election by separate electorates. It has been buried seven fathom deep, never more to rise in our country. The conditions that were obtaining in the various provinces were the real cause for introducing the system of separate electorates. The Poona Pact gave

us both the separate and joint electorates but now we have advised according to this report that has been presented here that the Depressed Classes are doing to enjoy joint electorates. It is hoped, Sir, that, in the great Union that we are all envisaging that this country will become in the years to come,—joint electorates will give equal opportunity for the Caste Hindus and the Minority communities to come together and work together and produce a better India. Sir, now there is a reservation of seats on population basis. This is a rightful claim, Sir, of the Depressed Classes who form the tillers of the soil and hewers of wood that they must have equal voice in the administration of the land. Moreover, due to their economic condition it is not possible for them to contest the unreserved seats and it is a good augury on the part of the Advisory Committee to come with this important recommendation that all the minority communities besides their having the reservation in the various provincial legislatures, will also have the right to contest seats in the unreserved seats. This forms a very good augury that hereafter both the Caste Hindus and the Harijans, that is the Scheduled Castes will go hand in hand so that whatever reform that may be brought to this land or in the Acts that may be brought before the Assembly and for the welfare of the country will be one accepted by all communities. Moreover this clause, allowing the minorities to contest the unreserved seats, shows the goodwill the majority communities are having towards the minority communities.

Much has been said about the representation of minorities in the Cabinet. I am one of those, Sir, who believe in political power for the elevation of the weaker sections of our land. It is by holding offices that these people are bound to come in contact with these unfortunate minority communities and see for themselves what should be done to elevate them. If I plead that there ought to be proper representation of these minorities in the Cabinet, I do not mean, Sir, that the Cabinets will become polluted or it will become inefficient but equal opportunity must be given. Once you give reservation on population basis, I also claim, Sir, that representation in the Cabinet also must be in that proportion. Sir, events have shown in this country that the members that have been drawn from Scheduled Castes to various offices as Ministers and Speakers of the Assembly have proved equally good in the discharge of their duties. Let there be nothing in the minds of the majority communities that those who were chosen from these communities for high offices will not be efficient. I feel that a convention has to be created according to the 1935 Act, as recommended in the Report. I am sure that the goodwill of the majority communities will always be there to see that those weaklings,—the minority communities, are well represented in the Cabinets. Sir, in the matter of services, I earnestly request that everything must be done to these minority communities so that they may have their quota in the services of this great land. Often it is said though the Depressed Classes have the required qualification, under some pretext or other they are not given chances in the services. I wish, Sir, after this report has been accepted by the Constituent Assembly, those majority communities who will have the ruling say in the matter will see that the claims of the Scheduled Castes will not be forgotten. I know—as a matter of fact to start with, the present Dominion Cabinet have already issued an executive order setting aside 12½ per cent and 16½ per cent for the Scheduled Castes both in the competitive and non-competitive services. This is a very good augury and I am sure the change of heart will be followed further and proper quota for the representation of the Scheduled Castes in the services will be maintained.

Coming to the conclusion, Sir, the report envisages creation of a Statutory Commission and also Officers in the provinces to investigate and see what are the real things that are keeping these people backward in all the social, economic and educational spheres and I welcome this because this will go a long way for this Commission and also the Officers to know for themselves what are the difficulties of the Scheduled Castes and during the next 10 years do such things, so that after the 10th year we, the Scheduled Castes may not ask for reservations either in the provincial legislatures or in any of these things. It is up to the majority community to see that justice is done so that these minorities may rise

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in the educational and social sphere so that they may take equal share in the administration of this great land. Sir, there is a fear in the minds of some of my friends, especially the Scheduled Castes, that the Hindus are getting into power and that Hindu Raj is coming into force and they may introduce the Varnashrama that was obtaining years back, again to harass the Harijans. I may tell such friends, as we see things, the Varnashrama Dharma may be applied in a different sense—not in a sense that was obtaining years before—and I am sure this report will be accepted unanimously in this House and any amendments that may be brought may not disfigure the very good report that has been produced by my Honourable friend Sardar Vallabhbhai Patelji.

Mr. F. R. Anthony (C. P. & Berar: General): Mr. President, Sir, I feel that as a Member of the Minority Sub-Committee and also of the Advisory Committee I should say a few words on the Report. I might tell you that some of the issues were of a highly controversial character. Some of them involved argument and counter argument not only for hours but sometimes for days. But all the deliberations were conducted in the best traditions of generosity on both sides. It was not always an easy matter to cross words successfully with an able and almost incredibly tenacious lawyer like Mr. Munshi. There were many points of view. Some people were guided quite understandingly from their points of view by unalloyed principles. Others were fortunately more realistic and more statesmanlike in their approach. So far as the interest of my community are concerned, I feel that I have to offer a special word of appreciation and thanks to those members who approached our problems in an attitude of realism, particularly to Sardar Patel. We from our side did everything we possibly could to come to an agreed solution which I am glad to say, we did arrive at ultimately. I feel I must express—the appreciation and the thanks of my Community to those who realised the special needs of the Anglo-Indian community, and ultimately gave them shape in the report of the Advisory Committee. This report, Sir, represents a happy augury for the future. I have always been one of those who felt that we must modify our principles to suit realities. The path of statesmanship is the path of compromise. I am glad that statesmanship and a sense of realism were brought to bear on our proceedings and were infused into them by Sardar Patel. By being generous—that is what the majority community was in fact—by adopting an attitude of magnanimity to the minorities, you have helped to efface the fear that the needs and the points of view of the minorities would not be considered. By that act of statesmanship you have helped to harness completely the loyalty of the minorities to the tasks of nation-building which face us.

I believe that today the conditions are a challenge to the minorities. Every wise minority will look forward to the time, sooner or later, when it will take its place not under any communal label or designation, but as part and parcel of the whole Indian community. (*Hear, hear*) I believe that the conditions today are a challenge, because of the background of events, to some members also of the majority community. I say to them: “Let us all march forward inspired by this spirit. Let us work up for this goal, that we shall sooner than later shed all communal labels and be bound together by the all-compelling sense of belonging to one Indian community (*Applause*).

Sriyut Rohini Kumar Chaudhury (Assam: General): I would like to take this opportunity of speaking on this motion to give expression to some of my feelings. In fact this is the first time that I rise to speak on any motion after we achieved our independence. I do not know, Sir, if I have correctly followed the course of this debate or understood what the implications of the report on the Rights of Minorities are. But it seems to me,—I hope to be excused for—saying so, but it seems to me that there are two kinds of minorities at present. One of them belongs to the India which was once ours and which had been decimated practically

and is now being protected by God in heaven and in His place, because that is the place, that is the sanctuary for all religious men and saints. Unlimited numbers of seats are being reserved for them in heaven from 16th August 1947 up till now. In spite of the great rush for seats in heaven, there seems to be no want of accommodation. We are not concerned with their goal. We are Members of the Constitution making body. We have nothing to do with their woes and miseries. We shall frame certain rules till Friday and after that we shall disperse on Saturday and go to the different Provincial Assemblies and Councils. We shall then enjoy the Dusserah vacation and Durga Pooja. We shall come again to give the finishing touches to this Constitution. Then there will be time enough for us to think of the unfortunate victims of our division of India. I am sure, Sir, the interests of these unfortunate people will be kept alive by adjourning this House for a few minutes or by observing silence for a minute or two and things like that. We thus pay homage in silence to those who have died fighting. We have established this convention now to observe silence for those who have died. This convention, I am afraid, will have to be followed for a very long time yet in this unfortunate country of ours.

Sir, there is another type of minority with which we are not immediately concerned. For that minority I am glad to observe ample provision has been made. There have been seats reserved for them for a period of 10 years. They will have an opportunity of contesting the unreserved seats. With the reserved seats they will continue in their own communal party and secure also the unreserved seats through the benevolence of the Congress party. I believe that it will not take ten years, by this means, to make the minority community a majority community. From that time onwards there will be no minority communities. That is all as it should be because we have adopted this policy and have divided our duty and our responsibility.

In the area which is known as Pakistan, the Government of that country would look after the interests of the majority and, in the area which is known as India we shall devote ourselves to the protection of the minority. We have been doing so and we will go on merrily doing so.

Sir, while, thinking of the minorities in the different provinces of this country, let not this House forget certain provinces which are absolutely backward, *e.g.*, Assam and Orissa, where not a single man can be found to fill up a seat in the Indian Government, where not a single man has been found to fill up the position of a Governor, where not a single man has been found fit to hold the high offices in the Railways or Posts and Telegraphs or even in the Imperial Secretariat which still retains its imperial character.

It is easy to call the Province a Cinderella province after keeping dust and ashes there and it is very easy to call in that way the people of a province who are suffering from an inferiority complex after having done all that you could possibly do to deny them the opportunity given to the people of other provinces. Sir, I notice that there are some frowns on the faces of certain Honourable Members of this House and I think for the sake of safety I must run back to my seat now.

Shri S. Nagappa (Madras: General) : Mr. President, Sir, really it is a very important day in the annals of Indian History. Now, Sir, as my friend has already said the Committee deserves congratulations for having submitted an agreed report. I have to bring to your notice, that these minorities stood in our way of being free long long ago. The Britisher pleaded with these minorities all these days in order to delay to give us independence. It is only on the 15th of August we got independence and today it is only the 27th and within 12 days these minorities have come to an agreement. So, Sir, you can see how much unity there is in India. There was a kind of pose. They began to play with us, so that we seemed to be disunited for all times to come. Now within a few months we have come to understand each other and

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are able to present a Minority Committee Report, and that too an agreed report, though these were all—the majority of the members—from the minority communities. Does this not show the hollowness of our friends' sincerity when they pleaded to set apart our independence question all these days? But anyhow I do not want to go into the past. Now, I am glad today we have been able to undo the mischief that was done 15 years ago by Ramsay Macdonald. It is he who was responsible for the destruction of today. He is the man who is responsible for the loss of life and loss of property in this country. If I have any power, I would have called him to answer these questions. It is he who sowed the seed of disunity and destruction about 15 years ago by giving the communal award.

Now, Sir, it is a very good and auspicious day that all the minorities have come together and are able to understand that the country's Welfare is more important than that of an individual or a particular community.

Now, I particularly congratulate the Sardar for having been able to allow all the minorities to contest even the unreserved seats. It is a great thing. We have also to congratulate the Sardar for having been stiff when there was need, to be so. It is statesmanship having sat tight in places where he ought to be. He has not conceded some of the demands, especially the percentage of votes. The qualities of statesmanship require generosity where generosity is to be shown and stiffness where it is needed.

Under the instrument of Instruction of the 1935 Act there is a provision for inclusion in the Cabinets. But it would have been better if there is an assurance for a minority community Member to be included in the Cabinet, and it would have been more satisfactory if there had been a statutory provision. For instance I want to quote my own province. It is a province of 215 members. There are about 30 Harijans. They form one seventh of the Legislature and their population is 1/5th. They are 8 millions out of total of 49 millions. They form 1/5th of the population, they form 1/7th of the legislature, but what is their share in this Cabinet? According to the strength of the Members they would have been two because they are 1/7th and when the whole Cabinet is 14 or 13 it should have been two, but when the question came up, they have abolished a Harijan post. They have made it 13 and have not given one. I say that the Harijans are not going to elect ministers it is left to the Premier to select. The quota must be statutorily reserved. I feel that we should not be at the beck and call of the Premier. Let the Premier select the Ministers according to his choice. Why should we think that he has done us a great favour? It is our due share. We are not asking for anything gratis. So, Sir, this is how injustice will be done. Today we see with our naked eyes that injustice was done and therefore, it would have been better if an assurance is given to these minorities regarding their position in the Cabinet.

Now, Sir, it is not possible to make minority communities the Premiers, because the Premier is expected to command the confidence of the majority party. So is no good to expect rotation to be applied for the Premiership. But there is every provision, every possibility, every probability to choose the Governors of the Provinces by rotation from among the various communities. It would have been easy if this had been included in the Report.

Again, Sir, it is not possible to make a minority community man to be the Dominion Premier but at the same time it is easy to make, say, for instance, out of 12 times, six will go to the general community and 3 times will go to the Scheduled Castes, 2 times will go to Muslims and 1 to other smaller minorities and out of a rotation of 12 one will be the share of the Dominion Presidentship, Governorship and Deputy Governorship, Deputy Presidentship etc. These things would have gone a long way to assure minority communities that the majority is in favour of the

minorities, and sincere towards minorities. As regards services I am glad very recently the Dominion Government has come out with its policy. I congratulate there also the Dominion Government. It has done justice to some communities and it has done more than justice, especially to the Christian Community or some such community. It has been fair there. I would suggest that it would have been better if it has been provided in the Report itself, for instance, a particular community will have its share according to its population. I do not want to rob Peter to pay Paul. It is very bad policy. I want my due share; though I am innocent, ignorant dumb, yet I want you to recognise my claim. Do not take advantage of my being dumb. Do not take advantage of my being innocent. I only want my due share and I do not want anything more. I do not want, like others, weightage or a separate state. Nobody has a better claim than us for a separate state. We are the aboriginals of this country.

Now, Sir, so far as the services are concerned, I congratulate the Dominion Government. It would have been better if a provision in this report had been made such that the Provinces also can copy. Even now it is not difficult for the Dominion Government to give instructions to Provincial Governments to copy that. Now, as regards the population, Sir, according to 1931 Census we are about 7 crores. We see that there had been an increase of 14 per cent. average increase. As poverty breeds population our minority might have increased by not less than 20 per cent.

This is the theory given by Malthus; I am not saying that. Because a rich man has a different standard of life and he would like to marry only when he attains some position or some power or property whereas if you go to the poor man's quarters, you will see a number of children, moving about, and if you go to the rich man, he will be praying to God to give him children. There is no surprise when Malthus says that poverty breeds population. If we were more than six crores in 1931, Sir, how is it that we have been reduced to five and half crores in 1941? There is something behind it. Especially in Bihar and the Punjab, I am sorry, in Bengal, some mischief has been done by somebody. There was controversy between Hindus and Muslims. Both these people thought it safe to fall upon these poor and Innocent Harijans and these people were converted or were added to the Hindu population as our people happen to be Hindu. Instead of increasing to seven, we have come down to five and a half crores. Therefore, I would request that in order to give seats to the Harijans, you should take the 1931 Census. That Census was not prepared by the Harijans. It was prepared by the Government machinery and we had no hand in it. There is not even a single Harijan that can do any mischief. After all, it is a Government record. You know there is a general increase in the population. You give us the average representation! I do not want any special provision. According to that Census, please work it out. I am afraid because future representation is assured on the population basis. If that is the case, in course of time,—within 10 years, two crores have been diminished; if it is left at this rate, within ten or twenty years, I am afraid there may not be a Harijan at all, Harijan in the real sense. As the honourable, Premier of Bombay says, I would even prefer one seat if I am economically as good, if not better, at least equal, on a par with him. It is left to the constitution. It remains to be seen how much speed you will put in the matter of this community.

As a whole, on this report deserves to be congratulated, not only Sardar Patel, but each and every member of the Advisory Committee and Minorities Committee for having cooperated with him, for having been able to come up with such an agreed report. Sir, I recommend this report for the consideration of this House.

Dr. H. C. Mookherjee (West Bengal: General): Mr. President, I must say at the beginning, that I am not one of those who believe that the greatness of a country is increased by increasing the greatness or the economic or political importance of a particular group which is inside it.

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On the other hand, I have always advocated the placing of national interests above group interests. At the same time, my experience as Chairman of the Minorities Sub-Committee has convinced me that it was necessary for the sake of peace, for the sake of the future progress of our country, that every attempt should be made to meet the wishes of the minorities. I am a member of a minority community myself and I feel proud that the community of which I am a member has decided to give up all special privileges, and first of all I must thank my colleagues of my community who are members and who are present here today. Along with that it was realised that the several groups had distrust of the majority. Of course, personally speaking, I noticed that this was true of a majority among them and I have exhorted them and I am still exhorting them, again and again, to have some measure of trust. If they demand safeguard, those safeguards can be implemented only if the majority community can be trusted. But till this distrust is removed, I do recognise that something has to be done to meet their wishes. It is here that I must compliment Mr. Munshi, who in the Minorities Sub-Committee did so much running from one group to another, in order to find their minimum demands, then pressing their case on the attention of the Minorities Committee and who got them carried in the Advisory Committee. I must bear witness to the goodwill and generosity that was shown to us by Sardar Patel. I therefore recommend the findings of the Advisory Committee to the House. At the same time, personally speaking, I must make it clear once more that I stand for trust of the majority and that I feel that some among us who stood for a more radical policy, have a kind of grievance against Sardar Patel because he has not allowed us freedom to carry it out though, I also admit that we were defeated by a majority of the members.

Mr. President: We have had a long discussion on this motion. Although I do not wish to stop speakers, I would expect them to conclude discussion on this within the next ten minutes. There are two or three speakers still to speak and I would request members to confine their speeches to three minutes each. Mr. Sidhwa.

Mr. R. K. Sidhwa: (C. P. & Berar: General) : Sir, I shall not take up much of the time of the House. From my boyhood I have always believed that to serve humanity without any distinction of caste or creed is a very noble religious duty and with that end in view, I have always inculcated and advocated that view to my community. I am proud to state that my community have all along, notwithstanding the opposition of a section of my community, never advocated separate electorate or separate or special representation either in the legislature or in the services. I am also proud to state, I am glad to state that while we have not advocated any special representation, we have been really happy with joint electorate and non-reservation of seats in the legislature. Sardar Patel has rightly stated that we have taken part in politics, in education, in social and in all walks of life and we have made our view point felt amongst the majority in such a way that it was for them to realise and feel that they cannot ignore a community which has been really taking part in all these spheres of public life.

Sir, in the Minorities Sub-Committee, my friend and colleague Sir Homi Mody was in favour of special representation in the legislature and it was I who advocated very strongly against it. But I had only three votes against nearly 22, not because the members felt that I was not right, but the members felt that I was taking rather a rational view point and a more advanced view point. Let me tell you, the following day, without my approaching Sir Homi Mody, he realised that what I had said on the previous day was right, absolutely right and he himself changed his view point and on the following day, he said that he was not asking for any special representation for the Parsi community because he felt that if he did so, it was harmful to the community itself. From this point of

view, you can see, as Sardar Patel said, that we have to adjust among ourselves. Without my approaching Sir Homi Mody privately or openly, he had to change his view. I would only impress upon the other minorities that if they really assimilated their view points now onwards with the majority view point, I can assure them, that in the period of ten years that has been given to them, they will have no grievance, they will have no complaint to make against the majority community. It is only the heart that is wanted on behalf of the minority to adjust themselves. I am of opinion that the ten years that have been given to them is a sufficiently long period. Within that period, I would appeal to the small minorities to adjust themselves so that at the end of ten years, they should not have to go to the majority and say "give this or give that", they must, on the contrary demand that we are entitled to this. They must carry it out just as our community have been doing.

With these words, I congratulate the committee for the generosity they have shown; some of the minorities did not deserve what they have got. I really give credit to the majority community for what they have done. I was opposing so many things; I had not a majority in the committee; but I was impressed all along by their noble and generous heart to accommodate the small minorities.

I only wish, Sir, that the phrase "minorities" should be wiped out from the history. The ten years that have been given to them is a sufficiently long period and I hope that when we meet in the shortest period within ten years, these minorities will come and say "we are happy, we do not want anything".

Mr. Jaipal Singh (Bihar: General) : Mr. President, I myself am a member of the advisory Committee. So I would not like to congratulate myself and my colleagues. But I have come to say a few words on behalf of the Adi-Vasis of India in so far as they are affected by the recommendations of the Minorities Sub-Committee. I do felicitate some of the smaller and, if I may say so in comparison with our own numbers, the infinitesimal minority groups like the Anglo-Indians and the Parsis, on their success. So far as the Anglo-Indian are concerned, they certainly have received more than their desserts. I do not grudge them that: let them have that, and good luck to them in the future. Our attitude has not been on grounds of being a numerical minority at all. Our position has nothing whatever to do with whether we are less than the Hindus or Muslims or more than the Parsis. Our stand point is that there is a tremendous disparity in our social, economic and educational standards, and it is only by some statutory compulsion that we can come up to the general population level. I do not consider the Adibasis are a minority. I have always held that a group of people who are the original owners of this country, even if they are only a few, can never be considered a minority. They have prescriptive rights which no one can deny. We are not however asking for those prescriptive rights. We want to be treated like anybody else. In the past, thanks to the major political parties, thanks to the British Government and thanks to every enlightened Indian citizen, we have been isolated and kept, as it were, in a zoo. That has been the attitude of all people in the past. Our point now is that you have got to mix with us. We are willing to mix with you, and it is for that reason, because we shall compel you to come near us, because we must get near you, that we have insisted on a reservation of seats as far as the Legislatures are concerned. We have not asked and, in fact, we have never had separate electorates; only a small portion of the Adibasis, that part of it which was converted to various religious and particularly to the Christian religions of the West, had a separate electorate but the vast majority, wherever it was enfranchised, was on a general electorate with reservation of seats. So, as far as the Adibasis are concerned there is no change whatever. But numerically there is a very big change. Under the 1935 Act, throughout the Legislatures in

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India, there were altogether only 24 Adibasi M. L. As. out of a total of 1,585, as far as the Provincial Legislatures were concerned and not a single representative at the Centre. Now in this adult franchise system of one member for one lakh population you can see the big jump. It will be ten times that figure. When I speak of Indian India may I also make my appeal to Princely India. In Princely India nowhere have Adibasis found any representation. I hope the spirit of Indian India will duly permeate there.

Mr. M. S. Aney (Deccan States) : There is no non-Indian India now.

Mr. Jaipal Singh: I would explain to Mr. Aney that I was using a new phrase instead of 'British India' by calling it Indian India and calling the States Princely India. He may use some other expression if he so likes, but what I mean by Indian India is non-Princely India. I hope this spirit of trying to give a push to the most backward section of Indian society will permeate Indian States also.

Sir, a good deal has been said by my friends, the Scheduled Castes leaders in gratitude in regard to the reservation that has been made for appointments. Only a few days ago the Government of India made announcement that a certain policy would be followed so that the Scheduled Castes would find a place in the Central Government. I deeply regret that the most needy, the most deserving group of Adibasis has been completely left out of the picture. I do hope that what I say here 'will reach the Government of India and that they will pay some attention to this particular item. We do not want reservation on any unequal terms. We desire that so long as we come up to the standards which are required for appointment we should not be kept out of the picture at all.

There is much more that one could say on the subject of Adibasis, but, as the House will have an opportunity to discuss that particular problem when the Reports of the two Tribal Sub-Committees come up before this Assembly, I need say no more now. But I commend that the recommendations of the Advisory Committee in regard to the minorities may receive the favourable considerations of this Assembly.

Mr. President: I think, I should now close the discussion. We have had enough of discussion on this point unless the House otherwise wishes. Member will get another opportunity when we come to the clauses.

The Honourable Sardar Vallabhbhai J. Patel: Sir, on behalf of the Advisory Committee I am grateful to all the Members of the Minorities Committee to all the Members of the Advisory Committee who have helped and co-operated in bringing out a report which is almost unanimous, a report which was expected to be very controversial and a report which has given general satisfaction as is evidenced from the speeches that have been made on the floor of the House. Therefore I move that the Report with its enclosure relating to Anglo-Indians of which I also made mention in my preliminary remarks, be taken into consideration. Then we can proceed clause by clause.

Mr. President: The question is:

"That the Report (with its Annexure relating to Anglo Indians) be taken into consideration".

The motion was adopted.

Mr. President: We shall now take up the items in the Appendix to the Report.

The Honourable Sardar Vallabhbhai J. Patel: The first item refers to electorates. It reads:

"All elections to the Central and Provincial Legislatures will be held on the basis of joint electorates."

I assume that the House is unanimous on this point and therefore I do not propose to make any speech Sir, I move.

Mr. President : Is there any amendment to this?

B. Pocker Sahib Bahadur: Mr. President, Sir, I must congratulate the Hon'ble the Mover of the motion for the spirit in which he moved it and for appealing to the House to forget the past and to carry on the discussion in a friendly spirit I very much welcome that spirit and I shall certainly conform to the wishes of the Hon'ble the Mover. You know, Sir, that we are in very critical times, and every word that is said here will go very far either way, either to cementing the friendly relationship or creating dissensions among the people. Therefore, Sir, I have this in my mind when I have to propose my amendments in which I may have to differ from the Hon'ble the Mover and the recommendations of the committee. With these remarks, Sir, I shall move my first amendment which is on the agenda. My amendment runs as follows:—

“That on a consideration of the report of the Advisory Committee on minorities, fundamental right etc., on minority rights this meeting of the Constituent Assembly resolves that all elections to the Central and Provincial Legislatures should, as far as Muslims are concerned, be held on the basis of separate electorates.”

In making this motion, Sir, I am fully aware that there is a very strong section who feel differently from me and who not only feel that separate electorates are not desirable, but who also feel that it is the separate electorates that have been responsible for so many ills which have attacked this country and which are responsible for so much of misunderstanding that has caused so much harm to the country. Now, Sir, I would submit that in considering this question Honourable Members of his House should comply with the request of the Honourable the Mover and forget the past and begin with a clean slate. They ought not to apply their minds to this question with any pre-conceived notions which they might have entertained during recent years. They should forget all that has happened in the past and look at the question only with the view as to how far this provision which I am proposing will be useful in developing a better understanding between the communities and how far it will contribute to the happiness of all the communities concerned. I would request them to divest themselves of all ideas of past incidents and look at the question entirely from the point of view as to how far it is necessary and advisable to cement friendly relationship hereafter and to see that all the communities in the land are contented and whether this provision will not lead to the happiness of all the communities concerned. I will request you to begin with the premise that it is our primary and fundamental duty to make the constitution in such a way that it will satisfy all communities and be conducive to contentment among all communities I hope, Sir, that the House will agree with me in saying that if important communities are left discontented and if they are left to get on with the feeling that they have not got an adequate voice in the governance of the country, that is an evil which we will have to avoid at any cost. The contentment and satisfaction of all communities in the land is the *sine qua non* of a good constitution which it is our religious duty to make here.

In some of the speeches I found that regret was expressed about the existence of what are called the minorities or perhaps minority communities. As a matter of fact there is no use in our going against human nature and having before us ideologies which are impossible or realisation Human nature being what it is, there are bound to be minorities and minority communities in every land; and particularly in such a vast sub continents as India they are bound to exist and it is humanly impossible to erase them entirely out of existence. What we can do is to minimize differences between them and to do things in such a way that all minorities are satisfied and feel they are contented. In this matter there are two principles which have to be kept in view. There must be a spirit of give and take on the part of various communities and particularly on the part of the majority community there must be a spirit of generosity. They should not measure things on an arithmetical or mathematical scale and try to argue of those points. When some minorities are working

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under great disabilities and feel that they have not had their share in the governance of the country, adequate provision should be made so as to satisfy them. Even if the majority feel that any particular minority is not right in claiming a particular method of achieving their end, even there I would say there must be a spirit of give and take and the majority community should be generous, and I appeal through you, Sir, to Hon'ble Members of this House to keep this particularly in view, and also remember that after all, if this generosity is exercised by the majority community, they are not going to suffer. The majority is a majority and the minorities are minorities. If by some special measure which may be proposed, some particular minority community gets a little more than what it deserves, according to their population or some such thing, even the majority community should act in a spirit of give and take and display a generous spirit. It is in this spirit that I appeal to the House to look at this question. I have to make these preliminary remarks because I know there is a strong feeling against separate electorates in a large section of the people. It is also found in the Report of the Minority Committee and that of the Advisory Committee. They feel that it is a very dangerous thing to have separate electorates, or to recognise the principle of having separate electorates.

Now I have to tell you that there are various communities in this land and various minorities, and it is impossible in the very nature of things to erase them out of existence. As I have already said, it is our duty, it is the duty of those who make the constitution to make it in such a way that there are provisions in it to keep all of them contented.

Then, the next thing is how to give full effect to these considerations. I submit, Sir, that so long as it is recognised that the minorities should be kept satisfied, that their views and their grievances should be given an effective voice in the deliberations of the Legislature, I do say that the only way is to get at that man in that community who really represents that community. On the other hand, if you say that community has no right to exist as a community, and that it should be effaced by one stroke of the pen, then, Sir, I am certainly out of court. But you have to recognise, and it, is absolutely necessary to recognise, that there are communities with vital differences among themselves, whether on grounds of religion or other differences. There are such communities, and it is our duty to provide for them constitutionally, that they are all adequately represented and the best and only effective way in which any particular community can be represented is by laying down a procedure by which the best man who can represent that community, who can voice forth the feelings of that community is elected to the legislature. That is the sole criterion on the basis of which we have to look at this question. The question now is whether in order to achieve that end, it is necessary to have separate electorates or not. That the interests of the communities should have a representation in the legislature is conceded even by the Report of the Committee. The only difference is, that they want to achieve that purpose by some other means and I say by that means the end will not be achieved at all. What the Minorities committee says is, "Reserve a certain number of seats to candidates belonging to that particular community but on the basis of the joint electorate". Then it is that person whom the majority community backs that will be elected. Perhaps that man may be a man liked by the majority under the guise of belonging to the minority community. There have been instances in which Muslims and Hindus joint together, in the old days of Non-Co-operation, and boycotted all legislatures, and simply for the sake of fun, some illiterate sweeper or scavenger, or some such person, was put up as a candidate as coming from a particular community in order to make a mockery of the whole show. If that could be done in those days, what I am asking is, whether such things will not reoccur. Of course it all depends on the spirit in which the question is

viewed, but I say the mere fact that a particular member belongs to a particular community is not a guarantee that his views represent the views of that particular community. That particular community if at all it is to be represented, has got to elect the right man from among the members of that community. That is my appeal to you. If a worthless man or a man who is not capable of even understanding the needs of the community is elected from a particular community, he cannot be expected to represent that community simply because he is labelled as one belonging to that community. I submit, Sir, this is the criterion which should decide whether this report has given effect to the principle which they have accepted, namely, that the minority communities should be represented on the legislature. If, on the other hand the existence of the minorities and their right for representation are denied, well, then I have nothing more to say. But I would request you to approach this question in a generous spirit. I would request the Hon'ble Members to remember the days in which in pursuance of the Lucknow Pact of 1916 separate electorates were recognised and the spirit in which both communities moved as brothers in the non-co-operation days of 1920. Now, Sir, if the communities were able to move as brothers and sisters in those days and they could lay the foundations for the achievement of independence which we have now gained, I do not see any reason why we cannot hereafter work on the same principle as brothers and sisters and work as members of the same family and make India one of the proudest nations in the comity of nations. It is up to us to make India the foremost nation in the world, provided we act in a spirit of cordiality and friendship. In view of the spirit in which we were working in 1920 in the non-co-operation days, I say it is possible for us to work in the same spirit hereafter also. And I submit to you Sir, that it is upto the Members of this House to set an example by divesting themselves of pre-conceived notions that all the ills of the country were due to this system of separate electorates. I do not want to enter into discussions as to the correctness or otherwise of this notion. My only appeal to you is to join the Hon'ble Mover in asking you to forget the past and to act in a friendly spirit in the future.

I have to emphasise one point. The legislature is intended to make laws for the whole country and for all communities, and it is necessary that in that legislature the needs of all communities should be ventilated. I would submit that as matters stand at present in this country, it will be very difficult for members of particular communities, say the non-Muslims to realise the actual needs and requirements of the Muslim community. I say that even if a non-Muslim does his best to do what he can for the Muslim community, to represent their views, he will find it impossible to do so because he is not in a position to realise, understand and appreciate the actual needs of the members of that particular community, so long as he does not belong to that community. They will find it practically impossible to know exactly what the needs are. There are ever so many questions, particularly hereafter, which the communities will require to be ventilated in the legislatures. There may be legislation concerning wakfs, marriage, divorce and so many other things of social importance, I request the House to consider this matter from the reverse point of view. How would the Hindus feel if the Muslims were to represent their grievances in the legislature and provide effective remedies as regards say, temple entry marriage customs etc. ? I do admit that there may be efficient men on either side possessing knowledge of the needs of both Hindus and Muslims, but they will not be many. Therefore it is that I say that the principle should be that the best man in the particular community should represent the views of that community and this purpose cannot be served except by means of separate electorates.

One more point I wish to place before you is this. This institution of separate electorates was being enjoyed by the Muslim Community from the first decade of this country, i.e., for over 40 years and now the moment

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independence has been obtained it is being abolished. It would be a very sad thing, I submit, to give rise to the feeling among Muslims that at this critical stage they are being deprived of the benefit of this institution now and that they are being ignored and their voice stifled. I request Honourable Members to avoid such a contingency and the creation of such a feeling among the Muslim community of India.

One other point I would like to mention is this. The Muslim community is well-organised. It is very necessary in the interests of the country as a whole that each of the important communities should be well-organised, so that all and come together and arrive at an understanding for the future governance the country. At present the Muslims are strong and well-organised. Now, if they, are made to feel that their voice cannot even be heard in the Legislature, they will become desperate. I would request you not to create that contingency. You are fully aware that at present there is very little difference between the Congress and the Muslim League as regards their objectives. No doubt, till recently they had wide differences, but somehow or other, wisely, or unwisely, rightly or wrongly, they have been solved and an agreement has been reached between these two great organisations. The fundamental point on which they differed has been resolved and there is no difference really now. At this stage they must join hands and destroy the subversive elements in the country. I am sure you will agree with me that there are a large number of elements in the land which are subversive and which act against law and order. Provincial Governments have taken full power in their hands to pass Ordinances in order to put a stop to these elements. Now, I appeal to the Honourable gentlemen of this House, both Congressmen and Muslims and other communities, to join hands and act together so that these subversive elements which have raised their head at this critical juncture of the history of this great land may be put down, and in order to do that, I say in spite of the great difference of opinion that exists today, granting of separate electorates to the Muslims and allowing Muslims to have their voice heard in the Legislature so as to enable them to act hand in hand with the Congress will be the best method. Otherwise, these elements will be a very great danger to the safety of the people of the land, not only internally but also externally. I do not want to be more explicit on the point because I know that Hon'ble Members understand me when I say this. With these few words. Sir, I move my amendment.

There are, Mr. President, other amendments of which I have given notice. They come under one or other of the items in the Appendix and therefore, I reserve my right to move them.

Mr. President: The amendment and the motion are now open to discussion.

Shri M. Ananthasayanam Ayyangar (Madras: General) : Sir, I am extremely disappointed at the speech made by the previous speaker. I thought that after having obtained Pakistan my friends in India would change their attitude. I really wonder what more can be done. We are going too far and are trying to placate them in every possible way. I have got here the treaty entered into by Turkey regarding the protection of its minorities on 24th July 1923 at Geneva. I ask any of the protagonists of this amendment, to show me a single instance where in any part of the country, in any part of the world a political right has been conceded in the manner in which it has been conceded here. I ask the indulgence of the House to read article 39 of the Turkish treaty. It cannot be said that there is a greater nation in recent years standing for the rights of Muslims in the world than Turkey. Let us see what rights they have given to the other minorities in Turkey and what rights they have insisted upon for their nationals in other countries. I have got here the two

sides of the picture. There are the two agreements, printed in Constitutional Precedents No. III. I shall read article 39:

“Turkish nationals belonging to non-Muslim nations will enjoy the same civil and political rights as Muslims.”

These rights they do have. That only means that they are entitled to stand shoulder to shoulder with the rest of the community, to stand for any seat anywhere without being trammelled, without being ineligible for any particular post or office. By all means, let them win the confidence of the entire community. That is the only way in which they can come together. What is the other method, I ask the Honourable Member. The germs of his complaint were sold since 1916, not by us, but by the Britishers. Let me go back into the history of our land a little earlier, though it may take some time of the House. Hindus and Muslims fought shoulder to shoulder as early as 1857. Let us not forget that we wanted to reinstate in our country the rule by our own people, whether Hindus or Muslims, wherever they were, in various parts of the country. They joined in a strenuous fight for the release of this country and for its independence. By whatever names the western historians might call it, it was a battle for independence. Then the British Government wanted to play one community against the other. Sometimes they favoured the Hindus and sometimes the Muslims. It is no doubt true that some respectable and patriotic Europeans were the authors who put the idea of starting the Indian National Congress in our minds. It is no doubt true, but, what did their successors do? They found in a short time of fifteen years that the ideas of independence had come to stay in this country. It was dangerous for them and therefore in 1903 Lord Curzon wanted to separate the Hindus and Muslims in Bengal. No man or woman, not even a child, would sleep until the arrangement for partition of that province was annulled. Once again we came together and to-day on account of separate electorates we are separate again.. I am told, Sir, that one day in 1916 European who was responsible for separate electorates in this country wrote to his friend in England that he had achieved one of the best things in the world. *viz.*, separating the Hindus and Muslims. There is no doubt that difference between the Hindus and Muslims do exist. One prays towards the East and the other toward the West. But there is also a common bond. Mohammad started his religion to bring the various warring elements together under a common banner. Religion in ancient days was an integrating power. There must be a common platform on which all could stand. I look forward to that day when humanity will be one, when all castes and creeds will disappear, (*Cheer*) when children are asked as to what religion they belonged,, they may-say, “I do not belong to any religion but I am an Indian and do take pride in being one.”. I look forward to the day when there will be no difference. Even a child knows that the sex of the mother is different from that of the father. Though one electric bulb may be white and the other red, the current that is running through is one and the same. A philosopher is necessary to come and say amidst all these happenings, ‘Let us bring millenium on earth’. In my part of the world, the Madras Presidency, though the Muslims are in a minority, they also joined in this move for separating the country. Have you a paralleled to this carriage that is going on in the Punjab whoever may be responsible for it ? It is a disgrace to our ancient religion and the religion of the Prophet. Neither the Seers nor Maharishis, if they will be looking on, will be satisfied with what is going on in the country. Is it not time for us wisely to consider what is responsible for this ? We are all brothers. Can it be said that Mr. Pocker is different from myself ? He speaks Tamil and I also speak Tamil. He cannot speak in Hindustani whereas I am able to understand and speak Hindustani in a smattering way. If tomorrow I become a Muslim do you think I will become less of a Madrasi ? Unfortunately the country has been cut up and those people who may be responsible for it may be proud of it. After all it is like a

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fight between two brothers. I am a lawyer and I know of cases where a younger brother files a suit against the elder brother and where the elder brother says that the younger brother was not born to his father. After the case is over if there was marriage in elder brother's house the younger brother refuses to attend the same and the elder brother says It is no doubt true that we fought, but I am not going to celebrate the marriage if my younger brother does not attend it ? Similarly some day Pakistan also may come back to us. What will be the effect of my friend Mr. Pocker's amendment ? You go in the morning to the mosque and I go to the temple. But there will have to be a common platform where we have to join together on many matters. If there is famine we will all have to fight it. We expect if there is to be joint electorates, we will come together some time. Under the joint electorate system a Hindu can represent the Muslims and a Muslim the Hindus. I will represent much more than you do because I know I am not a Muslim and as such I will always have an inferiority complex and so look after your interests well. So why not take advantage of that ? My friend Mr. Pocker says "I want a good, honest representative". What is the definition of goodness ? Goodness does not come by being a Muslim or a Hindu. I believe he wants a man who effectively supports the Muslims cause. When there was carnage in Bengal, we did not bother to enquire how many were Hindus and how many were Muslims and we do not know even to this day. Unfortunately Hindus also sometimes feel "we are still human beings; when the country has been divided, why should they be protected still ? Let this business, be done away with". For Heaven sake avoid all this. Now he says that he is not the proper representatives of the Muslims who has not got their confidence. Even a Hindu or a Muslim Priest will run the show if India is to become a Religious State instead of a Secular State. Nothing more than that. Therefore these are not the things that will bring us together. I am a Hindu and if you allow me to represent you, I will come to you at least every 4 years. Similarly a Muslim can come to the Hindus. Ultimately we will come together. This is possible only if we have joint electorates. If I do not come on his vote, if I am not his representative, what on earth is there to bind me to him ? From the practical point of view, I ask my friend who moved this amendment if he is, one or five or twenty in a House of two hundred, what is it that he can do without the co-operation of the others ? Is he going to preach here Islam or read the Quran ? Will I be allowed to the Vedas here ? In this House, what is it one can do without the help of the majority ? I expect very soon a secular State will arise here. Are you going to stand between us and the establishment of a secular State ? Will you not profit by the events recorded history ? What was America 150 years ago ? Will you not take a leaf out of their history books ? 150 years ago, persons who were driven from their soil, sailed in S. S. May flower in search of other lands and reached "West India". That is the present America. Today they are the masters of the world in the economic field. They are the persons who today do this and that. They are teaching our people, who knew these things 5,000 years ago, how to clean our teeth and wash our faces. They do not know the fact that we do not take our food without first taking a bath. They come and tell us these things because, on account of the disintegrating forces working in our country, they have stolen a march over us. Did not the Italians, the Frenchmen, the Spaniards and others come together in the continent of America ? Therefore it is up to us to create a secular State. It would no be wrong for me to quote Mr. Jinnah in this connection, whatever, he might have said before Partition. He said: 'My idea is to have a secular State here'. Somebody asked : "Religious or secular ?" He said: 'Hindus and Muslim are alike to me. They must have equal opportunities. I am trying to make a common nation for

both of us. Why should our Muslim friends who owe allegiance to Mr. Jinnah and whom they revere as I do, think differently in this matter? I am not prepared to call a single individual a minority. I do not like the word 'minority' at all. Therefore I am saying that I am opposed to this amendment.

Mr. B. Das (Orissa: General) : Mr. President, may I ask whether we are to be allowed to discuss the things we have discussed for years again here on the floor of this House ?

Mr. President: I appreciate the point of order raised by Mr. B. Das. I expect Members to confine themselves to the subject matter of the motion which it is true is such that we can talk interminably on many points. I expect Members to have an eye on the clock also. Mr. Ayyangar has already taken more than 20 minutes.

Shri M. Ananthasayanam Ayyangar: Yes, Sir, but this is the first time I am speaking on this subject which is uppermost in our minds. It is not easy not to refer to certain happenings. In the Punjab, of the 165 civilian officers who were sent from here to Karachi by train, only two have returned. They have come back to India. That is the news in the "Hindustan Times" yesterday. What has become of the 163 civil servants, belonging to the Secretariat at Delhi ? Their fate is not yet known. I would spend not 20 minutes but even 20 years weeping and crying over happenings such as this I am trying to find a solution. I am trying to request my friend Mr. Pocker and appeal to him once again to develop a secular State. Ample provision for cultural, linguistic and educational matters has been made. And if there is any difficulty, let us sit together and surmount it. Let not the interest of any single community or Individual be sacrificed for the cause of the rest.

As regards political matters, let us sit together and solve our problems. We have patched up our differences : if now we can build up a secular State, we can rear up our heads as the foremost, nation in the world. We have nowadays been thinking of the culture of the West. The sun of wisdom that rose in the East has set in the West unfortunately. Let us revive that Sun. Let us make him rise gloriously in the East. With these few words I request my friend Mr. Pocker and the other gentleman who has joined him in tabling this amendment to withdraw it and stand unanimously for joint electorate. (*Cheers*)

Mr. President: I now call upon Mr. Mahavir Tyagi to speak I hope he will be short to the point and that he has heard my remarks made a few minutes ago.

Shri Mahavir Tyagi: (U.P. : General) : *[I am sorry the previous speaker has alarmed you, Sir. I have come here to oppose the amendment moved by Mr. Pocker. In compliance with your instruction I will not take much time, but before we proceed to the consideration of this question. I want to remind the House that our country has had a good deal of the experiment of separate electorates. Hindus and Muslims, who are here, are very familiar with it. This injection of deadly poison was given by the English who ruled over us.]*

B. Pocker Sahib Bahadur: On a point of order, Sir, I understand that the Honourable Member is very familiar with the English language. Anyway, I would be very grateful if the Honourable Member will speak in English so that I may be able to follow him.

Shri Mahavir Tyagi: I can speak in English. But English not being my tongue it is apt to be ungrammatical and un-idiomatic; if my friend is prepared to face this kind of English, I am quite willing to oblige him.

Sir, when they came to keep us under bondage, they successfully gave us that injection. They in fact sowed the Dragon's teeth in the country and it grew and made us all communally conscious as Hindus and Muslims. They

[] English translation of the Hindustani speech.

also made us irrigate this crop and we did it too willingly with our own blood instead of with water and the crop was well tended by them and today we are reaping that deadly crop. After that bitter experience of their diplomacy, if even today in this House we stand up and say, when we are building a new, when we are legislating for future generations for our peace and for our happiness, that we should start with that poisonous injection again, this is something to which I cannot agree. We have seen enough of it. Today, when, as I just now submitted, we are reaping that deadly harvest, when on the borders of our country there is bloodshed and the worst disorder which civilisation has ever witnessed, when places lying only a hundred miles from here are not safe, it is time that we realised that all this is the result of the separatist tendency injected into our veins by the Britons. Now that we have thrown, the British seven seas away from here it is surprising that we should again be asked to take up that separatist tendency and put that poison again into the Constitution which we are making today. I submit that the country as a whole is opposed to this. Personally I am a believer in unadulterated socialisation of both property and politics. I believe property should be socialised. I am also a believer in unadulterated democracy, which means a true representation of the people; true without any weightage, without any favour; without any disregard of the rightful privileges of any section of the people or any individual. Without depriving even the individual, of this rights, there must be a free representation of all, and the legislatures—Central or Provincial—must fully represent all the people and must represent in a free manner. If we put obstacles in the way of any or stop the passage of others or give privilege to others, that will mean that the democracy or the representation of the people will not be as true and pure as it ought to be in an unadulterated democracy. To give the right of suffrage to a section of people on religious basis is something which the world does not understand. After all, we do not come here to legislate about religions. We come here to legislate and make laws to see that peace is maintained in the country on a country-wide basis. It is not a question of one section being legislated against or legislated in favour it is not a question of one or the other section being considered. It is the whole country which has to be taken into consideration when we legislate. So the idea of getting representation from religious sections is simply ridiculous. We have had it till now, but we cannot continue it because the future constitution is not meant to be a constitution of religions. A State cannot be a confederation of so many religions or sects or groups. The laws and the administration of the country can only be entrusted to and can only be handled by those who command the biggest confidence in the country. The major political party will, as a rule, be in charge of the administration of a country. That is recognised everywhere. The minority must remain a minority. Now before a minority there is only one alternative: it is to be loyal to the majority and co-operate and gain the confidence of the majority. There are also other alternatives—which of course I do not advocate nor support—according to these alternatives minorities become extinct; and on the other side of the country this process of extinction is going on at present. Here Sir, I may be permitted to say that we belong to that part of the country which has guaranteed at the very outset safety of life and property to every one, to every individual in this country. We base our politics on love and truth and not on fear and hatred as is done by our neighbours on the west. We do not believe in discarding minorities or finishing them or killing them *en-masse*, because we are believers of conversion and we are confident of being able to convert them one and all to our side. We believe that minorities will in the long run be reduced to one entity and that entity would be one un-adulterated unity of people a democracy. We want to dissolve, minorities into the majority by 'justice'. We want to rule this country and to run its administration on

the basis of perfect justice. These minorities cannot be recognised because in a country whose administration is supposed to be run on the basis of justice alone, there is no question of minority or majority. All individuals are at par. We cannot recognise religion as far as the State is concerned. I wonder if my friends who have suggested separate electorate for minorities would appreciate the remarks of a great leader of India. It is Mr. Jinnah who in his address to the Pakistan Assembly says:—

“We are starting with this fundamental principle that we are all citizens and equal citizens of one State. We would keep that in front of us as our ideal and in course of time you will find that in the political sense the Hindus will cease to be Hindus and Muslims will cease to be Muslims because religion in the personal faith of each individual.” That is what the Governor-General of one of the parts of India says, Sir, he was known here to be the worst communalist, as it were, but even he, when he takes over the charge of a State, even he, when he takes up the reins of a communal State and the administration of a big country composed of Hindus and Muslims, he wags so. It is very well known that his State is a Mohammadan State and they are proud of its being Mohammadan and they proudly call it “Pakistan”; even in that State he says, religious will not be taken notice of by the State. Every individual will be an individual and Hindus will lose their Hinduship as far as their political rights and privileges are concerned. I submit Sir, that even they are believers of oneness of their people. Why should we introduce this separatist tendency into our politics? Sir, at another place the same very great leader says “you are free to go to your temples and places of worship in this State of Pakistan. You may belong to one religion or caste or creed, that has nothing to do with the business of the State.” I submit Sir, Constitution making is the business of the State Muhammadans as such have nothing to do with it. They are here because they are citizens of India. We are one nation which stands for justice. We will legislate in a manner that will be a guarantee against all injustice, and we shall not recognise any sections. Sir, this amendment is not in keeping with the high principles we last adopted and which we have passed as resolutions in the past.

Now with regard to the Report, I am glad to say that it is practically an unanimous one. Though I could not yet agree to the principle of reservation of seats, yet as we are just making some arrangement for minorities to be represented temporarily, I will not stand in the way. It is perhaps to satisfy their fears that some accommodation of their desires has been made. But I have failed to appreciate why they are allowed the liberty to stand for and contest general seats too. Every one knows that they cannot be successful from any extra seat after they have had their due share of seats reserved. Their failure will be quoted after ten years, as arguments against the removal of this reservation clause.

Suppose a candidate offers himself to stand for a general seat. To expect a Hindu to vote for a Mohammadan, especially in the Punjab side, is something which is terribly impossible. Nobody will vote. The circumstances have so changed. This again on account of this very separate electorate system of which we have practical experience. It will practically be a mockery to allow minority candidates to stand from the general seats as well. I submit, Sir, we should have only one electorate and that should be a joint one. The idea of accommodating the minorities for even ten years is not exactly in accord with our principles. I think, we have compromised and compromised enough. I am afraid even this compromise might also prove futile. Even this may have bad results. But in spite of this compromise. I submit that the report is very good and the members of the Committee are really to be congratulated for having produced practically a unanimous report which they have submitted to this House. We are proud of them and we shall also be proud of the joint electorate which they have recommended to the country. I hope we will accept their proposals as they are.

Shri T. Prakasam: (Madras: General) : Sir, many of the leaders of the so called minorities offered thanks and congratulations to the Honourable Members of the Committee and its Chairman, Sardar Vallabhbhai Patel for the generosity shown by the majority in this direction. I should

[Shri T. Prakasam]

say, Sir, they should be congratulated not for the generosity shown, but for discharging their duty as they have done now. There is nothing of generosity which has been shown by the members of the Committee or by you, Sir, as Chairman of the Committee. It is a duty that has been cast upon the majority which has not been discharged for such a long time. All these minorities have been allowed to be formed and developed to this stage, until we are choked with the poison of communalism that has been there for such a long time. All this could have been checked in the past. We have been paying now, Sir, for all the sins of omissions and commissions of the majority, itself. It was the duty of the majority, Sir, to see that all these separatist tendencies had not developed, separate communities had not been formed. Now they have been put together just as they had been at one time. This is a country, as every one knows, where in the beginning there was only one religion, one God and one form of worship. All these later things had come up gradually. Look into the sequence of dates of all these religions that have been started. Take the Christian religion and mark the period when it came into existence. Take the Muslim religion and mark the period when it came into existence. What was the state of affairs before these religions came into existence? Before two thousand years and one thousand and three hundred years, there were no such things as these that prevail today.

But these religions are not and should not have been responsible for all the troubles that we witness today. I was present in Multan when the first Hindu-Muslim riot started and from there it is going on year after year, for such a long period, until at last it has reached this stage. It is a very unfortunate state of affairs which could have been checked earlier. What is the reason for all these things? It is not the religion that is responsible. If today in the Punjab all these massacres and crimes are going on, it is not exclusively due to difference in religion. On the top of this so-called religion, what has come about is the desire, desire for profit, desire for office and desire for encroachment on others' properties. It is that thing that has come on the top of these things. I am very glad, Sir, that all these 27 years or 31 years of struggle; from the coming into this country of Mahatma Gandhi, though the whole thing developed into violence from the very first year or the second year, in spite of it the majority had been watching carefully to see that these things are bridged, until at last, it has come to the honour and credit of the national cause, of the National Congress for the way in which the result has been brought about. At last, the victory has been won and the British people have left this country. In the wake of their leaving the country, all these troubles have come up in so many ways. I must congratulate this Committee and Sardar Patel for the manner in which all these communities which had been statutorily separated for such a long time, have been brought together and made to feel as one and made to agree. That is the highest point that has been gained. Even among the Muslims, Sir, after the so-called Pakistan or partition, friends who are sitting here, who are from almost every province, they are all agreed on the 'need for joint electorates. We should have had joint electorates for the last 25 years and there would have been no trouble in this country at all. It is only the desire for office, the desire for profit, the desire for encroaching upon others' rights dislodging others and taking possession that has brought about ruin upon this country. It is that thing that this national movement and struggle started under Mahatma Gandhi has tried to harness, check and focus into one and I should like to congratulate Sardar Patel for the way in which he has managed to bring all these different minority communities together and made them agree.

Also it is to the honour of this Committee and the exclusive privilege of this Committee and I should say of the people of this country to have

secured this success and brought about a constitution like this which is being prepared. In that constitution, yesterday or day before yesterday, it was mentioned that one of the communities which was treated as a separate community should not be treated as a separate community. This is an occasion on which we are framing a constitution, a Union Constitution, to have all the people put together. Let them not disagree; let them be treated as part of the majority. That is the way in which things are being forged and I agree that these are things which have gone wrong for ages together and for centuries together and that they could not be brought together in one moment and made to go together: That is why this committee has made this report in this careful manner and it is to the credit and honour of this committee that this great result has been achieved. I therefore congratulate this Committee and its Chairman Sardar Patel.

I am proud of the fact that you and I and all of us who have part take in this great struggle have survived to see this result and the way in which this is being forged and we are now almost coming to the end of it. Within ten years it is stated all these things will disappear. I have no doubt they would disappear within ten years or even less than that. Every one of us in the country should bear in mind that this does not take away from us the duty that is cast upon us in serving the country to remove this desire for place desire for office and desire for others' properties.

We are reading in the press all that is going on in the Punjab today and all that is with a view to get hold of the properties and privileges of those who are on the top. It is the duty of the Governor-General of Pakistan and the Government there to see that things are not allowed to go on in the manner in which they are going on and I have no doubt that every step is being taken on this side, so far as our Government is concerned, and I hope that the Pakistan Governor-General and his Government, would also see that people from here are allowed to go into West Punjab and see things for themselves. I would like to go into West Punjab today, if I am allowed. Can I get the passage ? Will I get the facilities to go and see with my own eyes myself what is going on there just as I can go to East Punjab and see what is going on there? It is these things that have got to be secured and I am sure that our leaders will see that they are secured. I have therefore much pleasure congratulating the Committee and supporting the report.

Chaudhuri Khaliquzzaman (U.P.: Muslim) : Sir so much has been said in favour of and against joint electorates and separate electorates during the last three decades that I do not think it is possible for anyone to add any new argument for or against them. However, I feel that it is my duty to point out one very serious objection which was urged against separate electorates. The objection was that it has helped a third party. Fortunately for us all that third Party is no more here. Should we really visualise the situation as it stands today in its true perspective, much of the suspicion that hangs round this system of separate electorates will disappear. After all, if they are conceded to us, what will happen to this great majority ? Today there is no third party to whom we can appeal. We have been witnessing things here. If anything happens in East Punjab or if there is any untoward incident in Delhi itself we cannot go to the Governor-General or to any one else. We have to go to Sardar Patel, because he has become the final arbiter of the fate of the minorities. What use is then that people should cite history, which history is as dead as bones ? Surely, there were very serious objection. Rightly or wrongly the Muslims did not realise that separate electorates were the cause of dividing communities. But today those arguments do not hold good. If you conceded separate electorates, the Muslim community feels that they will help in returning their true representatives, representatives who will lay before you—not to any other power, not to any

[Chaudhuri Khaliqzaman]

other Government, not even to Pakistan—our grievances and our claims, therefore I beg of you and beg of this House to consider the new situation in which this question is being discussed.

I know and I am fully conscious that a great body of this House is opposed to separate electorates. Considering the short shrift that this demand received in the sub-committee and in the Advisory Committee on minorities, I had very little hope that we shall be listened to here but whether we are listened to or not, that is not the point. The question is: will the majority community here take into account the new situation in which this demand is made ? Cast away your suspicions. I know that there is a large body of opinion both outside and inside this House which is not prepared to cast away these suspicions which have been created in the past against the Muslims. I would beg of you to realise that when we here accepted the citizenship of this state, we meant to be honest, we meant to be sincere. We have got to live here as a minority but living as a minority and as a citizen does not mean that we have not got any rights to urge for our own community or we should desist from doing it. But if we do that, I hope the old suspicions will not be revived, because whatever happens, whatever the decision of the majority might be, take it from me that the Muslims will accept it. But it is up to you to see whether you should not consider this demand of the Muslims which they feel is likely to give them greater protection than otherwise, and see that, it is accepted by this House. Therefore without giving any other argument, because I have no arguments to advance, I only appeal to you to consider the situation in the light of the changed circumstances and believing that it is the majority alone on whom we are going to rely for our demand, I hope you will accept it.

The Honourable Pandit Govind Ballabh. Pant (U.P. - General) : Mr. President, I regret that the mover of the resolution should have considered it necessary to introduce this subject at this stage and in the existing circumstances. I had thought that we had outgrown the stage when sentiment instead of reason used to overpower us. My friend the leader of the Muslim League Party asked us to take note of the changed circumstances. That is exactly what I ask him to do. I regret very much that the magnitude of the great change that has come over this country has not been adequately appraised or appreciated. The mover does not seem to realise that since the 15th August the administration of this country has been made over lock stock and barrel to the People of this country. I may also assure him and those associated with him that I am trying to look at the question exclusively from the point of view of the minorities. I am one of those who feel that the success of democracy is to be measured by the amount of confidence that it generates in different sections of the community. I believe that every citizen in a free State should be treated in such a manner that not only his material wants but also his spiritual sense of self-respect may be fully satisfied. I also believe that the majority community should, while considering these questions, not only try to do justice, but throughout it should be informed and inspired by genuine feelings of regard for the minorities and all its decisions should be actuated by a real sense of understanding and sympathy. So when I am opposing this motion, it is because I am convinced that it would be suicidal for the minorities themselves if the system of separate electorates were countenanced and upheld now. In fact, we seem to forget the great change as I said which has come over the political status of our country. In the olden days, whatever be the name under which our Legislatures functioned, in reality they were no more than advisory bodies. The ultimate power was vested in the British and the British Parliament was the ultimate arbiter of our destiny. So long as the power was vested in the foreigners, I could understand the utility of separate electorates. Then perhaps the representatives of different communities could pose as the full-fledged advocates

of their respective communities, and as the decision did not rest with the people of the country they could satisfy themselves with that position. But it is not merely a question of advocacy now. It is a question of having an effective decisive voice in the affairs and in the deliberations of the Legislatures and the Parliament of this free country. Even if in an advisory capacity one were a very good advocate, he cannot be absolutely of any use whether to his clients or to himself if the Judge whom he has to address does not appreciate his arguments, sentiments or feelings, and there is no possibility of the Advocate ever becoming, a Judge. I want the Advocate to have also before him the prospect of becoming a Judge. In the new status that we have now secured, every citizen in this country should in my opinion be able to rise to the fullest stature and always have the opportunity of influencing the decisions effectively; so I believe separate electorates will be suicidal to the minorities and will do them tremendous harm. If they are isolated forever, they can never convert themselves into a majority and the feeling of frustration will cripple them even from the very beginning. What is it that you desire and what is our ultimate objective? Do the minorities always want to remain as minorities or do they ever expect to form an integral part of a great nation and as such to guide and control its destinies? If they do, can they ever achieve that aspiration and that ideal if they are isolated from the rest of the community? I think it would be extremely dangerous for them if they were segregated from the rest of the community and kept aloof in an air-tight compartment where they would have to rely on others even for the air they breathed. I want them to have a position in which their voice may cease to be discordant and shrill but may become powerful. The minorities if they are returned by separate electorates can never have any effective voice, and what have Mr. Jinnah, and other leaders of the Muslim League Party repeatedly declared? They had separate electorates and separate electorates with weightage and it was their definite pronouncement, after all the experience they had for the last three decades of separate electorates, combined with weightage, that it was an illusory safeguard and that it did not secure their rights and their interests. In spite of separate electorates and weightage which the Muslims and the Hindus enjoyed in the Provinces of Bengal, Bihar and the North-West Frontier what have we not been hearing all these days during the last many months? Has the system of separate electorates helped them? Have separate electorates even with weightage been of any real assistance to them in this pitiable predicament? It is really unfortunate that in spite of all this experience there should still be a demand for separate electorates today.

Then again what do the minorities desire? Do they want to have any share in the Government of the country and in its administration? I tell you, you cannot have a genuine seat in the Cabinet if you segregate yourself from the rest of the community, for the Cabinet can only act as a team in a harmonious manner and unless every member of the Cabinet is answerable to a common electorate the Cabinet cannot function in a fruitful manner. Are you prepared to give up your right of representation in the Government? And will you—be satisfied with the pitiable position of being no more than advocates—if advocates alone you wish to be—when your advocacy will be treated, if not with scorn and ridicule, but in any case with utter disregard and unconcern, which is bound to be the case when those who are judges are not in any way answerable to your electorate? Your safety lies in making yourselves an integral part of the organic whole which forms the real genuine State.

Further, what is your ultimate ideal? Do you want a real national secular State or a theocratic State? If the latter, then in this Union of India a theocratic State can be only a Hindu State. Will it be to your interest to isolate yourself in such a manner? Will this State care for those who have no share or voice in the election of the representatives who will have real control of the affairs of the State? Will anything be

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more dangerous than that? Then you have also to consider, if such a system is introduced, how it will react on you now and hereafter. If you have separate electorates for the minorities, the inevitable result is that the majority becomes isolated from the minorities, and being thus cut off from the minorities, it can ride rough-shod upon them.

So I ask you whether you want the majority to be cut off in such a way that the majority will not be answerable to anybody belonging to your community and no one in the majority will have to care for your sentiments or for the reactions of his acts on you and your associates? Nothing will be more harmful than that. And do you not see the signs today? Do you not see the upsurge of communal passions even in quarters which had remained uncontaminated in the past? I have no doubt that from whichever point of view you may look at it, it will be extremely detrimental to your interests if you now clamour for separate electorates. Apart from other things it is an obsolete anachronism today. In a free country nobody has ever heard of separate electorates. After all, what is the essence of democracy? For the success of democracy one must train himself in the art of self-discipline. In democracies one should care less for himself and more for others. There cannot be any divided loyalty. All loyalties must exclusively be centered round the State. If in a democracy, you create rival loyalties, or you create a system in which any individual or group, instead of suppressing his extravagance, cares nought for larger or other interests, then democracy is doomed. So, separate electorates are not only dangerous to the State and to society as a whole, but they are particularly harmful to the minorities. We all have had enough of this experience, and it is somewhat tragic to find that all that experience should be lost and still people should hug the exploded shibboleths and slogans. In the olden days one could have shouted like that; but now, especially these days when we are seeing all the orgies of violence before our very eyes when we are every hour hearing the harrowing tales of massacres, of rapine, of plunder, of rape and what not, which make everyone of us hang his head in shame if not to hang himself by the neck, then I say, does it not occur to you that we have paid amply for this abominable cult of separation and we must grow wise?

We are now going to be free and we have paid a price for this freedom; we have Pakistan on the one side and the Union of India or Hindustan on the other side. There has been too much talk of treating the Muslims as aliens in Hindustan or the Hindus as aliens in Pakistan. Will this institution of separate electorates encourage the disruptive tendencies or will it bring about that cohesion without which neither state can exist? Do you want the citizens of one State to look to their co-religionists in the other State for their protection, or do you want them to be treated as equal citizens of their own free sovereign State? I want all minorities to have an honourable place in this Union of India. I want them to have full opportunities for self-realisation and self-fulfilment. I want this synthesis of cultures to go on so that we may have a State in which all will live as brothers and enjoy the fruits of the sacrifices of those who gave their all for the achievement of this freedom, fully maintaining and observing and following the principles of equality, liberty and fraternity. (*Loud cheers*).

Mr. President: We shall rise now and meet again at 3 O'clock.

Some Members: The question may be put.

Mr. President: If that is the wish of the Assembly, I shall put the closure.

The question is : that the question be now put.

The motion was adopted.

Mr. President: I call upon the Honourable Sardar Patel to reply, if he wishes to say any thing.

The Honourable Sardar Vallabhbhai J. Patel: Sir, I will not take much time I was sorry to learn that this question was taken seriously

because when this question came before the Advisory Committee, there was not so much debate as I heard here today. My friends of the Muslim League here who moved this amendment and supported it took it for granted that they had a duty to perform in a sense. They had been pressing for separate electorates and enjoying it for a long time and felt that they should not leave it all of a sudden, but just move the motion and have the vote of the House. But when I heard the elaborate speeches I thought that I was living in the ages in which the communal question was first mooted. I had not the occasion to hear the speeches which were made in the initial stages when this question of communal electorates was introduced in the Congress; but there are many eminent Muslims who have recorded their views that the greatest evil in this country which has been brought to pass is the communal electorate. The introduction of the system of communal electorates is a poison which has entered into the body politic of our country. Many Englishmen who were responsible for this also admitted that. But today, after agreeing to the separation of the country as a result of this communal electorate, I never thought that that proposition was going to be moved seriously, and even if it was moved seriously, that it would be taken seriously. Well, when Pakistan was conceded, at least it was assumed that there would be one nation in the rest of India—the 80 per cent. India—and there would be no attempt to talk of two nations here also. It is no use saying that we ask for separate electorates, because it is good for us. We have heard it long enough. We have heard it for years, and as a result of this agitation we are now a separate nation. The agitation was that “we are a separate nation, we cannot have either separate electorates or weightage or any other concessions or consideration sufficient for our protection. Therefore, give us a separate State”. We said, “All right, take your separate State”. But in the rest of India, in the 80 per cent of India, do you agree that there shall be one nation ? Or do you still want the two-nations talk to be brought here also? I am against separate electorates. Can you show me one free country where there are separate electorates ? If so, I shall be prepared to accept it. But in this unfortunate country if this separate electorate is going to be persisted in, even after the division of the country, woe betide the country; it is not worth living in. Therefore, I say, it is not for my good alone, it is for your own good that I say it, “forget the past. One day, we may be ‘united. I wish well to Pakistan. Let it succeed. Let them build in their own way, let them prosper. Let us enter into a rivalry of prosperity, but let us not enter into that rivalry that is going on today in the land of Pakistan. You do not know that we are sitting in Delhi on a volcano. You do not know the strain that is being put on us because of what is happening near about. My friend the Mover of the amendment says the Muslim community today is a strong-knit community. Very good; I am glad to hear that, and therefore I say you have no business to ask for any props, (*Cheers*). Because there are other minorities who are not well-organised, and deserve special consideration and some safeguards, we want to be generous to them. But at the same time, as you have enjoyed this to a certain extent for a long time and you may not feel that there is discrimination, we agree to reservation according to population basis. Where is that kind of reservation in any other free country in the world? Will you show me? I ask you. You are a very well-organised community. Tell me, why do you behave like a lame man? Be a bold and a strong man, as you are well-organised and stand up. Think of the nation that is being built on this side. We have laid the foundation of a nation. From now, under this new constitution, Chaudhuri Khaliquzzaman says the British element is gone, and therefore forget the suspicious. The British element is gone, but they have left the mischief behind. We do not want to perpetuate that mischief. (*Hear, hear*). When the British introduced this element they had not expected that they will

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have to go so soon. They wanted it for their easy administration. That is all right. But they have left the legacy behind. Are we to get out of it or not? Therefore I say, and appeal to you. "What are you doing"? Think about it. Do you expect any one man in this country outside the Muslim League who will say 'Let us now also agree to separate electorates'. Why do you do this? If you say "We want now to have loyalty" on this side to this nation", may I ask you "Is this loyalty?" Are you provoking response of loyalty from the other side ? I have no intention to speak on this, but when the Mover of this amendment talked such a long time and it was supported by the Leader, then I felt that there is something wrong again still is this land. Therefore, my dear friends, I ask you "Do you want now peace in this land? If so do away with it; you can do no harm either to Pakistan or India or anything, but only you will have all over the country what is happening in this country near about us; if you do want it, you can have it." But I appeal to you "Let us atleast on this side show that everything is forgotten" and if we want to foreget then let us forget what has been done in the past and also what is responsible for all that is happening today. Therefore, I once more appeal to you to withdraw the amendment and let us pass this unanimously. so that the world outside will also understand that we are united. (*Cheers*).

Honourable Members: Withdraw!

Mr. President: I have now to put the amendment first to vote. The amendment reads :

"That on a consideration of the report of the Advisory Committee on minorities, fundamental right etc. on minority rights this meeting of the Constituent Assembly resolves that a election to the Central and Provincial Legislatures should, as far as Muslims are concerned, be held on the basis of separate electorates."

The motion was negatived.

Mr. President: I now put the original motion to vote. It reads:

"All elections to the Central and Provincial Legislatures will be held on the basis of joint electorates."

The motion was adopted.

The House then adjourned till 3 of the Clock in the afternoon.

The Constituent Assembly of India re-assembled after Lunch at 3 p.m., Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Mr. President: We shall proceed with further discussion of the items, Sardar Patel.

The Honourable Sardar Vallabhbhai J. Patel: Sir, I move the proviso to the first item—

“Provided that as a general rule, there shall be reservation of seats for the minorities shown in the schedule in the various legislatures on the basis of their population:

Provided further that such reservation shall be for 10 years, the position to be reconsidered at the end of the period.”

I move this for the acceptance of the House.

Mr. President: There are some amendments. The first is by Pandit Thakurdas Bhargava.

Pandit Thakurdas Bhargava (East Punjab : General) : With your permission, Sir, I propose to move my amendment No. 19 in List I and not 18.

“That in the first Proviso to para. 1 for the word ‘seats’ the word ‘representation’ be substituted.”

I am apply to move this amendment as it affords an opportunity to Mr. Munshi to move another amendment which I consider is the right one. I am sorry to say that I am not inclined in the present circumstances to say anything in support of my amendment.

Shri K. M. Munshi: (Bombay : General) : Mr, President, Sir, I move the following amendment to the amendment of Pandit Bhargava :

“That in amendment No. 19 of List I, dated 25th August 1947, for the word ‘seats’ the word ‘representation’ be substituted”, the following words be substituted:—

“after the word ‘schedule’ the words ‘and the section of the Hindu Community referred to in paragraph 1A hereof’ be inserted.”

The words of the proviso are these—

“Provided that as a general rule, there shall be reservation of seats for the minorities shown in the schedule.”

and if my amendment was adopted it would read as follows:

“reservation of seats for the minorities shown in the schedule and the section of the Hindu Community referred to in paragraph 1A hereof.”

I have also moved an amendment to No. 85 whereby the item of Scheduled castes is going to be removed to a separate para. No. 1A and not included in the schedule.

The object of this amendment is to clarify the position of the so-called Scheduled Castes. The word ‘minorities’ so far as international treaties and international law is concerned, is only restricted to racial, linguistic and religious minorities. The Harijans, generally known as Scheduled Castes, are neither a racial minority nor a linguistic minority, not certainly a religious minority. Therefore in the interest of exact phraseology this amendment was found necessary. It was only, as members of the House will remember, when the Government of India Act was moved that the definition of ‘minorities’ was so extended by Sir Samuel Hoare as to include every minority which the Governor thought fit to consider as minority. This is a very-very mischievous extension of the term and my amendment seeks to clarify the position that so far as the Scheduled Castes are concerned, they are not minorities in the strict meaning of the term; that the Harijans are part and parcel of Hindu community, and the safeguards are given to them to protect their rights only till they are completely absorbed in the Hindu Community.

Another reason is this, and I might mention that that reason is based on the decisions which have already been taken by this House. The distinction between Hindu Community other than Scheduled Castes and the Scheduled Castes is the barrier of untouchability. Now, by the

[Shri K.M. Munshi]

Fundamental Rights which we have accepted, untouchability is prohibited by law and its practice is made a criminal offence under the law of the Federation. We have also accepted in the Fundamental Rights that no public place should be prohibited to anyone by reason of his birth. So far as the Federation is concerned, we have removed the artificial barrier between one section of the Hindu Community and the other.

In view of those facts, any safeguard as a minority, so far as the Scheduled Castes are Concerned, is illogical and will possibly prevent their complete absorption in the Hindu fold. I therefore submit that the amendment which I am moving clearly defines the position.

Mr. H. J. Khandekar (C. P. & Berar : General) : *[Mr. President my amendment is very simple, and it is:—

That in Appendix 5 wherever the word “population” has appeared in the proviso to para 1 at the end of para. 3(c), and in para. 5 the following words should be added after that word:—

“In the case of the Scheduled Castes according to 1931 census”. I want to tell the House my special reason for moving this amendment. India’s population is increasing day by day. If we review the period between the census of 1911 and that of 1941, we discover that India’s population has reached the figure of 40 crores. I want to place before you a fact which you all know that the Scheduled Castes belong to the lower strata which is in no way behind higher classes, in respect of increasing its numbers. If one child is born to a caste Hindu then four are born to a Scheduled Caste Hindu but it is very sad and surprising that the Population of Harijans has been decreasing since 1931. I do not know why it is so. When we sought the reason for it we discovered that in 1941 Census in the provinces of Bengal and Bihar, some of our Muslim brethren got the Scheduled Castes registered as Muslims on the one hand and Caste Hindus got them registered as Hindus on the other. And this is the reason why ever since the 1931 Census our population has been continuously declining and in 1941 Census the strength of Scheduled Castes was less than in the 1931 Census by 2 crores. Therefore I have to place this amendment before you, because the minorities are getting their rights in the provincial and Central Assemblies according to their numerical strength, and if we get our rights according to 1941 Census then our representation will be much less. The reason is that according to 1931 Census we are few but even that is tolerable as compared to the 1941 Census, When the latter was taken the war was on and it is possible that the census might not have been taken correctly, especially of the Scheduled Castes. Caste Hindus got Scheduled Castes registered as Hindus and the Muslims got them registered as Muslims. Therefore, I suspect that the 1941 Census is absolutely wrong. Not only I but the whole Harijan community throughout the country loudly proclaimed that our strength as shown in the 1941 Census was wrong and that our representation should not be based on that figure. Now there is no way out except that the mover of this resolution may give us an assurance that census will be taken again, in which case I will be prepared to withdraw my amendment. If the census had been taken fairly then our strength would have been much more, but as regards 1941 Census, I suspect that it is not a correct census so far as we are concerned. From this standpoint I put this amendment before you. I am aware that every member of this House has great sympathy for Scheduled Castes. I have heard many speeches. Many leaders sympathise with us, but that is of no use, if it is merely verbal. People say and I also affirm that we are a part and parcel of the Hindu community. If you oppose this amendment of mine, it will only mean that you are not prepared to give us anything more than what we are getting according to the 1941 Census. When you say that they are Hindus and that a few seats less or a few seats more

*[English translation of Hindustani Speech begins.

does not make much difference, then I will request that if under the 1931 census we get a few seats more, the House should not hesitate to give us those seats. Therefore, I request the Honourable Mover that he may accept my amendment and give to the Scheduled Castes rights according to 1931 census. With these words I hope the Honourable Mover will accept my amendment.]*

Shri V. I. Muniswami Pillai: Sir, my friend Mr. Munshi made it clear that the Scheduled Castes form a minority. Still they are not considered to be a minority in view of the fact that they do not come under the three categories of the minorities mentioned. I may tell this House, Sir, till the 16th of May the Scheduled Castes were considered to be a minority in this respect, but later on when the Cabinet Mission came, by an unknown process they have eliminated the Depressed Classes, I mean the Scheduled Castes, and have taken only the other communities into account. But my friend, Mr. Munshi made it clear that since there is the disability for Scheduled Castes, they will be given all the advantages as a minority and they will on no account be deprived of the facilities that are required by them. In that view, Sir, I think my amendment can be accepted. I move.

An Honourable Member: Mr. President, Sir, I would like to know how an amendment to an amendment could be moved unless the original amendment has been moved.

Mr. President: It is a consequential thing. Therefore I have allowed this opportunity of moving it now.

Shri S. Nagappa: Sir, Amendment No. 88. My friend Mr. Khandekar just now moved that the Census of 1931.....

Shri K. M. Munshi: I rise to a point of order. This is with reference to para 3. Now we are on para 1 in the schedule.

Shri S. Nagappa: That was moved.

Shri K. M. Munshi: That was an amendment to para. 1. The House is debating at the moment para. 1.

Shri S. Nagappa: I am saying it is a similar amendment.

Mr. President: When we come to that, you can move it.

Shri K. M. Munshi: Sir, I have got another amendment. My amendment No. 2 relates to para. 1. It simply carries out the scheme of the first amendment that I have moved.

Mr. President: That is consequential.

Shri K. M. Munshi: Yes, carrying out the same idea. if you will permit me, Sir, to move formally. The amendment which I move is this:

“That the words ‘7. Scheduled Castes’ be deleted from the schedule and the following para, be added after it:

‘1A The section of the Hindu community referred to as Scheduled Castes as defined in Schedule 1 to the Government of India Act, 1935 shall have the same rights and benefits which are herein provided for minorities specified in the Schedule to para 1.’”

This is consequential to Harijans being removed from the category of minorities and placed as an independent category as a section of the Hindus. I move the amendment.

* English translation of Hindustani Speech begins.

Mr. B. Das: Sir, I wish to move an amendment to the amendment moved by Mr. K. M. Munshi. He said, "The section of the Hindu community referred to as Scheduled Castes as defined in Schedule I to the Government of India Act, 1935". I wish to move this amendment: Instead of "defined in Schedule I to the Government of India Act, 1935", the words "to be defined in the Scheduled to the Union Constitution Act."

I do not wish the Government of India Act to be repeated. The Committee has gone into the Schedule of the Government of India Act which is referred to, and we can accept it as a Schedule of the Union Constitution Act. This is the amendment I move. The words "Government of India Act, 1935" be dropped and the words "to be defined in the Schedule of the Union Constitution Act" be inserted. That is the amendment I wish to move.

Shri K. Santhanam (Madras: General) : Sir, I may offer one remark with regard to the latest amendment moved by Mr. B. Das. If we had prepared a Schedule, then it would have been relevant. Without a Schedule, to refer a matter to a non-existent schedule, I do not think is quite regular. Reference to Government of India Act, 1935 is proper because it gives a concrete reference.

The points which I wanted to make are three. First, in this provision there is the word "legislatures". I want to know if it is meant that this reservation should be both for the Lower and the Upper Houses. assume that the reservation is meant only for the Lower House, because, under the constitution which we have adopted, the Upper Houses in the case of the provinces are to be elected on the Irish model while in the case of the Federation, it is to be on the model of the American Senate, elected by the provincial legislatures. I do not think that reservation should have an application to the Upper Houses of the legislatures and I think it may be clarified by saying "various Assemblies".

Another point which I would like to point out is that this clause should not be made applicable to East Punjab and West Bengal. The conditions there are peculiar as a result of the partition. We do not know, exactly what is the distribution of population there today. Unless we know the distribution of population, any such principle as reservation of seats on the basis of population would have unpredictable effects and therefore, until we know exactly the distribution of population in these two provinces, I think this clause should not be made applicable. I think, as a general rule, these two provinces should be treated as exempted from the present Report.

Another point which I would like to impress upon the mover of this amendment is that if in a constituency, a minority community for which reservation is provided is in a majority, that constituency without any reservation should be treated as a reserved seat. Suppose for instance, in a District, Muslims, are in a majority and that is a constituency. There are one or two seats. There is no reason why there should be a reservation in that constituency. I think for all practical purposes it should be included. in the number of seats reserved. Unless it is done, it may lead to untoward consequences. Suppose in the whole District there is a Muslim majority and you have got three or five seats to that District. Are you reserving Muslim seats in a constituency where they are in a majority ? I think it will be absurd. If you do not reserve, then their seats may not be counted in the reserved seats this contingency must be duly provided for especially when this principle is to be applied to West Bengal and East Punjab. This will also become very material in certain parts of Bihar and in certain parts of the United Provinces. Therefore, my simple suggestion is, if in any constituency the minority community for which any reservation is made is in a majority, that constituency must be treated as already reserved by the very fact of the majority of the electorate and then the number of seats allotted to that constituency should be deducted from the total reservation. I think this is a detail

which has to be worked out with reference to each province, but the point deserves to be remembered.

There are many other considerations which arise from the fact of reservation on the basis of population into which I need not go now, and I shall deal with them when dealing with other matters. I suggest that these three points, namely whether reservation is to be made applicable to the Upper Houses, whether this principle is applicable to West Bengal and East Punjab and how the constituencies where the minorities for which reservation is made are in a majority are to be dealt with, all these matters should be clarified or at least should be left over for future consideration and decision.

Prof. Shibban Lal Saksena (U.P.: General): Mr. Munshi moved an amendment to the schedule but the schedule has not yet been moved. I think his amendment can come only after my amendment has been moved.

Mr. President: What Mr. Munshi did was to move an amendment to the proviso in the first clause and he has not touched your amendment.

Rev. S. J. Jerome D'Souza (Madras: General): Mr. President, I should like to make a few very brief general observations on these provisos just presented to this House by Sardar Patel. Before doing so, let me also, though somewhat belatedly, express, my very great gratification at the way in which these minority questions have been handled, the skill and tact with which a consensus of opinion has been secured in this report and the great kindness and spirit of understanding shown by Sardar Patel in dealing with these questions here and elsewhere in discussions.

I know that this question of reservation is something which has troubled the minds of a good many among us here, now that separate, electorates have to be given up; and if there were doubts about giving them up, the extremely cogent and powerful exposition which we heard this morning should set all doubts at rest and should bring even the hesitators that there might be in general agreement with the thesis that separate electorates must go. But, on the other hand, it is not absolutely clear and many here are not convinced that reservation is the happiest substitute for them. This is a compromise and like all compromises there is bound to be an element of illogicality in it. I say this not because reservation itself is something wrong. There is an impression that reservation is anti-democratic and that it should somehow be got rid of in the course of the next ten or fewer years. I beg to say that I do not agree with this. Reservation in itself is one way of securing a satisfactory working of the electoral principle. Sir, after all we ourselves in this very House and in our Provincial circles are providing for upper Houses in which there will be functional representation. In its own way functional representation is nothing else than reservation of a very special kind. You reserve seats for particular interest. The misfortune here is that reservation is made on communal lines and secondly, the reservation being made, the elections to the reserved seat are not made exclusively by those on whose behalf the reservation is made, but by a general constituency by a mixture in the electorates. Therein comes the difficulty and I beg this House to understand that the few misgivings that may have been expressed on this head are due to this and not to any other consideration. Nevertheless I believe that his principle of reservation with general electorates is a bold experiment though fraught with some risks, nonetheless worth making at this juncture for the satisfaction of all. It cannot be given up, because, if I may venture to remind the majority party in this House, for years together the Congress party has been associated with the demand that there shall be joint electorates with reservation. At this stage to give up reservation as some of my friends wish to do would be in contradiction to the promises held out, if not tactly at least by implicit agreement. That is one reason why we cannot go back on this and I am most happy once again to say that the way in which the feelings of the minorities have been interpreted in this

[Rev. S.J. Jerome D'Souza]

matter by Sardar Patel have filled us with satisfaction and reassurance and our thanks are due to him. As I said, we should all be happy if a day would come when reservation could be taken away and I am sure if that other opening, which has been left before this House and before this country, namely that general seats might be contested by members of those classes for whom reservation has been made, if that yields a certain amount of satisfaction, if a certain number of prominent and accepted people are elected on that basis, I am sure that the minorities will be encouraged at the end of a certain period to give up this reservation. This would dispel whatever fears they may have that under present arrangements people might be chosen to represent them who do not really represent them or who would not interpret their minds as they wish them to be interpreted. I would therefore conclude by appealing to this House to make this great experiment a success by working it in such a way that it satisfies minorities on whose behalf it has been placed here, that the men chosen may be men who would have the courage of their convictions and that the expression of their courageous convictions may not offend or in any other way displease the majority communities and that they would be taken as courageous and sincere people. Such an attitude would provide a safe outlet for feelings which might otherwise be suppressed and go underground, and thus prove an effective safeguard for the working of democracy.

We know that, though democracy of the parliamentary type has succeeded and succeeded remarkably well in England, it has failed elsewhere and it has failed precisely because majority parties or groups have known how to master the machinery of elections, they have known how to dominate public opinion. Formidable reactions against such method developed in certain European countries, and the ugly monster of fascism reared its head. But even fascism, ugly as it was, sought to obviate the difficulty of possible suppression of individual or minority opinion by thinking of a scheme which really comes to functional representation, namely, the forming of what they called a corporative State, a device which has fallen into unmerited disrepute, because of its association with Fascism. If, Sir, these things are borne in mind and if a very fair trial is given to this scheme of joint electorates with reservation, it is possible that our country in making this innovation, this bold experiment, might save democracy from one of its obvious dangers and might perhaps set an example for a solution of minority problems which may be accepted elsewhere. I say this knowing well that the chances are not very abundant as to complete success in the sense that I indicated but I do hope that this will not be looked upon as an unpleasant and forced concession made to minorities but that will be worked in the spirit in which it is given in order to give to those minorities the satisfaction for which they have pleaded before You.

Pandit Chaturbuj Pathak (C. I. States) : * [Mr. President, my colleague Mr. Khandekar has desired in his amendment that they (Scheduled Castes) should be given representation according to 1931 Census. In this connection I want to say a few words. If instead of 1941 census we give representation to the minorities on the basis of 1931 census, it will have its repercussions on other minorities as well. He has stated that there have been mistakes in the taking of Census because in some places they have been registered as Muslims and at other places they have been registered as Caste Hindus. Because the Muslims have increased their numbers, in this way, they would also like to increase their representation according to 1941 Census. And if the forthcoming census which will take place after 4 years is correct and according to it the strength of the Scheduled Castes increases, Mr. Khandekar will be tempted to suggest that they (Harijans) should be given representation not according to 1931 census, but according to 1951 census. I fail to see how this will be appropriate.]*

[] English translation of Hindustani speech.

Shri H. J. Khandekar: *[I only suggest that a Census should be taken before allocation of seats or the allocations should be deferred till the census of 1951, or that our numerical strength be fixed according to the 1931 census. For my community, I will accept representation on the basis of the 1951 census or on one that may be taken now. But the census of 1941 is utterly wrong. Any division on that basis would be grossly unjust to the Harijans].*

Pandit Chaturbhuj Pathak: *[Mr. Khandekar has said that the birthrate amongst Achchuts is high enough but at the census their number has not been recorded as high. The reason for this is that happily they have been enumerated amongst Caste Hindus. Mr. Khandekar has admitted this. It is good. The Caste Hindus themselves have pleaded for good treatment of Harijans and that they should be treated as Caste Hindus. Mr. Khandekar should have no objection to it.]*

Shri H. J. Khandekar: *[The Harijans have been counted amongst Caste Hindus only to increase the number of the Caste Hindus. This device has caused no change in the social life of Harijans. Those Harijans who have been classified amongst the Caste Hindus are still in the same deplorable state. Their standard is not the same as that of the Caste Hindus.]*

Shri Chaturbhuj Pathak: *[I do not think that when Achchuts are enumerated amongst the Caste Hindus they (at once) acquire the standard of Caste Hindus and they *ipso facto* get all the rights of Caste Hindus.

I have only to submit that I oppose Mr. Khandekar's resolution to adopt representation on the basis of the 1931 Census. Even in the report submitted no mention of number is made. It is written there; "On the basis of their population"; *i.e.*, they would get representation according to their population. I support this (the report)].*

The Honourable Sardar Vallabhbhai J. Patel: Some amendments have been moved to this. One is by Mr. Munshi in which after the word 'schedule' he wants to say 'and the section of the Hindu community referred to in paragraph 1A hereof'. It is only intended for clarity and it makes no substantial change and therefore I propose to accept, that amendment.

So far as Mr. Khandekar's amendment is concerned I do not think we can accept it because it would not be proper to make a special exception for the Scheduled Castes, that their reservation should be on the basis of one census and that reservation for other minority communities should be on the basis of another census. It would not be proper and it would be an invidious distinction. I do not understand why he wants to do that. Probably he wants to exclude some of those who have been included in the Scheduled Castes in 1931. I do not think it is proper to do so at this stage. In the resolution that I have moved, there is no mention of any census. We have simply said 'on the basis of their population'. Therefore it should be kept as it is. No injustice is being done to any community, and uniformity is also desirable and necessary.

Then Mr. Santhanam has moved an amendment and made two or three suggestions. One is about reservation of seats for the minorities in the various Legislatures. He says it should be 'various. Legislative Assemblies'. I have no objection to accepting that amendment.

He made another point that East Punjab should be excluded in Clause 3.

Shri K. Santhanam: And West Bengal also.

The Honourable Sardar Vallabhbhai J. Patel: I do not think it is necessary to accept that amendment as they are specifically excluded in clause 3.

— His third suggestion was that in a constituency where a minority
[] English translation of Hindustani speech.

[The Honourable Sardar Vallabhbhai J. Patel]

community are in a majority the seats must be from the reserved seats. I do not consider the suggestion a proper one. The seats are on the basis of population reserved as a whole and not on a particular constituency. Therefore I do not propose to accept it.

To sum up, I propose to accept Mr. Munshi's amendment and Mr. Santhanam's suggestion about putting the words 'Legislative Assemblies'. I commend the resolution for the acceptance of the House.

Mr. President: I will now put the first amendment, which has been accepted by Sardar Patel to vote.

The question is :

"That in amendment No. 19 of List 1, dated 25th August 1947 for the word 'seats' the word 'representation' be substituted". The following words be substituted:—

"after the word 'schedule' the words 'and the section of Hindu community referred to in the paragraph 1A hereof' be inserted."

The motion was adopted.

Mr. H. V. Kamath: What about Mr. B. Das's amendment to this ?

Mr. President: His amendment was that the words 'Government of India Act, 1935' be substituted by the words 'Union Constitution Act'. I think it is a verbal amendment and when the act is actually drafted they will take care to define it in the correct way. Does he press it ?

Mr. N. Gopalaswami Ayyangar (Madras: General) : You cannot say 'Union Constitution Act'. As it stands, there is no schedule. The correct description is what Mr. Munshi has given.

Mr. President: As the Member is not here I will have to put the amendment to the vote of the House.

The question is :

"That for the words 'defined in Schedule 1 to the Government of India Act, 1935' the words 'to be defined in the Schedule to the Union Constitution Act', be substituted."

The amendment was negatived.

Mr. President: The next is, Mr. Khandekar's amendment.

Mr. H. J. Khandekar: I withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The next is Mr. Munsiswami Pillai's amendment, that for 'ten years' the words '12 years' should be substituted.

Shri V. I. Muniswami Pillai: I withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That the two Provisos as amended be adopted."

The motion was adopted.

Mr. President: We now take up the Schedule.

The Honourable Sardar Vallabhbhai J. Patel. I move for the acceptance of the House the Schedule that is put in under para 1. I shall in doing so first read it.

SCHEDULE

- GROUP: A—Population less than $\frac{1}{2}$ per cent. in the Indian Dominion omitting States.
1. Anglo-Indians.
 2. Parsees.
 3. Plains' tribesmen in Assam (other than Tea Gardens' tribesmen).
- B.—Population not more than $1\frac{1}{2}$ per cent.
4. Indian Christians.
 5. Sikhs.
- C.—Population exceeding $1\frac{1}{2}$ per cent.
6. Muslims.
 7. Scheduled castes.

This Schedule is based on the strength of the communities in order that the relevant provisions in the subsequent sections may fit in and therefore this is merely a formal matter. There is no controversy about it. I therefore move that this Schedule be accepted.

Mr. President: There is only one amendment to this and that is from Prof. Shibbanlal Saksena. Of course it is covered by the amendment which we have passed just now. But it has to be formally dropped, so he may move it.

Prof. Shibban Lal Saksena (United Provinces: General) : Mr. President Sir, my amendment is No. 85 and it says that the words "scheduled castes" be deleted from the schedule. The purpose of the amendment is that scheduled castes should not be classed as separate minority but should be treated as an integral part of the Hindu community. My amendment reads—

That from group C of the Schedule to para I, the words "7 Scheduled castes" be deleted.

I would like to draw the attention of the Assembly to one important declaration. It is this. It will be remembered that Mr. Jinnah has often tried to include the Scheduled castes in the minorities; and on June 26, 1946, in a letter from Maulana Abdul Kalam Azad to Lord Wavell, and the latter's reply thereto, Lord Wavell is reported to have said:

"..... if any vacancy occurs among the seats allotted to the minorities, I shall naturally consult both the main parties before filling it."

Mr. Jinnah has thus included the Scheduled Castes among the minorities. But so far as we are concerned, we consider the Scheduled Castes as belonging to Hindus, they are not a minority, they have also always formed part of us. I am glad Mr. Munshi has brought up his amendment, which meets my purpose and I therefore withdraw my amendment, in favour of his.

Shri K. M. Munshi (Bombay: General) : Sir, because amendment No. 85 has been moved by Prof. Shibban Lal Saksena I move the amendment standing in my name:-

"That in amendment No. 85 of List III, dated 26th August 1947, the words "7. Scheduled Castes"; be deleted and the following para. be added after para:—

"1-A. The section of the Hindu community referred to as Scheduled Castes as defined in Schedule I to the Government of India Act, 1935, shall have the same rights and benefits which are herein provided for minorities specified in the Schedule to para 1."

Shri Lakshminarayan Sahu (Orissa : General) : Sir, on this Schedule I want to say one thing about the aboriginals. I think there should be some provision here so that the aboriginals also may find a place in this Schedule. The fact is, there are two and a half crores of aboriginals in.....

The Honourable Sardar Vallabhbhai J. Patel: There is a separate Committee going into the question of the aboriginals and other tribes and its report will come up. The question will be considered when we consider that report.

Shri Lakshminarayan Sahu: But could we not make some provision here?

Mr. President: There is a separate committee appointed for the aboriginals and other tribes and if there is any such recommendation in that committee's report, then we can take it up for consideration when considering that report.

Mr. Jaipal Singh: Sir, I would like to know whether it was not the idea that item A. 3. "Plains tribesmen in Assam" should be left over till the final report of the committees was received? I thought it was decided in the Advisory Committee not to discuss item A. 3, but I find that item included here.

Mr. President: I am afraid I have not been able to follow what you said.

Mr. Jaipal Singh: The report of the Committee will be before us before tomorrow afternoon. Pending that, I suggest that this item A. 3 be left alone, that the wording be left untouched and not discussed now. Let us get on to it afterwards, say, tomorrow.

Mr. President: You therefore that A. 3. "Plains Tribesmen in Assam" be taken out from the list.

Mr. Jaipal Singh: Yes, taken out now, and the wording decided on tomorrow.

Mr. President: It will come up when the report of the Tribals Committee comes up. For the present it will be left alone.

The Honourable Shrijut Gopinath Bardoloi (Assam : General) : Sir, I am afraid Mr. Jaipal Singh is making a mistake. The question now is whether the Plains Tribals in Assam are to be recognised as a minority, and that has been decided by the Minority Committee, and that is what we are considering. But what concessions are to be given to them has been left over, for a joint report to be received from the Advisory Committee and that report will be coming before us tomorrow or sometime after.

Shrijut Omeo Kumar Das. (Assam : General): Sir, I have an amendment No. 57, saying—

"That in the Schedule to para. 1, for words 'Plains' tribesmen of 'Assam' the words 'Plain Tribesmen of Assam other than tea garden tribes' be substituted."

Have I to move it now? Or am I to understand that it has been already accepted.

The Honourable Sardar Vallabhbhai J. Patel: It has been accepted that the words "Plains Tribesmen of Assam other than tea garden tribes" be substituted for the words "Plains" tribesmen of Assam."

Mr. President: Yes, he has accepted that.

Shri Lakshminarayan Sahu: Once that is included, cannot I say that the aboriginals should also be included in the Schedule ? Sir, the hill tribes of Orissa number fifteen lakhs and form one-sixth of the population.

Mr. President: But you have not given notice of any such amendment. Probably everyone thought that this matter would, anyway, be coming up along with the report of the Sub-Committee which has been appointed. Therefore, no one has given notice of any amendment on this matter. I take it that when the recommendations of that sub-committee are received and if they go counter to what is decided here, it will to that extent act as an amendment.

The Honourable Sardar Vallabhbhai J. Patel: When the report of that Sub-Committee comes up, the safeguards for the tribes will be included according to that report. Here we have an enumeration of the different classes of minorities according to their strength. Therefore, so

far as the Schedule is concerned there is no reason to suspect or doubt anything. Whatever safeguards are recommended by that Sub-Committee will be provided for. There is no occasion for any doubt.

Mr. Jaipal Singh: On a point of order, Sir. May I know when we are discussing the question of minorities, whether this has been submitted by the Advisory Committee or the Minority committee only. If I remember aright, this particular item was held over and it was agreed that it was not to be brought up for discussion here till the reports of the two Tribal Committees had been presented.

Shri K. M. Munshi : May I say one word about this? There seems to be some amount of confusion on this point. If you will look at the Report itself, the position will be made clear. In para 8 of the Report, it is said: "The case of these tribesmen will be taken up after the report of the Excluded and Partially Excluded Areas Sub-Committee is received." But at the same time, look at para 5. It enumerates the minorities which will be entitled to some rights. So in Group A you find the Words "Plains tribesmen in Assam." Therefore, what was postponed was not the incorporation of the Plains tribesmen in the Schedule but the safeguards which may have to be extended or altered after the report of the Excluded Areas Committee is received by the House. What is sought to be done now is to complete the Schedule by incorporating 'Plains tribesmen in Assam. It is not at if it decides what the safeguards are going to be. That is the position and therefore there is nothing inconsistent.

The Honourable Rev. J. J. M. Nichols Roy (Assam : General) I want to ask one question for clarification. It is- stated in Group A, item 3 "Plains tribesmen in Assam other than garden tribes". I understand by the term "other than garden tribes". It is meant garden tribes working as a labour population in the gardens and not those tribes that have settled in Assam who have had land and property there. Is that the meaning.?

Mr. President: I think that is the meaning.

Dr. P. S. Deshmukh: There is an amendment in my name. It reads as follows:

"That in schedule to para. 1, the following be added:

'GROUP D.-Educationally advanced and wealthy minority casts and communities in the various Provinces.

NOTE 1.-It shall be provided that persons belonging to these minorities shall not have the right to contest unreserved seats.

NOTE 2.-A list of these minorities, shall be as determined by each legislature of the existing Provinces."

The main purpose of my amendment is to safeguard the interests of the very small minorities, who are bound to find it very difficult to maintain their own, once the adult franchise is introduced. I mean the highly educated castes and communities that own a very large portion of the wealth of the whole country. At the moment, they are both very powerful. 'The former monopolise Government services and higher appointments. They are masters of the platform, and the Press is a pretty-maid in their sole keeping. They appear to be the only people who matter and there is nothing that is not within the hollow of their hands if they will it. Education gave them unlimited opportunities of serving the British interests and discharge their duties so loyally and to such complete satisfaction of their erstwhile masters. The communities which have lived by money-lending and trade also supplied to the British rulers the sinews of war and all the requirements of peace. If these should now appear to be the only fortunate People in India, nobody need be surprised. The credit of maintaining and sustaining the British rule in India is after all theirs. It could not suit them to join the revolution of 1942 and risk their lives. Whilst some went to jail quietly, others who loved the British less sacrificed everything they had including their

[Dr. P. S. Deshmukh]

lives. Those who sacrificed in this way feel that their interests are not being protected and their sacrifices are not being recognised. There is, therefore, in their opinion, nothing better than mere lip sympathy. That being so, the highly educated and well-to-do are likely hereafter to be much disliked and possibly persecuted. It behoves us therefore to be prudent and protect their interest by a provision in the constitution. These communities may, for the time being, be very sure of scoring over everybody else either on the score of academic careers or wealth, but I would like to warn them that their calculations may prove to be wrong. They are, I know, likely to question even my motives, but let me tell them that I wish them well.

Mr. H. V. Kamath: May I request you to define the words "Highly educated and wealthy"?

Dr. P. S. Deshmukh: I will do it when the amendment is accepted by my Honourable friend. They are, I know, likely to question my motives, but the reason why they should not be permitted to contest other seats is that after all they belong to the worst parasitic castes and in a real democracy which we are aiming at, it would not be proper that they should have unrestricted and unrestrained right to override the claims of the other people. How else are you going to safeguard these people, in the words of my friend Mr. Tyagi, from annihilation? I think the only way is to give them reserved seats and at the same time keep them away from other unreserved seats. But, Sir, I know that the sentiments I express and the socialistic bias that I would like this constitution to have is not very popular with the House as it is constituted today. Under the circumstances, I merely wish to make these observations for the consideration of the framers of the constitution. I have no desire to move my amendment.

Mr. President: I never thought that Dr. Deshmukh would really move his amendment seriously. I think he does not deserve any protection himself, although he himself belongs to the wealthy and well educated class. I had by chance omitted to call him to move his amendment but I now find that what I considered to be a mistake by chance was really a correct thing for me to do. (Laughter.) However, these are all the amendments of which I have notice. Sardar Vallabhbhai Patel may say anything if he likes.

The Honourable Sardar Vallabhbhai J. Patel: I did not expect any debate on this; however, it has taken place. I have already accepted the amendment moved by Mr. Shibbanlal Saksena and I now commend the Schedule for the acceptance of the House.

Mr. President: I now put the amendment which has been accepted by Sardar Vallabhbhai Patel of Mr. Shibbanlal Saksena.

The amendment was adopted.

Mr. President: I now put Mr. Munshi's amendment to Mr. Shibbanlal Saksena's amendment.

The amendment was adopted.

Mr. President: I now put the Schedule as amended to vote.

The motion was adopted.

Mr. President: We now go to clause 2.

The Honourable Sardar Vallabhbhai J. Patel:

"Anglo-Indians: (a) There shall be no reservation of seats for the Anglo-Indians, but the President of the Union and the Governors of Provinces shall have power to nominate their representatives in the Centre and the Provinces respectively if they fail to secure adequate representation in the legislatures as a result of the general election."

This is an agreed solution so far as the Anglo-Indian Community is concerned and I do not suppose anybody can move any amendment to this because as the community is satisfied with the proposal and as the Advisory Committee has accepted it unanimously I recommend this for the acceptance of the House.

Shri K. Santhanam: I have one or two doubts to be cleared. I suppose here 'Legislatures' will be 'Assemblies' Then does it mean that in every province the Governor would appoint representatives of Anglo-Indians?

The Honourable Sardar Vallabhbhai J. Patel: It means what is stated there.

Mr. President : I put this now to vote.

Clause 2 was adopted.

Mr. President: This reminds me. I made a mistake when I put the first clause I did not say 'Provincial Assembly'. I put Provincial Legislature. I take it the House accepts that.

We go to the next item.

The Honourable Sardar Vallabhbhai J. Patel: I move—

"Parsees—(b) : There shall be no statutory reservation in favour of the Parsee Community, but they would continue to remain on the list of recognised minorities :

Provided that if as a result of elections during the period prescribed in proviso 2 to para 1 above it was found that the Parsee Community had not secured proper representation their claims for reserved seats would be reconsidered and adequate representation provided should the separate representation of minorities continue to be a feature of the Constitution."

This is also an agreed thing between the Parsee Community and the Advisory Committee. Therefore I recommend that this should be accepted.

Mr. President: I take it that there is no discussion required on this.

The motion was adopted.

The Honourable Sardar Vallabhbhai J. Patel: I move—

"3. (a) Indian Christians—(a) There shall be reserved representation for Indian Christians in proportion to their population in the Central Legislature and in the Provincial Legislatures of Madras and Bombay. In other provinces, they will have the right to seek election from the general seats."

This is also an agreed thing between the Christian Community and the Advisory Committee. Therefore I recommend this for the acceptance of the House.

Sri B. Gopala Reddy: (Madras : General) : It includes Councils also I believe. In Madras we have 3 reserved seats in the Council.

Mr. President: Yes. I take it here it means the Legislative Assembly and Council. I put it to the House.

The motion was adopted.

The Honourable Sardar Vallabhbhai J. Patel: The Punjab question we propose to postpone till the conditions in the Punjab are properly ascertained and settled. The question is kept over and I suggest the House may agree to it.

Mr. President: The question of minority rights in Eastern Punjab will be considered separately. I think there is an amendment which says 'Western Bengal' also should be added to it. Should that also be included?

Shri K. M. Munshi: Amendment No. 24 by Pandit Thakurdas Bhargava relates to Eastern Punjab to which I have moved an amendment (No. 3) just to carry out the intention of the Honourable the Mover.

Mr. President: We take the amendment of Mr. Munshi at this stage.

Pandit Thakurdas Bhargava: My amendment is to (c) of para 3. I move it. It reads: That in sub-para. (c) of para 3 for the word "seats" the word "representation" be substituted.

Shri K. M. Munshi: Sir, I move the amendment which says:—

"That in amendment No. 2; of list I, dated 25th August 1947, for the words(c) of para 3 for the word 'Seats' the word 'representation' be substituted:—

(b) of para 3. Delete the words beginning with 'Sikhs (b)' etc., to the end and substitute the following:—

'East Punjab (b). In view of the special situation of East Punjab the whole question relating to it will be considered later.'

If my amendment is accepted, the clause will read as follows:—

"Sikhs—(b). In view of the special situation in Eastern Punjab the whole question relating to it will be considered later."

This will take the place of the present paragraph.

Mr. S. M. Rizwan Allah (U.P. : Muslim) : Sir, I beg to raise a point of order on this amendment. This is a Report of the Minorities Committee. Different provisions have been laid down in this report about various minorities. So far as the Sikhs are concerned, no decision has been arrived at in the Minorities Committee Report about them. It is stated in this Report that the matter about Sikhs will be decided later on. Now an amendment has been tabled to replace a Province instead of Sikhs and thus in place of a minority an issue about territory is brought in. This is a report for the minorities and has nothing to do with any Province and therefore the amendment is out of order.

Mr. President: I do not think the point of order really arises. As a matter of fact there are other minorities in that Province and the whole question of minorities is held over. So it is quite in order.

Now I put Mr. Munshi's amendment which is this:—

"(b) of para 3. delete the words beginning with 'Sikhs (b). The question of minority rights for the Sikhs will be considered separately, and substitute the following.—

'East Punjab (b). In view of the special situation of East Punjab the whole question relating to it will be considered later.'"

The amendment was adopted.

The Honourable Sardar Vallabhbhai J Patel:

"*Muslims and Scheduled Castes.*—(c) There shall be reservation of seats for the Muslims and Scheduled Castes in the Central and Provincial Legislatures on the basis of their population."

I move the above clause for the acceptance of the House.

Prof. Shibbanlal Saksena: Mr. President, Sir, as the amendments to Clause 1 by Mr. Munshi and myself have been accepted, it is necessary that in para. 3, the words "and Scheduled Castes" wherever they occur be deleted.

Mr. President: I take it that is a consequential amendment. We have already accepted the definition of Scheduled Caste elsewhere and the same thing will be introduced here.

The amendment was adopted.

Mr. President: I have put only the amendment to vote. The clause, as amended, is now put to vote.

The clause, as amended, was adopted.

The Honourable Sardar Vallabhbhai J. Patel:

“Additional right to minorities.—The members of a minority community who have reserved seats shall have the right to contest unreserved seats as well.”

This is an item which was hotly contested in the Minority and the Advisory Committee and after a prolonged debate this proposition was passed. As this proposition has been passed at two places, I do not think it will be wise to open another debate on this question. After all after having a prolonged debate on this question it would be better to pass it as it is. I move this proposition for the acceptance of the House.

Seth Govind Das (C. P. and Berar: General) : *[Mr. President, as Sardar Sahib has just stated there was a good deal of discussion between the minorities and Advisory Committees on clause 4. Afterwards there was a good deal of discussion among members themselves over this matter. So far as minorities are concerned, there are many minorities which in fact cannot be called as such. For instance take the case of Harijans. They are in fact Hindus; they are not a minority like the Muslims or the Christians. Therefore so far as Harijans are concerned they ought to be treated in one way and the other minorities should be treated in another way. Harijans have been very much suppressed. This is also a matter which is to be considered separately. In this connection, I want to say that if Sardar Sahib does not take the vote of the House today but postpones it for tomorrow, that will be more appropriate because even now there are many members who want to think over it and are discussing the matter amongst themselves. I desire that this matter be disposed of in such a manner as may give full satisfaction to all members of the House as well as to all minorities. And I do not think that it would be proper to put it to vote today. Therefore, I appeal to Sardar Sahib that he may postpone this matter till tomorrow. There are many other recommendations of this committee which can be considered today.]*

Mr. R. V. Dhulekar (U.P.: General) : *[Mr. President, I also beg to request that, as this is a very complex issue, it may be postponed so as to enable us to give fuller consideration to it.]*

Mr. President: A suggestion has been made that this item may be held over for consideration tomorrow.

The Honourable Sardar Vallabhbhai J. Patel: Sir, I have already told the House that this question was debated in the Minority Committee as well as in the Advisory Committee and we had a very full debate. In spite of this, if our friends desire to postpone this question I must resist it on the ground that I see no advantage. We had two full debates. I have said that after the debates the Resolution as is being moved was passed and no advantage is to be obtained by postponing this. I do not think that any debate would be useful. If I thought that there was any possibility of any advantage being gained, I would have agreed, but postponement would not help us at all. This has been passed in two committees not by a very narrow majority and therefore I do not see any advantage. I must say that postponement will simply mean waste of time. I therefore move that this be accepted.

Mr. President: In any case you have to rise at half past four. It automatically has to be postponed.

[] English translation of Hindustani speech.

The Honourable Sardar Vallabhbhai J. Patel: We shall abide by the desire of the House and the ruling of the Chair, but if this is to be put to vote, it will be carried immediately.

Mr. President : But as certain Members have expressed a desire that there should be further discussion, I would not like to disappoint them. They wish to speak about it. We have got a meeting of the Cabinet and some of us have to go there at 5 o'clock. The House stands adjourned till 10 o'clock tomorrow morning.

The Assembly then adjourned till Ten of the Clock on Thursday the 28th August, 1947.

No. CA/24/Com./47.

CONSTITUENT ASSEMBLY OF INDIA

COUNCIL HOUSE,
New Delhi, the 8th August, 1947.

FROM

THE HON'BLE SARDAR VALLABHBHAI PATEL,
CHAIRMAN, ADVISORY COMMITTEE ON MINORITIES
FUNDAMENTAL RIGHTS, ETC.

TO

THE PRESIDENT,
CONSTITUENT ASSEMBLY OF INDIA

DEAR SIR,

On behalf of the members of the Advisory Committee appointed by the Constituent Assembly on the 24th January 1947 and subsequently nominated by you. I have the honour to submit this report on minority rights. It should be treated as supplementary to the one forwarded to you with my letter No. CA/24/Com./47, dated the 23rd April, 1947 and dealt with by the Assembly during the April session. That report dealt with justiciable fundamental rights; these rights, whether applicable to all citizens generally or to members of minority communities in particular offer a most valuable safeguard for minorities over a comprehensive field of social life. The present report deals with what may broadly be described as political safeguards of minorities and covers the following points—

- (i) Representation in legislatures; joint *versus* separate electorates and weightage.
- (ii) Reservation of seats for minorities in Cabinets.
- (iii) Reservation for minorities in the Public Services.
- (iv) Administrative machinery to ensure protection of minority rights.

2. Our recommendations are based on exhaustive discussion both in the Sub-Committee on Minorities as well as in the main Advisory Committee. From the very nature of things, it was difficult to expect complete unanimity on all points. I have pleasure in informing you, however, that our recommendations, where they were not unanimous, were taken by very large majorities composed substantially of members belonging to minority communities themselves.

Joint versus separate electorates and weightage

3. The first question we tackled was that of separate electorates; we considered this as being of crucial importance both to the minorities themselves and to the political life of the country as a whole. By an overwhelming majority, we came to the conclusion that the system of separate electorates must be abolished in the new constitution. In our judgement, this system has in the past sharpened communal differences to a dangerous extent and has proved one of the main stumbling blocks to the development of a healthy national life. It seems specially necessary to avoid these dangers in the new political conditions that have developed in the country and from this point of view the arguments against separate electorates seem to us absolutely decisive.

4. We recommend accordingly that all elections to the Central and Provincial legislatures should be held on the basis of joint electorates.

In order that minorities may not feel apprehensive about the effect of a system of unrestricted joint electorates on the quantum of their representation in the legislature, we recommend as a general rule that seats for the different recognised minorities shall be reserved in the various legislatures on the basis of their population. This reservation should be initially for a period of 10 years, the position to be reconsidered at the end of that period. We recommend also that the members of a minority community who have reserved seats shall have the right to contest unreserved seats as well. As a matter of general principle, we are opposed to weightage for any minority community.

5. For two reasons the application of the above principles to specific minorities was considered in detail by the committee. In the first place, it was known to us that minorities are by no means unanimous as to the necessity, in their own interests, of statutory reservation of seats in the legislatures. Secondly, the strict application of the above principles to a microscopic minority like the Anglo-Indian seemed to require very careful examination. We accordingly classified minorities into three groups 'A' consisting of those with a population of less than 1/2 per cent. in the Indian Dominion excluding the States, group 'B' consisting of those with a population of more than 1/2 per cent. but not exceeding 1 1/2 per cent. and group 'C' consisting of minorities with a population exceeding 1 1/2 per cent. These three groups are as follows—

Group 'A'—

1. Anglo-Indians,
2. Parsees.
3. Plains' tribesmen in Assam.

Group 'B'—

4. Indian Christians.
5. Sikhs.

Group 'C'—

6. Muslims.
7. Scheduled Castes.

6. *Anglo-Indians.*—The population of the Anglo-Indian community excluding the States is just over a lakh, that is, .04 per cent. Mr. Anthony, on behalf of the Anglo-Indians, contended that the census figures were inaccurate but even admitting a larger figure than the one given in the census, this community is microscopic, and to deal with it on a strictly population basis would mean giving it no representation at all. The representatives of the Anglo-Indians on the committee asked originally that they should have the following representation in the legislatures:—

House of the People	3
West Bengal	3
Bombay	2
Madras	2
C.P. & Berar	1
Bihar	1
U.P.	1

Subsequently they asked that they should be guaranteed two seats in the House of the People and one in each province in which they have representation at present, that is, a total of 8 altogether. After very

considerable discussion, in the course of which the representatives of the Anglo-Indian community gave full expression to their views, the committee unanimously accepted the following formula, namely, that there shall be no reservation of seats for the Anglo-Indians but the President of the Union and the Governors of Provinces shall have power to nominate representatives of the Anglo-Indian community to the lower house in the Centre and in the Provinces respectively if they fail to secure representation in the legislatures as a result of the general election. We wish to congratulate the representatives of the Anglo-Indian community on the committee for not pressing their proposals which would not merely have introduced the principle of special weightage which was turned down as a general proposition by an overwhelming majority but would also have encouraged other small minorities to ask for representation wholly out of proportion to their numbers. We feel sure that by the operation of the formula recommended by us Anglo-Indians will find themselves given adequate opportunity effectively to represent in the legislatures the special interests of their community.

7. *Parsees*.—In the Minorities Sub-Committee, Sir, Homi Modi had urged that in view of the importance of the Parsee community and the contribution, it has been making to the political and economic advancement of the country. Parsees should have adequate representation in the Central and Provincial Legislatures. The Sub-Committee were of opinion that this claim should be conceded. In view, however, of the opinion expressed to him by several members that an advanced community like the Parsees would be adequately represented in any event and did not need specific reservation. Sir Homi had asked for time to consider the matter.

When the issue came before the Advisory Committee, Sir Homi stated that though the committee had already accepted the Parsee community as a recognised minority entitled to special consideration on the same basis as other minorities in Group 'A', he had decided to follow the traditions which the community had maintained in the past and to withdraw the claim for statutory reservation. He assumed that Parsees would remain on the list of recognised minorities and urged that if, during the period prescribed in the first instance for the special representation of the minorities it was found that the Parsee community had not secured proper representation, its claim would be reconsidered and adequate representation provided, if the separate representation of minorities continued to be a feature of the constitution. The Committee appreciated the stand taken by Sir Homi and agreed to his proposal.

8. *Plains' tribesmen in Assam*.—The case of these tribesmen will be taken up after the report of the Excluded and Partially Excluded Areas Sub-Committee is received.

9. *Indian Christians*.—The representatives of the Indian Christians stated that, so far as their community was concerned, they did not desire to stand in the way of nation building. They were willing to accept reservation proportionate to their population in the Central Legislature and the Provincial legislatures of Madras and Bombay. In the other provinces, they would have the liberty of seeking election from the general seat. They were against any weightage being given to any community, but made it plain that if weightage was given to any minority, in Groups 'B' and 'C'. They would demand similar weightage. As weightage is not being conceded to any community, this means that the Indian Christians are prepared to throw in their lot with the general community subject only to the reservation of certain seats for them on the population basis in the Central legislature and in Madras and Bombay.

10. *Sikhs*.—In view of the uncertainty of the position of the Sikhs at present, pending the award of the Boundary Commission in the Punjab, the committee decided that the whole question of the safeguards for the Sikh Community should be held over for the present.

11. *Group 'C'—Muslims and Scheduled Castes.*—The Committee came to the conclusion that there are no adequate grounds for departing from the general formula in the case either of the Muslims or of the Scheduled Castes. Accordingly it is recommended that seats be reserved for these communities in proportion to their population and that these seats shall be contested through joint electorates.

12. A proposal was made in the committee that a member of the minority community contesting a reserved seat should poll a minimum number of votes of his own community before he is declared elected. It was also suggested that cumulative voting should be permitted. The Committee was of the view that a combination of cumulative voting and a minimum percentage of votes to be polled in a community would have all the evil effects of separate electorates and that neither of these proposals should be accepted.

Representation of minorities in Cabinets

13. Some members of the committee proposed that there should be a Provision prescribing that minorities shall have reserved for them seats in Cabinets in proportion to their population. The committee came unhesitatingly to the conclusion that a constitutional provision of this character would give rise to serious difficulties. At the same time, the committee felt that the constitution should specifically draw the attention of the President of the Union and the Governors of Provinces to the desirability of including members of important minority communities in Cabinets as far as practicable. We recommend accordingly that a convention shall be provided in a schedule to the constitution on the lines of paragraph VII of the Instrument of Instructions issued to Governors under the Act of 1935 and reproduced below.

“VII. In making appointments to his Council of Ministers, our Governor shall use his best endeavours to select his Ministers in the following manner, that is to say, to appoint in consultation with the person who in his judgement is most likely to command a stable majority in the legislature those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of the legislature. In so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers.”

Representations in Services

14. A proposal was made to us that there should be a constitutional guarantee of representation in the public services of the minority communities in proportion to their population. We are not aware of any other constitution in which such a guarantee exists and on merits, we consider, as a general proposition that any such guarantee would be a dangerous innovation. At the same time, it is clear to us that consistently with the need of efficiency in administration, it is necessary for the State to pay due regard to the claims of minorities in making appointments to public services. We recommend, therefore, that, as in the case of appointments to Cabinets, there should be in some part of the constitution or the schedule and exhortation to the Central and Provincial Governments to keep in view the claims of all the minorities in making appointments to public services consistently with the efficiency of administration.

The Anglo-Indian members of our committee have represented to us that owing to the complete dependence of the economy of their community on their position in certain services and their existing educational facilities, their case required special treatment. We have appointed a sub-committee to investigate this question and to report to us.

15. The minorities' representatives in the committee naturally attached importance to the provision of administrative machinery for ensuring that the guarantee and safeguards provided for the minorities both in the constitution and by executive orders are in fact implemented in practice. After considerable discussion, we have come to the conclusion that the best arrangement would be for the Centre and for each of the Provinces to appoint a special Minority Officer whose duty will be to enquire into cases in which it is alleged that rights and safeguards have been infringed and to submit a report to the appropriate legislature.

16. We have felt bound to reject some of the proposals placed before us partly because, as in the case of reservation of seats in Cabinets, we felt that a rigid constitutional provision would have made parliamentary democracy unworkable and partly because, as in the case of the electoral arrangements we considered it necessary to harmonise the special claims of minorities with the development of a healthy national life. We wish to make it clear, however, that our general approach to the whole problem of minorities is that the State should be so run that they should stop feeling oppressed by the mere fact that they are minorities and that, on the contrary, they should feel that they have as honourable a part to play in the national life as any other section of the community. In particular, we think it is a fundamental duty of the State to take special steps to bring up those minorities which are backward to the level of the general community. We recommend accordingly that a Statutory Commission should be set up to investigate into the conditions of socially and educationally backward classes, to study the difficulties under which they labour and to recommend to the Union or the Unit Government, as the case may be, steps that should be taken to eliminate their difficulties and suggest the financial grants that should be given and the conditions that should be prescribed for such grants.

17. A summary of our recommendations is attached in the Appendix.

The 8th August 1947.

Yours truly,
VALLABHBHAI PATEL,
Chairman.

APPENDIX A

REPRESENTATION IN LEGISLATURES

1. *Electorates*.—All elections to the Central and Provincial Legislatures will be held on the basis of joint electorates.

Provided that as a general rule, there shall be reservation of seats for the minorities shown in the schedule in the various legislatures on the basis of their population.

Provided further that such reservation shall be for 10 years, the position to be reconsidered at the end of the period.

SCHEDULE

Group: A.—Population less than 1/2 per cent. in the Indian Dominion, omitting States.

1. Anglo-Indians.
2. Parsees.
3. Plains' tribesmen in Assam.

B.—Population not more than 1½ per cent.

4. Indian Christians.
5. Sikhs.

C.—Population exceeding 1½ per cent.

6. Muslims.
7. Scheduled Castes.

2. *Anglo-Indians*.—(a) There shall be no reservation of seats for the Anglo-Indians, but the President of the Union and the Governors of Provinces shall have power to nominate their representatives in the Centre and the Provinces respectively if they fail to secure adequate representation in the legislatures as a result of the general election.

Parsees. (b) There shall be no statutory reservation in favour of the Parsee Community, but they would continue to remain on the list of recognized minorities:

Provided that if as a result of elections during the period prescribed in proviso 2 to para. 1 above it was found that the Parsee Community had not secured proper representation, their claim for reserved seats would be reconsidered and adequate representation provided should the separate representation of minorities continue to be a feature of the Constitution.

Note.—The above recommendations represent the view taken by the representatives of the Parsee Community.

3. *Indian Christians*.—(a) There shall be reserved representation for Indian Christians in proportion to their population in the Central Legislature and in the Provincial Legislatures of Madras and Bombay. In other provinces, they will have the right to seek election from the general seats.

Sikhs—(b) The question of minority rights for the Sikhs will be considered separately.

Muslims and Scheduled Castes.—(c) There shall be reservation of seats for the Muslims and Scheduled Castes in the Central and Provincial Legislatures on the basis of their population.

4. *Additional right to minorities*.—The members of a minority community who have reserved seats shall have the right to contest unreserved seats as well.

5. *No weightage.*—The minorities for whom representation has been reserved will be allotted seats on their population ratio, and there shall be no weightage for any community.

6. *No condition for a minimum number of votes of one's own community.*—There shall be no stipulation that a minority candidate standing for election for a reserved seat shall poll a minimum number of votes of his own community before he is declared elected.

7. *Method of voting.*—There may be plural member constituencies but cumulative voting shall not be permissible.

REPRESENTATION OF MINORITIES IN CABINETS

8. *No reservation for minorities.*—(a) There shall be no statutory reservation of seats for the minorities in Cabinets but a convention on the lines of paragraph **VII of the Instrument of Instructions issued to Governors under the Government of India Act, 1935 shall be provided in a Schedule to the Constitution.

**VII. In making appointments to his Council of Ministers our Governor shall use his best endeavours to select his Minister in the following manner, that is to say, to appoint in consultation with the person who in his judgment is most likely to command a stable majority in the legislature those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of the legislature. In so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers.

RECRUITMENT IN SERVICES

9. *Due share to all minorities guaranteed.*—In the all-India and Provincial Services, the claims of all the minorities shall be kept in view in making appointments to these services consistently with the consideration of efficiency of administration.

(NOTE.—Appropriate provision shall be embodied in the Constitution or a schedule thereto to this effect.)

10. *Position of Anglo-Indian community.*—Owing to the complete dependence of the economy of the Anglo-Indian community on their position in certain services and their existing educational facilities, a sub-committee consisting of the following members has been appointed to submit a report:

1. Pandit G. B. Pant.
2. Mr. K. M. Munshi.
3. Mrs. Hansa Mehta.
4. Mr. S. H. Prater, and
5. Mr. F. R. Anthony.

WORKING OF SAFEGUARDS

11. *Officer to be appointed.*—An Officer shall be appointed by the President at the Centre and by the Governors in the Provinces to report to the Union and Provincial Legislatures respectively about the working of the safeguards provided for the minorities.

12. *Statutory Commission for backward classes.*—Provision shall also be made for the setting up of a Statutory Commission to investigate into the conditions of socially and educationally backward classes, to study the difficulties under which they labour and to recommend to the Union or the Unit-Government, as the case may be, the steps that should be taken to eliminate the difficulties and the financial grants that should be given and the conditions that should be prescribed for such grants.

APPENDIX 'B'

No. CA/60/Com./47.

COUNCIL HOUSE,
New Delhi, the 25th August, 1947.

FROM

THE HONOURABLE SARDAR VALLABHBHAI PATEL,
CHAIRMAN, ADVISORY COMMITTEE IN MINORITIES,
FUNDAMENTAL RIGHTS, ETC.

TO

THE PRESIDENT,
CONSTITUENT ASSEMBLY OF INDIA.

SIR,

I have the honour to refer to paragraph 14 of my letter No. CA/24/Com. 47, dated the 8th August and to submit this supplementary report on the position of Anglo-Indians in certain services and the grant of special educational facilities for them. This report is based on a consideration of the findings of a sub-committee appointed by us.

2. (a) Position of Anglo-Indians in certain services:

We find that, as a result of historical circumstances the whole economy of this community is at present dependent on finding employment in certain types of post in the Railways, the Post and Telegraphs and the Customs Departments. A recent survey conducted by the Provincial Board for Anglo-Indian Education in Bombay showed that 76 per cent of the employable section of the community there were dependent for their livelihood on these appointments. We believe that the position is almost the same all over India; the total number of Anglo-Indians at present employed in these three departments being about 15,000. The special reservation given to them in the Government of India Act, 1935 does not however extend to all the categories of posts in these departments, but only in those with which they have had long past associations. In view of this we feel that if the existing safeguards in this regard are not continued in some form for some years to come, the community will be subjected to a sudden economic strain which it may not be able to bear. We therefore recommend that:

- (i) The present basis of recruitment of Anglo-Indians in the Railways, the Posts and Telegraphs and the Customs Departments shall continue unchanged for a period of two years after the coming into operation of the Federal Constitution. After that, at intervals of every two years, the reserved vacancies shall be reduced each time by 10 per cent. This shall not however bar the recruitment of Anglo-Indians in the categories of posts in which at present they have reserved places *over and above* the prescribed quota of reserved appointments, if they are able to secure them on individual merit in open competition with other communities. It shall also in no way prejudice their recruitment on merit to posts in these departments, or any other in which they have not been given a reserved quota.
 - (ii) After a period of ten years from the date of the coming into operation of the Federal Constitution all such reservations shall cease.
 - (iii) In these services there shall be no reservation for any community after the lapse of 10 years.
- (b) Special educational facilities for Anglo-Indians.

There are at present about 500 Anglo-Indian Schools in India. The total Government grant to these schools is about Rs. 45 lakhs being approximately 24 per cent. of the expenditure incurred by the schools. We feel that a sudden reduction in the grant will seriously dislocate the economy of these schools; and that it would only be fair to bring them gradually into line with other similar educational institutions after giving them sufficient time and opportunity to adjust themselves to the altered conditions now prevailing in the country. We also feel that in this way these institutions might become a valuable educational asset which would cater to the growing educational needs of the whole nation and not only to those of the Anglo-Indian community. We accordingly recommend that:

- (i) the present grants to Anglo-Indian education made by the Central and Provincial Governments should be continued unchanged for three years after the coming into operation of the Federal Constitution.
- (ii) After the expiry of the first three years, the grants may be reduced by 10 per cent and by a further 10 per cent after the 6th year and again by a further 10 per cent after the ninth year. At the end of the period of 10 years, special concessions to Anglo-Indian schools shall cease.
- (iii) During this 10 years period, 40 per cent of the vacancies in all such state aided Anglo-Indian schools shall be made available to members of other communities.

The term 'Anglo-Indian' used in this Report has the meaning given to it in the Government of India Act, 1935.

Your sincerely,
VALLABHBHAI PATEL

BLANK

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 28th August 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

MEMBERS TAKING THE PLEDGE

The following Members took the pledge—

Professor N. G. Ranga.

Shri K. Kamaraja Nadar, M.L.A.

REPORT ON MINORITY RIGHTS

Mr. B. Das (Orissa : General) : Sir, on a point of order. Yesterday the House passed Clause 1 (a) which was moved by Mr. K. M. Munshi to define the Scheduled Castes as part of the Hindu Community. Sir, to that I moved an amendment.

Mr. President: I may tell you, Mr. Das, that we are not drafting the statute today. If there is anything which is not quite accurate in the description, the draftsman will put it right. So we need not worry about that. It is a purely technical matter.

Mr. B. Das: Schedule I does not exist from 15th August. It has been omitted in the Adaptation Act (The India Provisional Constitution) Order, 1947.

Mr. President: Even if it does not exist, I think the draftsman will understand what is meant.

Shri Gopikrishna Vijayavargiya (Gwalior State) : Sir, Members from Bengal feel that if right to contest additional seats to minorities is given in Western Bengal it will infringe the position there, and disturb the whole proportion. I request that question may be deferred for later consideration.

Maulana Hasrat Mohani (United Provinces: Muslim) : May I know how, at this time when members of the Congress High Command and members of the minorities talk of the Minorities' Report, they always mean by minority Muslims only ? I refuse to accept Muslims to be a minority. Now you say you have done away with this communalism. Are we not calling a minority to refer only to Muslims ?

Mr. President: I am afraid I have not followed what the Honourable Member is saying.

Maulana Hasrat Mohani: Sir, I did not take any part in the discussions about this Minority Report purposely. My idea was

Seth Govinddas (C. P. and Berar : General) : Sir, may I know what Item we are discussing?

Mr. President: There is no item under discussion; I thought the Maulana was raising a point of order. The Honourable Member should mention his point and then make his speech if necessary.

Maulana Hasrat Mohani : Sir, I have got a very fundamental objection to this Minority Report. How is it that when you talk of minorities you mean Muslims only and when you talk of reservation you refer to Muslims only?

Mr. President: I am afraid I cannot allow the Honourable Member to speak at random because there is nothing that we are discussing at this stage.

Maulana Hasrat Mohani: I am saying that, when we talk, of minorities how is it that Muslims only are referred to as a religious minority ? The Muslims refuse to be called a minority if parties are formed on political line.

Mr. President: I think the Honourable Member is discussing the merits of a matter which has already been discussed and passed.

Maulana Hasrat Mohani: That is what I wanted to say.

Mr. President: We were discussing Clause 4 of the Appendix yesterday and we will now take up the amendments.

Mr. Debi Prosad Khaitan (West Bengal : General) : Sir, in connection with this I have an amendment, No. 44, which is related to paragraph 4 of the Report which is also Clause 4 of the Appendix. If you allow me to move that at the proper time I shall be obliged. And if you wish me to move it now I am prepared to do it.

Mr. President: Yes, you can move it.

Shriyut Rohini Kumar Chaudhury (Assam : General) : Sir, according to the order paper we should discuss the fundamental rights first and then take up the consideration of any other matter.

Mr. President: We are discussing this first.

Mr. Debi Prosad Khaitan: Sir, I move:

“That with reference to paragraph 4 this Assembly recommends that owing to seats shall not have the right to contest unreserved seats.”

I have collected certain figures which go to show that the aggregate population of Scheduled Castes and Muslims constitute about half of the total population. If to the figures that I have added together for Burdwan Division, Presidency Division and Jalpaiguri and Darjeeling districts, the figures of Murshidabad, Nadia and Dinajpur which have come over to West Bengal be added, the total figures of scheduled castes and Muslim will be still more adverse to the rest of the population. Therefore it will be very unjust and unfair if the communities for whom reservations have been made are allowed to contest still more seats out of the unreserved ones. It may be remembered that the general population apart from the scheduled castes.....

Mr. H. J. Khandekar (C. P. and Berar: General) : Sir, on a point of order, we passed a clause yesterday to the effect that the Scheduled Castes

are a part and parcel of the Hindu community and not a minority. So the present amendment and the Mover's speech making the scheduled castes a minority is, I think, out of order.

Mr. Debi Prosad Khaitan: I submit, Sir, that what I am referring to is communities or a section of a community for whom reservations have been made. Whether they are called minorities or a section of the Hindus, the position is not disturbed at all. I am not referring to scheduled castes as a recognised minority but as that section of the Hindu community for which reservation is made. Therefore I submit that I am not at all out of order.

The position is that the general population after taking into account the scheduled castes and Muslims will be about half or just more than half. Further I intend to submit that the general population, after the scheduled castes and Muslims have got their reserved seats, would like to give some seats to Indian Christians, Buddhists who are a large number in Bengal, and other communities to which some of the seats should more properly go than those communities who have already got reservation. I submit that this matter requires further consideration at our hands. So I am moving this amendment and I believe Mr. Munshi will make a recommendation that just as the case of East Punjab has been reserved for further consideration the case of West Bengal in these circumstances should also be kept back for further consideration. I would be willing to accept that suggestion.

Sir, I move.

(Shri Mohanlal Saksena and Prof. Shibban Lal Saksena did not move their amendments.)

Mr. President: As this is the only amendment that is moved, the matter is now open for discussion.

Mr. K. M. Munshi (Bombay : General) : Mr. President, Sir, the amendment moved by my Honourable friend, Mr. Khaitan was moved only with a view to state that the case of West Bengal may be considered afresh. And I understand that the Honourable Mover of the Report is going to accept it in that form only. The reason for this is that the figures for the new West Bengal that were placed before the Mover of the Resolution were not accurate. At least there is some discussion as to whether the figures are accurate or inaccurate. If the figures are inaccurate then this question may require some kind of consideration later on. Then why precipitate a decision on the figures which are not correct? Therefore it is felt advisable to leave the case of West Bengal to be considered later on when all the figures have been properly collected. That is whole purpose of this amendment. It does not seek to make any change in the body of Clause 4 so far as the whole of India is concerned; except that as the case of East Punjab for consideration has been accepted, that of West Bengal also may be considered afresh.

Pandit Lakshmi Kanta Maitra (West Bengal: General) : Mr. President, Sir, I would like to say a few words in connection with the amendment which has been just moved. I want to tell this House and particularly my friends of the Scheduled Castes and other minorities that the object of this amendment is not to frustrate or to defeat the object which is embodied in the Minority Committee's Report. But the House should at the same time realise that the position of West Bengal and of East Punjab today is entirely different from that of the rest of

[Pandit Lakshmi Kanta Maitra]

India, as a result of the partition of the country, and particularly after the Radcliffe Award which in many respects varies from the national award. Most of the members from Bengal are not in a position to understand here and now what exactly has been the result and what West Bengal's population now consists of. If we compare the statements contained in the Radcliffe Award with what is stated here, we find considerable divergence in the matter of figures. Nobody knows exactly what is the population of West Bengal now under the Radcliffe Award. Therefore, instead of precipitating a decision just now, we may stay our hands for the present, so that when we are in full possession of the statistical data with regard to the newly formed provinces of West Bengal and East Punjab, we may be in a position to decide their case in a proper manner. The House has already accepted this suggestion in the case of East Punjab. We now submit that the House will bear with us, and that, the case of West Bengal also may be fully and carefully considered with all the available data that may be in our possession within a few days. I may tell the House that the Radcliffe Award is so illogical and arbitrary that in some cases the domestic households of persons have been in the Indian Union while their able lands are in Pakistan. So we are not in a position to know what area is meant when we simply see the word Pakistan or Indian Union mentioned. We do not know what portion is in Pakistan and what portion is in Hindustan, and what is the relative population in either part. What all these considerations in view, we have now come to the conclusion that for doing justice for all parties concerned the question of West Bengal should stand over for the present. This is all that is demanded in the present motion. There is no idea of going behind the principle that we have accepted. With these few words I support the amendment.

Mr. Naziruddin Ahmad (West Bengal: Muslim) : Mr. President, Sir, I do not here want to say anything on this delicate question that may raise any controversy. I only desire to draw the attention of the House to certain aspects of the matter, and I hope the Honourable the Mover of the Report will kindly consider them; but whatever the decision of this House may be, it will be loyally and cheerfully accepted.

Sir, the effect of this amendment would be that in West Bengal some minorities, excluding the Scheduled Castes who have now been treated as a separate class feel that they would lose the sentimental right or advantage of contesting the unreserved seats. The principal object, so far as I can see, in providing for the right of the minorities to contest unreserved seats seems to be to induce them to give up their privileges of reservation of seats, as quickly as possible. In fact, if there was no reservation, the position would be that they may get more seats in certain constituencies than otherwise but only if the majority community favours them. This is thus an inducement thrown out to the minorities to give up their claim for reservation. In fact, the Hindus being in a great majority in West Bengal, they would have had the choice of electing an additional member of the minority group to the unreserved seat. It would be entirely in their hands. So the amendment would seek to deprive the situation of that condition. I submit that it would be better to keep the original paragraph as it stands rather than to accept this amendment. But I make my submission with regard to this only to request Honourable Sardar Patel to consider the same.

With regard to the minorities, the Scheduled Castes as I pointed out a moment ago now form a different class altogether. Practically the only minority that remains and that will be affected by the amendment will

be the Muslim community. If the Hindus would cheerfully elect a Muslim to an additional seat, that would be entirely for them to say; and if they think that a particular Muslim for nationalistic reasons or for reasons of efficiency etc. if they think that they should elect him, that is their business. If they think that they would not elect an additional Muslim to an unreserved seat, they can always do so. But I think the right of the electorate should be left absolutely untouched and a legislative prohibition should not be introduced. It is on grounds of high policy that I speak and not on narrow grounds of getting or losing one or two seats. One or two seats would not matter. What matters is the sentimental gesture to the minorities. This is a situation which deserves very careful consideration from the point of view of long-range politics.

Shri Upendra Nath Barman (West Bengal: General) : Mr. President, Sir, I had no intention to oppose this motion, but I have to stand up today before this House because of some observations made by the Mover of the Resolution in the course of which he insinuated that after the Radcliffe Award and the partition of Bengal, West Bengal will have almost 50 per cent or exactly 50 per cent of population within the Scheduled Castes and Muslim communities, and therefore he wants to defer this matter and appoint a Committee. My submission is that this is a reflection upon the Scheduled Castes which we all have been trying for so long to shake off altogether. I submit that we, the Scheduled Castes have joined wholeheartedly in this constitution-making not only from outside but as members of the Congress, because we know that whatever may be our shortcomings during this period of our dependence whatever crimes we may have imbibed during our unfortunate period, there had been born men amongst us, specially of Bengal I can say like Vivekananda and Rabindranath Tagore who inspired in us the faith and hope of rejuvenation of India. Now, during the course of my taking part in this Constituent Assembly and the various Committees, I am confirmed in, my belief that after all the genius of India has not forsaken her in her hour of need. We have complete faith in the sagacity of the majority community for the time being I call them.

Sir, this independence has been won by the Congress with the help of those who had the keenest of vision, the highest of wisdom, the straightest of limb and the staunchest of spirit. We have full faith in their impartiality when they take the reins of office in their own hands, and we have full faith that they will amply discharge their duty of enlivening India, of lifting her to the standard of such a height that she might take her rightful place among the comity of nations. But at such a time, unfortunately one of my friends from Bengal speaks and speaks in such a way that it pains us. So I have the painful duty to remind him that this is not the way to gain faith. After all, Sir, what are you going to do? I have no objection to putting off this matter to a later date to consider the whole position of West Bengal. I have no doubt that this Assembly on whom rests so much responsibility will come to the same decision as we are going to adopt, perhaps according to the decision of the minority committee. But still some friends from Bengal think that their decision should be reconsidered I have no objection to that. After all, after this Radcliffe Award and the division of Bengal, the Muslims have got a minority; there can be absolutely no doubt about it. I do not worry for a moment about any seat outside the reserved quota because I know fully well that even in the reserved quota the minority will have to depend upon the majority votes, *i.e.*, the Caste Hindus. Our revered leaders have told us time and again that this blot within the Hindu community, the Scheduled Castes must go so that we can rise as a nation.

[Shri Upendra Nath Barman]

I fully endorse that view. But, my submission is that in the interim period, so long as this distinction remains the Scheduled Castes will depend upon the majority community. So if in any case outside the reserve quota, any Scheduled Caste member or a Muslim member so to speak, wants to contest a seat, he will have to depend upon the sympathy and faith of the bigger community. So from my point of view, I do not worry at all whether outside the reserve seats any seat be allowed to be contested by the Scheduled Castes, but as a matter of principle when you are going to accept the principle for the rest of the Provinces, do you mean to say that this august Assembly will make an exception in the case of Bengal or any particular province I think not. However, I leave it to the House to defer this matter or not.

The Honourable Sardar Vallabhbhai J. Patel (Bombay : General): Mr. President, Sir, there is only one amendment to Clause 4. The members of the minority community have reserved seats and those who have reserved seats will have right to contest unreserved seats as well. The amendment moved today by Mr. Khaitan, which has been amended by Mr. Munshi seeks that like the East Punjab the question of West Bengal be held over. There is no reason either for the Scheduled Caste people or other people to have any suspicion about it. When the East Punjab question will be examined, the West Bengal question will also be examined. Nothing will be done behind their back and nothing will be taken away without their consent or without their knowledge. It has still to be seen what the actual effect of the population and proportion will be. Therefore, when we have made the Schedule which we have passed for giving safeguards in connection with franchise and elections, we have fixed them on the basis of population and strength. If really the population is so much so far as any minority is concerned, that they need not have any such additional right to contest, if it is such as would affect the majorities seriously so as to reduce it to an ineffective majority, then it is a case for consideration. So if it only suggested, as is suggested in the amendment, that this question be held over and be considered along with the question of East Punjab, then there is no need for any apprehension. There need be no doubt about the sincerity of the people who have given these concessions, and in substance they will stand by it. Therefore, I have no hesitation in accepting the amendment and I move that Clause 4 may be accepted.

Mr. President: There is only one amendment, the effect of which is that the question of West Bengal may be held over for consideration at a later date. The Mover has accepted it. Do I take it that the House accepts that suggestion ?

Honourable Members: Yes.

Mr. President : Then, I put Clause 4, as amended, to vote.

Clause 4, as amended was adopted.

CLAUSE 5

The Honourable Sardar Vallabhbhai J. Patel: Clause 5—

“The minorities for whom representation has been reserved will be allotted seats on their population ratio, and there shall be no weightage for any community.”

I don't think that there need be any debate on this question now as it has been fully discussed in the Press and also in the Committee and I don't think there will be any body who will differ from it. Sir, I move this for the acceptance of the House.

Mr. President: There are two amendments to this (Messrs. Tajamul Husain and H. J. Khandekar did not move their amendments.) I put the clause to vote.

Clause 5 was adopted.

CLAUSE 6

The Honourable Sardar Vallabhbhai J. Patel: For the subsequent clauses also there will be no amendments I suppose Clause 6—

“No condition for a minimum number of votes of one’s own community. ‘There shall be no stipulation that a minority candidate standing for election for a reserved seat shall poll a minimum number of votes of his own community before he is declared elected.’ ”

This question has also been considered very often even in the past and it is another form of separate electorates being introduced and it has been considered and in view of the change in the situation there is no need for introducing any such thing. We have agreed no such reservation of percentage is necessary. Sir, I move the clause for the acceptance of the House.

(Messrs. Tajamul Husain and V. C. Kesava Rao did not move their amendments.)

K. T. M. Ahmed Ibrahim Sahib Bahadur (Madras: Muslim): Amendment No. 4 was given notice of by Mr. Pocker Saheb and myself and it refers to this clause.

Mr. President: I will take it up later. Mr. Nagappa.

Shri S. Nagappa (Madras: General) : Mr. Chairman, Sir, I want to bring to the notice of the House that in the case of Scheduled Classes before they are declared elected to the seats reserved for them, I would request that a certain percentage of the votes of that community the candidates must be able to poll. I know, Sir, that that gives a kind of prestige and leadership to the candidate who comes from that community. For instance today if we are elected to reserved seats, when there is agrarian trouble, when the Harijans and the agriculturists are at loggerheads and when we go and appeal to these people these Harijans they say “Get out man, you are the henchmen and show-boys of the caste Hindus. You have sold our community and you have come here on their behalf in order to cut our throats. We don’t accept you as our representative.” Sir, in order to avoid that what I suggested is that a certain percentage of the Harijans must elect the candidate so that he may be able to tell them that he has, the backing of some Harijans and he will have the prestige and voice as their representative. That prestige and voice he should have.

Mr. H. J. Khandekar: Is the Mover moving his amendment or is he making a speech? He must declare whether he is moving or not?

Mr. President: Are you moving the amendment or not ?

Shri S. Nagappa: Yes, I am moving the amendment.

The Honourable Mr. B. G. Kher (Bombay: General) : Yesterday the Honourable Member congratulated Sardar Patel for being firm and refusing to accept this. Now he is moving this amendment.

The Honourable Sardar Vallabhbhai J. Patel: He is moving it only to make a speech and then withdraw it. (*Laughter*).

Mr. President: Every member has a right to be inconsistent.

Shri S. Nagappa: Sir, I would explain how this does not amount to separate electorates.

Shri Mohan Lal Saksena (United Provinces: General): Let him move his amendment first, and then let him speak.

Mr. President: It makes no difference when he says he moves it. Mr. Nagappa you please read out the amendment.

Shri S. Nagappa: The amendment is as follows:—

“That the following be added at the end of para. 6:—

‘Provided that in the case of the Scheduled Castes the candidate before he is declared elected to the seat reserved for the Scheduled Castes, shall have secured not less than 35 per cent. of the votes polled by the Scheduled Castes in the election to the reserved seat.’”

Now Sir, I would explain to you how it does not work out to separate electorates.

Mr. K. M. Munshi: Does the Honourable the Mover of the amendment wish to move the amendment or is he going to withdraw it?

Mr. President: He has said he wants to move it.

Shri S. Nagappa: For instance there are four candidates that are seeking election to the reserved seats. Now let us take it there are 100 Scheduled Caste votes and let us assume all the 100 Scheduled Caste voters come and vote. A gets 36 and B gets 35, this comes to 71. Only 29 is there for the other. Now you need not take that man at all into consideration who has polled only 29 per cent. Now again you need not have two elections. You can distribute two coloured papers to the voters come and vote. A gets 36 and B gets 35, this comes to 71. Only placed for the Scheduled Caste candidate and if one gets more than 35 per cent, of the Scheduled Caste votes, or coloured votes, you need not take the other man into consideration at all.

Sir, even if he gets 36 per cent. but does not get the highest number of votes in the general election he should not be declared elected. As it is, if X gets 36 per cent. of the votes of the community and Y gets only 35 per cent., if the former does not get the majority of votes of the other communities at the election he is declared to be defeated and the latter though he gets only lesser number of votes of his own community, is declared elected; if he gets more votes than, X at the general elections, been declared elected. After all the election is completely in the hands of the general constituency or community. According to the Poona Pact you have allowed four candidates to be elected at the primary elections. This means that a man who gets 25 per cent. of the votes is declared elected to the panel where you have allowed cumulative voting. That is almost separate electorate I do not want separate electorates. I know the evils of separate electorates. I am for joint electorates. But, while seeing that joint electorates are there, let us not put the Harijan representatives in disfavour with their community who, as it is, call them show-boys of the general community. If a provision of the kind I am advocating is adopted, we can face the people of our community and tell them “Look here, we have been elected also by a majority of 35 per cent. of the members of our own community. We are not show-boys”.

By my amendment I am only seeking to reduce the panel from four to two and providing for the election of the, person who gets the majority of votes of the general community. I would request Members to think over it without prejudice.

I thank you, Sir, for giving me an opportunity to move my amendment.

K. T. M. Ahmed Ibrahim Sahib Bahadur: Mr. President, Sir, I move:

“That on a consideration of the Report of the Advisory Committee on minorities, fundamental rights, etc. on minority right this meeting of the Constituent Assembly resolves that in case the elections to the Central and Provincial Legislatures are to be held on the basis of joint electorates for all communities with reservation of seats for minorities, the election should be held on the following basis.”:—

I am not moving (a)—

“Out of the candidates who have secured at least 30 per cent. of the votes polled of their own community the candidates who secures the highest number of votes polled on the joint electoral roll shall be declared elected. In case there is no candidate, who has secured not less than 30 per cent. of the votes polled of his own community, then out of the two candidates who secures the highest number of votes of their own community, that candidate shall be declared elected who secures the highest number of votes of the total votes polled.”

Mr. President, this amendment is intended to secure the fulfilment in a satisfactory manner of the object of the reservation of seats accorded to the minorities by Clause 1. If a person is elected to the reserved seat by a constituency it will generally be presumed that that person represents the members of that community and that he would reflect the views and the opinions of that particular community in whose favour that seat has been reserved in that constituency. Now, Sir, for that person to represent in any adequate manner that particular community, he must command the confidence of that community. We want therefore that if he does not command the confidence of the majority of the community, he must have the confidence of at least 30 per cent. or even less of the voters of that community who went to the poll. This, you will concede, Sir, is a very reasonable request. It is a fundamental and vital right of every citizen in every form of democracy that his views and opinions must be given expression to on the floor of the Legislatures of the country. How can any citizen be confident that his views will be adequately represented on the floor of the House if the person sent to the legislature does not have the confidence of at least a fair proportion of the members of the community, if not the majority of that community? You will also remember, Sir, that a provision of this nature was, adopted by general agreement at the Third Unity Conference held at Allahabad in December 1932, *i.e.*, as a result of the agreement reached between all the communities and parties in this land.

My amendment is only an adaptation of the agreement which was arrived at on that occasion. I wish to Point out, Sir, that if there is no such provision, the person who is elected to the reserved seat cannot be expected to represent the views of the community in whose, favour that seat has been reserved. It would be imposing on a community a person who has been virtually elected by another community to represent the community which has been given the benefit of reservation, of seats, but has not been elected by it. Now it is too late in the day to contend that there are no minorities in this country and that there are no special interests of minorities to be safeguarded. The very appointment of the Advisory Committee no Fundamental Rights and on

[K.T.M. Ahmed Ibrahim Sahib Bahadur]

Minorities and the Minorities Sub-Committee presupposes the existence of minorities and their special interests. The Report also has proceeded on the assumption that there are certain interests of minorities to be protected. Therefore I say this House would not now take up the position that there are no minorities and there are no special interests to be provided for. Now, the issue as to how best to give protection to these minorities has to be considered. One of chief problems of modern democracy is how best to temper the rigours of the majority in order that the minorities may be protected from such rigours.

Now, Sir, in this age the divine right of kings has given place to the divine right of the majority, as has been put by a jurist. Our aim must be how best to temper the rigours of the majority in order that the minorities may have confidence in the majority, and in the constitution framed by the majority and may work out the constitution with all sincerity and honesty of purpose. We are assembled here as citizens of the State to frame a constitution in such a manner as to assure all sections of the population of their rights and to infuse confidence in the minds of all the sections of the population that their rights will be safeguarded. This amendment does not go any further than this, that in respect of the election of all representatives who are expected to reflect the views of a particular minority or community at least a fair proportion of the voters of that particular minority or community should have voted for the said representatives. This is a very legitimate request and by passing this amendment, Sir, we are not taking away the right of the majority to finally determine the representative of the constituency. Therefore, Sir, I appeal to this House to dispose of this question, in the words of the Honourable Mover "in an atmosphere of friendliness". As the Honourable Mover rightly said "we must leave behind us the legacy of bitterness" and we must look at this question devoid of all passion. I am anxious, Sir, that this matter should be considered in an atmosphere of extreme calm. Left to myself I would have wished that this Report on the Rights of Minorities was considered at a time when this country was free from all passion and the heat of the moment has subsided and died down, but unfortunately it has been taken up now. I appeal to you, following the appeal of the Honourable Mover, to consider this question in a dispassionate manner and not to import any heat. After all we request that the members of the minority community should be afforded the necessary facilities in order that the representatives elected in their name for the purpose of speaking on their behalf may have the confidence of a fair proportion of the voters. There is nothing anti-national in it and there is nothing fundamentally wrong. On the other hand it would be granting one of the fundamental and vital rights of every citizen in any form of democracy that he should have the right to have his views represented in the Parliament of the country by a person in whom he has got confidence and the members elected by the minority will after all be in a minority and the minority will not be able to dominate over the decisions of the majority in the legislature. The only purpose, is that the views and opinions of the minorities and the other communities may be reflected on the floor of the House in a proper manner by a person in whom those communities have got confidence at least to a limited extent. This is the purpose of this amendment and I do not know how it will infringe on the rights of the majority or how it will convert the majority community into a minority in any manner.

Well, Sir, for the successful working of any constitution, there must be confidence created in all sections of the population by the constitution framed. We desire that the independence that has been achieved—the new-born independence must be independence and freedom for all sections of the population and this can be achieved only if the constitution to be framed by this House secures the freedom and independence of all sections of the people and infuses confidence in the minds of the members of all sections. My amendment is a step in that direction, and I submit this is the surest way to foster harmony, good-will, cordiality and amity between the various sections and communities. The pre-requisite for the creation of harmony and cordiality between the various sections of the population is the creation of confidence in the minds of the various sections of the population and therefore it is that I appeal to this House to remember that after all we want only that the representatives may be elected by a fair proportion of voters of the particular communities. Well, Sir, I would like to point out that the system of proportional representation by a single transferable vote is an accepted method of election in all democracies and this very House has accepted the said method in respect of certain elections to be held in pursuance of this country was free from all passion and the neat of the moment has the constitution we are framing and this amendment is only an approach towards the system of proportional representation by single transferable vote and therefore, I hope, Sir, that this House, will accept this amendment. I am glad that the same feeling was also expressed by my Honourable friend Mr. Nagappa on behalf of the Scheduled Castes. You will see that we are not actuated by any malice or ill-will against anyone, but we only desire that there should be confidence in the minds of the minorities that their views are properly represented in the legislature by persons in whom they have confidence and in whose election they have a reasonably fair voice. I commend my amendment for the acceptance of the House.

Shrimati Dakshayani Velayudan (Madras: General) Mr. President I find that for the Motion four Members have given their names and first comes the name of the Honourable Dr. B. R. Ambedkar. I am surprised to find that a Member who came in as result of a joint electorate came forward to move this amendment whereas a member who, was all the while standing for separate electorates and for the so-called percentage is not to be seen in the House today. If there was any sincerity in moving this amendment we could have found the person who headed the list and I do not know why another member took up that responsibility. There may be some reason behind the scene. The Mover of the amendment, Mr. Nagappa, said when they come to the Assemblies as a result of joint electorates they may not be coming with the votes of the community and so they are not entitled to represent the community. If Mr. Nagappa thinks that he has come here as a result of such an election, the wisest and the best thing that he ought to do would be to withdraw his candidature or his membership from this Assembly and the Provincial Assemblies (*Hear, hear*). If anybody thinks that he is unfit to speak for the community when he comes on the vote of the community or the vote of the people in general, the best way to do service to the community is to disappear from the scene and not to take part in any political activities whatsoever and I think Dr. Ambedkar was wise enough to be absent on the occasion because he knew that this is not going to be carried in the Assembly today or on any day. As the Chairman of the, Minority Committee spoke yesterday these things were passed in the

[Shrimati Dakshayani Velayudan]

committee by majority of votes and, whatever reasons that he may bring forward here, it may not be carried out. So without wasting his time, he has gone for his work as he is engaged in Cabinet work. Somebody has come forward with an excuse that if this form of electorate exists, the real representatives of the people will not be able to come. If we analyse the demand for a percentage of the votes of the community, we will come to the conclusion that it is nothing but unadulterated separate electorates (*Hear, hear*). I must ask the Honourable Members who moved the amendment whether they are giving any meaning to the votes that will be cast by the members of other communities. In practice, we have to take into account only the votes that will be cast by the community. If a candidate gets 34 per cent. and another candidate gets 35 per cent. of the votes of his community, if the first candidate gets 200 votes from the general public and the next candidate gets 100 votes from the general public, and if we take into account the percentage of votes cast by the community, certainly the second candidate should be elected. Then it comes to this that there will be no meaning to the votes cast by other communities though it amounts to double the number of votes which the second candidate gets from the general people.

Then there is another reason for my opposing this amendment. Even if the Harijans are given this percentage of votes, and this kind of electorate system, the Harijans are not in a position to withstand the attractions that they will have to face at the time of elections. So many parties can set up candidates and they can purchase the Harijans and put up any candidate they desire, and any candidate can come up in the assembly and certainly he may not represent the community though he may get percentage of votes that is desired by this system. Along as the Scheduled Castes, or the Harijans, or by whatever name they may be called, are economic slaves of other people, there is no meaning demanding either separate electorates or joint electorates or any other kind of electorates with this kind of percentage. (*Cheers*). Personally speaking, I am not in favour of any kind of reservation in any place whatsoever. (*Hear, hear*). Unfortunately, we had to accept all these things because the British Imperialism has left some marks on us and we are always feeling afraid of one another. So, we cannot do away with separate electorates. This joint electorate and reservation of seats also is a kind of separate electorates. But we have to put up with that evil because we think that it is a necessary evil. I wanted to oppose this amendment because it will be standing in our way and because when the system is put into actual working it will be standing in the way of Harijans, getting a correct ideology. It is lack of correct ideology among Harijans that has led them to bring this sort of amendment here. If they think that they can better their lot by standing apart from the other communities, they are in the wrong. They can do better by joining with the majority community and not depending on the votes of their own community. I must assure the Mover of the amendment that the Harijans are not going to gain anything if you get this sort of electorate system. So I oppose this amendment and I hope that nobody in this House will support the amendment. (*Cheers.*)

(Many Honourable Members rose to speak.)

Mr. President: I have got requests from a very large number of Members to speak on this.

The Honourable Sardar Vallabhbhai J. Patel: Sir, I should like to say a few words before the debate is carried on. Mr. Nagappa was allowed to move the amendment on condition that he will withdraw it. There is no use in carrying on the debate. He only wanted to show to his community that he has not sold himself away. If you take it seriously and give importance to this business, then it would show that there is some substance in it. Why do you want to waste the time of the House on it ?

Mr. President : Is it necessary to carry on the debate about Mr. Nagappa's amendment?

Shri L. Krishnaswami Bharathi (Madras: General): That need not be taken seriously, Sir.

Many Honourable Members: Closure. closure.

Mr. President : No closure. There is the other amendment by Mr. Ibrahim.

(Kazi Syed Karimuddin rose to speak.)

Mr. President: Do you want to speak about it? We have dropped Mr. Nagappa's amendment at any rate.

Kazi Syed Karimuddin (C. P. & Berar : Muslim) : Sir, I support the amendment of Mr. Ibrahim, and I have to say a few words. I have heard with great patience the admirable speech of Pandit Pant and Sardar Pater's spirited defence of joint electorates. My submission is that I do not agree that it is only due to the separate electorates that the present situation is created. I do not want to minimise the various factors which have led to the present situation; but on behalf of the Muslim League Party, Sir, I submit that we are equally determined to eradicate this evil, from India and we will not leave any stone unturned in offering our hand of co-operation in this matter.

Mr. Ibrahim has moved an amendment, Sir, that there should be joint electorates with reservation of seats and that a member of a particular community should secure 33 per cent of the votes of his community. We cannot forget that there are misgivings. We cannot be blind to the present situation in the country. We all desire that it should not continue any more. But there are misgivings. There is mistrust and we have to move on very carefully and very calmly. This House has already decided on the abolition of separate electorates and we have to find out a formula that would satisfy the minorities. We must have the progress of the country in view also. The formula or amendment moved by Mr. Ibrahim lays down that there should be joint electorates. A candidate from a minority community will have to go with his cap in hand to beg the votes from other communities. Communalism will be gradually killed. Then he has to be a representative of his own community. For: which purpose have you given reservation of seats? Reservation of seats is given for this purpose that he should represent a particular community.

An Honourable Member: No, Sir.

Kazi Syed Karimuddin: He should have the sentiments of his community in view, he should have the aspirations of his community before him. If a minimum number of votes from his community is not fixed and if he is not able to secure that, my submission is that it will be the position of a client engaging a pleader who will be opposed to the interests of his client. Even a man of straw or even false convert will be able to defeat a genuine or real member of a community. Therefore, my submission is that in the interests of the provision of reservation of seats, it is necessary for a particular period that we should give this minimum

[Kazi Syed Karimuddin]

number of votes to a candidate of a particular community. I do not agree, Sir, that the mere introduction of joint electorates is a magic wand to do away with all these evils. The problem of the Schedule Castes is over and above this joint electorate for centuries. There are many other considerations which have contributed to the present position. I make an earnest appeal that as you have made a generous gesture of giving reservation of seats, you should also concede that for a particular period, the Muslim minority should be allowed to have a minimum number of votes from the community which will satisfy their political aspirations.

Mr. H. J. Khandekar: *[Mr. President, Sir, I stand to oppose the amendment which has been placed before you by my friend Mr. Nagappa. This amendment stands in the name of four Members. The first name is that of Dr. Ambedkar, and you all know that from the time of the Second Round Table Conference till the Minority Sub-Committee, of the Advisory Committee assembled, he relinquished the demand for joint electorates and continued the demand for separate electorates. On the question of this demand his message to all Harijans of his country, who belonged to his party, went to the extent that they were not even Hindus that they wished to have a colony separate from the Hindus, that they were not within the fold of Hindu religion, and it was for this reason that they desired separate electorates. This thing has been going on in the country for the last fifteen years with the result that a sort of discord has been created between Caste Hindus and Harijans of Dr. Ambedkar's party, and it has gone to the extent that Harijans of Ambedkar party do not wish to converse with Hindus. But I feel happy to state that when this matter relating to joint and separate electorates came up before the Minority Sub-Committee, Dr. Ambedkar did not press the claim further but withdrew it on the ground that he had no argument in support of the principle.

For the last 15 years, I have listened with interest to the speeches of Dr. Ambedkar and read them in newspapers too, but there was no argument in them in support of the demand for separate electorates. In this way, as the demand did not stand to reason, he did not press it but withdrew it. It is a great victory for us. Having withdrawn the demand, separate electorate was thought of by which the plea for percentage could be pressed. Speaking plainly it means that he desires separate electorates in a different form. I may explain to you the effects of separate electorates in this country. It was because of Lord Morley Minto that Muslims got separate electorates and the result was that our country was divided into two. The same separate electorates are being brought before us in the form of percentage. If this is accepted either for Harijans or for our Muslim brother, then it would mean the fulfilment of what my friend Mr. Jinnah has always said "Muslims of India and Muslims of Pakistan"—which means the preparation for Pakistan within India. Much suffering has been caused already. India has been divided into two. Brother Muslims have got what they wanted and was for their benefit. Having got that, they should be good enough not to try to create Pakistan within India and should not bring an amendment of this sort in this House.

It has come to my notice that our Muslim brothers, who in this country are about 3 crores, have got and are going to get on the report of the Advisory Committee all the facilities which they should get. Even

*[English translation of Hindustani speech begins.]

then they say that they should get percentage of votes in order to enable them to elect their representatives. Once again, my friend Mr. Nagappa too, who is an ally of Dr. Ambedkar and is dancing to his tune on some expectations, says the same thing, i.e., that it is in this way alone that our true representatives will be chosen. I want to ask these brothers, what is the meaning of a true representative ? I want to cite the example of this Assembly. If my friends are not true representatives of Harijans, if Kazis are not here as true representatives of Muslims then, what will happen to this Assembly ? If these honest Muslim brothers shout "Jinnah Zindabad", we shout "Bharat-Mata-ki-jai"; or other slogans and such sort of pin pricks continue, what will be the result ? I would like to ask Mr. Nagappa and Kazi Sahib, who will suffer then, the majority or the minority ? Any declaration of this sort is most improper and therefore I do not agree with the amendment of Mr. Nagappa.

The other thing which I have just pointed out is that this percentage of votes is through the medium of separate electorates. Even after the present amendment, a few more are coming before you (in support of the percentage of votes) which is in fact a child of separate electorates. It is improper to bring amendments of this kind within this House. It is merely wasting the time of the House. I wish to state that whatever has happened as a result of percentage of votes is before us. I am very to say that the result of separate electorates and the Poona Pact has been that in Nagpur and in Bombay, there is considerable agitation today against the Hindus and there are differences between one caste and another. The Poona Pact provided for primary election and cumulative voting which indirectly meant separate electorate. Do Dr. Ambedkar and Mr. Nagappa want to aggravate or eliminate this mutual conflict ? If they want to eliminate they should withdraw the amendment. If the tension between the caste Hindus and the Harijans is aggravated the latter would be the loser not the gainer. Because of this mentality of Dr. Ambedkar and Mr. Nagappa the Harijans will permanently remain Harijans and their position would gradually deteriorate. There are sub-castes within castes. There are several sub-castes among Harijans. In fact Harijans are not a part of any community but are spread throughout India in 132 sub-castes. If percentage of 35 is passed, the 3 per cent. "Chamars" who live in Nagpur will not come within the orbit of this election. If election is fought community-wise then "Mahars" who are 80 per cent. will get 35 per cent votes. Therefore "Chamars", "Bhangis" and the other sub-castes will not be able to return their representatives in elections because they are in minority among Harijans. In that case only the 'Mahars', to which section Dr. Ambedker and I belong and which has a predominating majority in Bombay and Nagpur, will capture all the seats of the Harijans in those provinces and other Harijans will get no seat at all.

Besides, I have to request Mr. Nagappa to withdraw the amendment. the reason being that contrary to his belief the percentage of votes is not in favour of Harijans. Harijans will not benefit by it, in fact it would be very bad (for them). Today we have achieved freedom for this country. We the inhabitants of this country have become its masters. Under these circumstances, if we do not take the majority community into confidence, and if the majority community does not take us to its confidence, then the government of this country cannot go on. For preserving peace in the country I have to request Mr. Nagappa to kindly withdraw the amendment.

Friends, only a few days back we the Hindus, the Muslims, the Sikhs, the Christians, the Parsis and the Harijans all acclaimed with one voice that we are one nation. We all gave our respectful salute to this tricolour.

[Mr. H.J. Khandekar]

It would be a pity, if today we put in this amendment which seeks separate electorates.]*

Shrimati Renuka Ray (West Bengal: General): Sir, I rise to oppose this last amendment. The report of the Advisory Committee shows very clearly that its authors have done their utmost to satisfy all elements in the country. In fact, Sir, if the report has erred it has erred in the direction of over-generosity to the so-called minorities. In order to allay suspicion and distrust and to come to an agreed solution it has given every consideration to those who are swayed by communal and religious considerations even to the sacrifice of national interests. After all Sir, it is not a question of minorities and majorities on a religious basis that we should consider in a democratic secular State. We have agreed to the reservation of seats just for the time being for the next ten years to allow those who cannot think of themselves in terms of "Indians" to adjust themselves over this period. I am surprised that the Mover of this amendment should have persisted today in bringing it forward. After the stirring appeal that was made by Sardar Patel and the very cogent and comprehensive arguments put forward by Pandit Pant to show that separate electorates are not only discordant and jarring to national interests but against the interests of the very communities for which they are intended, I thought he would not have pressed this amendment.

It is a back door method of bringing in separate electorates, which the House did not accept yesterday. Sir, we have stood aside helplessly while artificially this problem of religious differences—an echo of medieval times, has been fostered and nurtured and enhanced by the method of political devices such as separate electorates in order to serve the interests of our alien rulers. Today we see as a result our country divided and provinces like my own dismembered. We see that many who have made sacrifices, in the struggle for the freedom of India cannot be citizens of India today. We have learnt indeed a bitter lesson. We have submitted to all this so that at least in the rest of India that remains with us now we may go ahead in forming a democratic secular State without bringing in religion to cloud the issue. Religion is a personal matter. Religious differences might have been exploited as a political expedient by the British but there is no room for that in the India of today, Sir. the problem, that faces us is not a problem of minorities or of majorities on a religious basis. The problem that faces us is the problem of the vast majority in the country irrespective of religion, the majority who today are surrounded by ignorance and ill-health, hunger and want. It is they who are the backward sections of the, community and who are the majority at the same time. It is their problem that we have to take up. If we want to make the Objectives Resolution that this House has passed and the Fundamental Rights that have been laid down, a living reality it is this problem that we have got to tackle. We cannot allow any subtle devices by the back door such as restricted separate electorates to sidetrack us now from the main issue. We cannot expect those who are backward to function and participate as citizens with equal rights unless we take steps to make them conscious of their rights, By all means let us do all that we can help their development through every means In our power, and make such provision in the constitution. But a separatist tendency on the basis of religion is something that I do not think we

] *English translation of Hindustani speech ends.

can tolerate any longer. We have never stood nor do 'we stand today for Hindu domination; we do not want that Hindus as such as a religious community shall override any other interests. But 'We' do want that India's interests shall be paramount, that the interests of no special community shall stand in the way whether it is a majority or a minority religious community. Sir, I hope that this House will throw out this amendment and that we shall be able to go ahead until we are able to find a solution for the real problems that confront us, so that India can take her proper place in the comity of nations; so that in accordance with the cultural heritage which is ours, enriched by the variety of the cultures, that have found a home in this country, we will be enabled to play an effective part in the harmonious development of the world as a whole.

Mr. Naziruddin Ahmad: Sir, the amendment moved by Mr. Ibrahim has raised a little tempest in a teapot. I submit that it is better to look at it from a practical point of view. I admire the splendid idealism preached by the Honourable lady from West Bengal who spoke just now. I cannot aspire to be as eloquent and as persuasive as she can claim to be. But I think that though it is a good thing to be an idealist it is a useful thing to be a realist. I do not like the prevailing situation at all; I do not like that there should be any difference between the Hindus and the Muslims. I do not believe that the better classes have any differences in the higher walks of life. But after all our community consists of men who are not idealists; there are men who have a communal outlook. We find this exemplified in the elections. In municipal and other elections where joint electorate prevail, the voting, as is well known to those who have experience, has for long been carried on on communal lines. As I said before, I do not like this and no right thinking man likes it. But the situation should be looked at, as I said, from a practical point of view and with a due sense of proportion. What is the percentage of the majority community in India ? It is something like 75 and the percentage of Muslims would be about 25. In order to appreciate the enormous difference between the two I shall refer to a famous cartoon in a very well known paper here, where the attitude of the great Hindu community towards the Muslims in this House was depicted by the famous cartoonist Shankar.

He represents the great Hindu community as an elephant in a most affectionate mood and the elephant is holding in an affectionate embrace with his trunk the Muslim community—a weakling in the shape of our leader Chaudri Khaliqzaman. That gives to my mind, from a cartoonists' point of view, of course, the sense of proportion in which the Muslim stands to the Hindus. What is after all the effect of this prayer—I do not call it a demand—put forth through this amendment ? It is this that the Hindu community who can be collectively described as the elder brother has in a generous mood conceded for the period of ten years—I should consider that period quite sufficient—that they should get a reserved representation. It seems to me that it implies that the great Hindu community are willing for this period of ten years to listen to what difficulties and complaints, apart from the justice or otherwise of these complaints of the Muslim community. The only effect of allowing certain Muslim members to come through these 30 per cent. limit would be this, that 25 per cent. Muslims would come into the Legislature. What would the weakling younger brother represent to the elder brother the elephant ? What would be the nature of his prayer ? It will be an appeal.

No danger or harm can follow from this in the period of ten years if the elder brother listens to the grievances of the younger brother. These grievances and difficulties may be unreal or exaggerated, they may be due more to fear and suspicion rather than to any real reasons, but what would be the effect, I ask in all humility, what fearful consequences would arise out of these? If there is any reason in the prayer, then the elder brother, the affectionate elephant will accept it, if there is none he will reject it. That is all that will happen. I do not think the fearful consequences that are confidently predicted would at all follow from the acceptance of this amendment. I again submit, Sir, this is just a prayer on behalf of the younger brother to the elder brother in the shape of this vast august Assembly.

But I know that the result is a foregone conclusion. This amendment and the speeches in support of it reminds me of the argument of a lawyer before a judge, with the knowledge that the judgment has already been written and awaits delivery after his argument is over. We all know the result of the voting that is going to follow. But I hope that if we lose the amendment, the younger brother does not lose the affection of the elder brother.

Mr. President: I have received a number of slips, from Members who want to speak and I also see a number of Members standing, but....

Honourable Members: Closure.

Mr. President: I too think that we have had enough discussion now and would therefore put the motion for closure. The question is:

That the question be now put.

The motion was adopted.

Mr. President: The Honourable Mover may reply now.

The Honourable Sardar Vallabhbhai J. Patel: Sir, I am sorry to see that so much time has been taken on this amendment which I thought was going to be withdrawn and on which there would not be much debate. So far as the Scheduled Castes are concerned, I do not think very much has to be said on this amendment, because I got a representation from a large majority of the Scheduled Castes representatives in this House, except one or two or three, that they were all against this amendment (*Hear, Hear*), and Mr. Nagappa knew about it. But Mr. Nagappa wanted to move his amendment to fulfil a promise or undertaking or at least to show his community that he was not purchased by the majority community! Well, he has done his job, but other people took him seriously and took a lot of time.

So far as the amendment moved by the representative of the Muslim League is concerned, I find that I was mistaken in my impression and if I had believed this, I would certainly not have agreed to any reservation at all. (*Hear, Hear*). When I agreed to the reservation on the population basis, I thought that our friends of the Muslim League will see the reasonableness of our attitude and allow themselves to accommodate themselves to the changed conditions after the separation of the country. But I now find them adopting the same methods which were adopted when the separate electorates were first introduced in this country, and in spite of ample sweetness in the language used there is a full dose of poison in the method adopted. (*Hear, Hear*). Therefore,

I regret to say that if I lose the affection of the younger brother, I am prepared to lose it because the method he wants to adopt would bring about his death. I would rather lose his affection and keep him alive. If this amendment is lost, we will lose the affection of the younger brother, but I prefer the younger brother to live so that he may see the wisdom of the attitude of the elder brother and he may still learn to have affection for the elder brother.

Now, this formula has a history behind it and those who are in the Congress will be able to remember that history. In Congress history this is known as the Mohammad Ali Formula. Since the introduction of separate electorates in this land there were two parties amongst the Muslims. One was the Nationalist Muslims or the Congress Muslims and the other the Muslim League members, or the representatives of the Muslim League. There was considerable tension on this question and at one time there was a practical majority against this joint electorate. But a stage was reached when, as was pointed out by the Mover of this amendment in Allahabad a settlement was reached. Did we stand by that settlement? No, We now have got the division of the country. In order to prevent the separation of the country this formula was evolved by the nationalist Muslims, as a sort of half-way house, until the nation becomes one; we wished to drop it afterwards. But now the separation of the country is complete and you say, let us introduce, it again and have another separation. I do not understand this method of affection. Therefore, although I would not have liked to say anything on this motion, I think it is better that we know our minds perfectly each other, so that we can understand where we stand. If the process that was adopted, which resulted in the separation of the country, is to be repeated, then I say : Those who want that kind of thing have a place in Pakistan, not here (*Applause.*) Here, we are building a nation and we are laying the foundations of One Nation, and those who choose to divide again and sow the seeds of disruption will have no place, no quarter, here, and I must say that plainly enough. (*Hear, Hear.*) Now, if you think that reservation necessarily means this clause as you have suggested, I am prepared to withdraw the reservation for your own benefit. If you agree to that, I am prepared, and I am sure no one in this House will be against the withdrawal of the reservation if that is a satisfaction to you. (*Cheers.*) You cannot have it both ways. Therefore, my friends, you must change your attitude, adapt yourself to the changed conditions. And don't pretend to say "Oh, our affection is very great for you". We have seen your affection. Why talk of it? Let us forget the affection. Let us face the realities. Ask yourself whether you really want to stand here and cooperate with us or you want again to play disruptive tactics. Therefore when I appeal to you, I appeal to you to have a change in your heart, not a change in the tongue, because that won't pay here. Therefore, I still appeal to you : "Friends, reconsider your attitude and withdraw your amendment". Why go on saying "Oh, Muslims were not heard; Muslim amendment was not carried". If that is going to pay you, you are much mistaken, and I know how it cost me to protect the Muslim minorities here under the present condition and in the present atmosphere. Therefore, I suggest that you don't forget that the days in which the agitation of the type you carried on are closed and we begin a new chapter. Therefore, I once more appeal to you to forget the past. Forget what has happened. You have got what you wanted. You have got a separate State and remember, you are the people who were responsible for it, and not those who remain in Pakistan. You led the agitation. You got it. What is it that

you want now? I don't understand. In the majority Hindu provinces you, the minorities, you led the agitation. You got the partition and now again you tell me and ask me to say for the purpose of securing the affection of the younger brother that I must agree to the same thing again, to divide the country again in the divided part. For God's sake, understand that we have also got some sense. Let us understand the thing clearly. Therefore when I say we must forget the past, I say it sincerely. There will be no injustice done to you. There will be generosity towards you, but there must be reciprocity. If it is absent, then you take it from me that no soft words can conceal what is behind your words. Therefore, I plainly once more appeal to you strongly that let us forget and let us be one nation.

To the Scheduled Caste friends, I also appeal: "Let us forget what Dr. Ambedkar or his group have done. Let us forget what you did. You have very nearly escaped partition of the country again on your lines. You have seen the result of separate electorates in Bombay, that when the greatest benefactor of your community came to Bombay to stay in bhangi quarters it was your people who tried to stone his quarters. What was it? It was again the result of this poison, and therefore I resist this only because I feel that the vast majority of the Hindu population wish you well. Without them where will you be? Therefore, secure their confidence and forget that you are a Scheduled Caste. I do not understand how Mr. Khandekar is a Scheduled Caste man. If he and I were to go outside India, nobody will find out whether he is a Scheduled Caste man or I am a Scheduled Caste man. There is no Scheduled Caste between us. So those representatives of the Scheduled Caste must know that the Scheduled Caste has to be effaced altogether from our society, and if it is to be effaced, those who have ceased to be untouchables and sit amongst us have to forget that they are untouchables or else if they carry this inferiority complex, they will not be able to serve their community. They will only be able to serve their community by feeling now that they are with us. They are no more Scheduled Castes and therefore they must change their manners and I appeal to them also to have no breach between them and the other group of Scheduled Castes. There are groups amongst themselves, but everyone tries according to his own light. We are now to begin again. So let us forget these sections and cross-sections and let us stand as one, and together.

Mr. President: I have first to put the amendment of Mr. Nagappa.

Shri S. Nagappa: I do not press my amendment. I withdraw it.

Mr. President: Does the House give him leave to withdraw his amendment?

Honourable Members: Yes.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Then there remains Ahmed Ibrahim Sahib Bahadur's amendment,—

"That on a consideration of the Report of the Advisory Committee on minorities, fundamental rights, etc. on minority rights this meeting of the, Constituent Assembly resolves that in case the elections to the Central and Provincial Legislatures are to be held on the basis of joint electorates for all communities with reservation of seats for minorities, the election should be held on the following basis:—

‘Out of the candidates who have secured at least 30 per cent. of the votes polled of their own community, the candidate who secures the highest number of votes polled on the joint electoral roll shall be declared elected. In case there is no candidate, who has secured not less than 30 per cent. of the votes polled of his own community, then out of the two candidates who secures the highest number of votes of their own community, that candidate shall be declared elected who secures the highest number of votes of the total votes polled.’”

The amendment was negatived.

Mr. President: I now put the original clause 6.

Clause 6 was adopted.

CLAUSE 7

Mr. President: We shall now take up Clause 7.

The Honourable Sardar Vallabhbhai J. Patel: Sir, I beg to move:

“7 Method of voting.—These may be plural constituencies but cumulative voting shall not be permissible.”

There is an amendment that instead of putting this motion in a negative form as it now stands, it should be put in a positive form that “there shall be distributive voting”. That amendment will be moved formally and I propose to accept it. I suggest to the Honourable Members of this House, however, that we have to finish this Report before we rise today and therefore as this Report has been thoroughly discussed and main points have been passed, I hope on the amendments, if any, there will not be long speeches and we shall not waste time. I move the clause for the acceptance of the House.

Mr. President: There are two amendments, one by Mr. Kesava Rao and another by Mr. Mallick.

(Mr. Kesava Rao and Mr. M. B. Mallick did not move their amendments.)

Shri K. Santhanam (Madras : General) : Sir, I seek your permission to move only part (2) of my amendment. I don't want to move Part (1). My amendment is:

“That the voting shall be distributive, that is, each voter will have as many votes as there are members and he should give only one vote to a candidate.”

This amendment is necessary because I want to get the maximum advantage out of the joint electorates which we have adopted. Unless each candidate has to know every section of the electorates and is not able to confine himself to a particular section, the evil spirit of separate electorate will be retained. The result of my amendment will be, if there is a Scheduled Caste candidate he will not be able to say ‘I want to accumulate only the Scheduled Caste votes’ and a Christian candidate will not be able to say ‘I want to accumulate the Christian votes only’. Everyone will have to seek every vote from every section, and therefore without any further elaboration, I propose my amendment.

Mr. President: Does any one wish to say anything?

Shri D. H. Chandrasekharaiya (Mysore State) : President, Sir, the amendment standing in my name runs as follows:

“(i) That provision be made for conducting all elections on the system of proportional representation by single transferable vote.

(ii) That if the above system is not adopted, then the system of single nontransferable vote be provided for.”

In para. 12 of the Report corresponding to para. 7 of the Appendix it has been stated that the system of cumulative voting should not be permitted in the elections to the Central and Provincial Legislatures. But as already admitted by Sardar Patelji no definite suggestion has been put forward in the report about the actual method of voting to be adopted. To put over this lacuna an amendment has been moved by Shri K. Santhanam urging the adoption of what is called the compulsory distributive voting system in all elections, under the new Constitution. Sir, before speaking upon my own amendment, I should like to say a few words regarding the method that has been suggested. This method which is also, called the Block vote permits each voter to have as many votes as there are seats to be filled but he is compelled to give only one vote to a candidate. This is a system which is in vogue in some countries of the World, but its working has brought to light several drawbacks in it and therefore the opposition of political thinkers and statesmen is steadily increasing towards it as we see from their writings. Under this system it is only a majority party that will secure full success in elections. I shall take an instance to make my point clear. Supposing there is an electorate consisting of 100 votes, then a party that commands 51 votes will sweep the polls and any other party having even 49 votes will go to the wall. This system will thus make room only for the success of one party and a legislature formed with only one party can never be said to be national in character or representing all important interests and elements in the country. Modern democracy, as we all know, is generally a representative democracy which means that our legislatures should properly and fully reflect the public opinion of the country. Therefore the method that has been proposed is open to serious objections.

With a view to avoid the defects of this system is very necessary to adopt some form of proportional representation either the system of single transferable vote or the system of single non-transferable vote. I will not go into the details of these systems but both of them are scientific and elastic and give representation to majorities and minorities exactly in proportion to their voting strengths. When I say minorities I do not mean merely communal minorities. In fact I personally feel that the sooner this communalism goes out of politics the better it is for our country. But so long as communal minorities exist they will also take advantage of the system that I am proposing. The minorities that I have more particularly in view are these based on political considerations or economic ideologies or even territorial differences. I am inclined to think that this subject of method of voting should have more appropriately come in the report of the Union Constitution Committee than in the Report on the rights of Minorities, as it is a general subject relating to the form of representation in Legislatures. Whatever may be the nature of a minority, it ought to find a place in the Legislature adequately. This system is in vogue in several countries of the World. For instance in England some members of the British Parliament are chosen from certain Universities on the principle of proportional representation. In Northern Ireland members are chosen to both the House of Legislature only on the basis of this system. In South Africa the Senatorial elections are conducted in accordance with this system. In India we are familiar with this system in connection with some elections and I am told that the members of this House were elected from Provincial Legislatures in accordance with the principle of proportional representation by single transferable vote. Therefore a system which is fair and just to all, gives

representation to all majorities and minorities in proportion to the respective voting strengths and makes the legislature thoroughly representative of all national interests is certainly worth having. The only objection to it may perhaps be that it is a little complicated system. As we are now trying big experiments in democracy, I think that no difficulty should be considered as too great for us to solve. In our country 90 per cent of the population is illiterate, nevertheless elections are being held and political institutions are being run without any serious difficulties. Similarly I feel that the system of proportional representation can get on every well notwithstanding the illiteracy of the masses.

If for any reason the system of single transferable vote is considered to be unsuitable, then the other system of non-transferable vote which is simple enough may be tried. According to it, each voter is entitled to cast one vote whatever may be the number of seats to be filled. The result is that in a constituency consisting of 500 voters, only 500 votes will be polled and no more. This method is less complicated, more simple and well suited to the circumstances of our country. It will avoid all the drawbacks and defects associated with the block vote system. I do not want to take any more time of the House, in view of the suggestion made to shorten our speeches as much as possible. Therefore, in order to make our legislatures truly democratic and representative of all important elements and interests in the country, I commend my motion to the kind acceptance of the House.

Shri Ajit Prasad Jain (United Provinces : General) : *[Sir, the purport of most of the resolutions which have been moved during the last two or three days, is that some alteration be effected in the joint election (*i.e.*, the system of joint-electoralates which is before the House at the moment for consideration).

The meaning of the present resolution is also the same. In elections by means of a single transferable vote, small groups acquire the authority to send their elected representatives. Past experience has shown that whenever the system of proportional representation by single transferable vote was adopted, even a few individuals could send their representatives. Wherever Muslims or members of Scheduled Castes or other small minorities exist, they can have the authority, under this system, to elect their own representatives, by means of their own votes exclusively. On the contrary, the system of joint election is a democratic system. Its significance is to enable the largest possible number of persons to take part in the election of a candidate so that if some candidate be a Muslim then in his election both Hindus and Muslims may be able to participate, and if he be a Hindu then also, both Hindus and Muslims may be able to take part in it. But proportional representation is spoilt by the single transferable vote because there a few Hindus and Muslims can separately elect their representatives, thereby defeating the purpose of joint election.

The second part of this amendment is to the effect that a voter should have only one vote irrespective of the number of candidates. This also means that Muslims or members of scheduled castes are entitled to elect their own representatives. Therefore, the net result of both these amendments will be that although effort is being made to remove the defects of separate elections, they will reappear in a different form and the result of that will be that the minorities *i.e.*, Scheduled Castes

*[English translation of Hindustani speech begins.

[Shri Ajit Prasad Jain]

or Muslims or other minorities, will have an opportunity to their elections by appealing to communal sentiments of their people, and thus the decision to create a (proper) atmosphere by means of joint elections, will not materialise in the near future.

Therefore, I think that this amendment is one which will again create division and disturbances in the country, one which contains the fearful possibility of spreading factional and communal sentiment. I oppose this amendment which the Honourable member has just moved because I fear that it will create obstacles in our way and in the task before us.]*

The Honourable Sardar Vallabhbhai J. Patel: Now, I do not think I need say anything. The amendment which has been moved by Mr. Santhanam I propose to accept. The other amendment that has been moved does not suit our conditions, because we are now going to make an experiment of having elections by adult franchise which will bring on the rolls millions of ignorant voters. That being the case, the complicated system that has been suggested will be absolutely unsuited to us. Therefore I do not propose to accept it. I oppose it and move the adoption of the paragraph.

Mr. President: The amendment of Mr. Santhanam that has been accepted is this:

“That the voting shall be distributive, that is, each voter will have as many votes as there are members and he should give only one vote to a candidates.”

I take it, it is in substitution of....

Shri K. Santhanam: Of that latter part regarding cumulative voting.

Mr. President: The amended paragraph 7 is now to be voted upon.

The question is:

“There may be plural member constituencies, but the voting shall be distributive, that is, each voter will have as many votes as there are members and he should give only one vote to a candidate.”

The motion was adopted.

CLAUSE 8

The Honourable Sardar Vallabhbhai J. Patel: This item refers to representation in the Cabinets. I move—

“8. *No reservation for minorities.*—(a) There shall be no statutory reservation of seats for the minorities in Cabinets but a convention on the lines of paragraph VII of the Instrument of Instruction issued to Governors under the Government of India Act, 1935 shall be provided in a Schedule to the Constitution.

This was accepted unanimously in the Advisory Committee by all the minorities and the representatives of the majority communities. I hope the House will accept it: This is exactly a copy of the present provision in the Government of India Act, 1935.

(Messrs. Tajamul Husain, S. Nagappa and V. I. Muniswami Pillai did not move their amendments.

]* English translation of Hindustani speech ends.

Shri D. H. Chandrasekharaiya: Mr. President, Sir, the amendment which I wish to move runs as follows:—

“That para. VII of the Instrument of Instructions issued to the Governors of Provinces under the Government of India Act, 1935, and proposed to be followed now be amended so as to provide for representatives of acceding States being selected to the Council of Ministers among others.”

In connection with the communal minorities it is proposed to follow the convention expressed in para 7 of the Instrument of Instructions. As I said in another connection I have in view not merely the minorities of a communal or religious character but also based on other considerations.

Mr. K. M. Munshi: I rise to a point of order. This is a Minority Committee's report and we are only dealing with minorities and not States.

The Honourable Sardar Vallabhbhai J. Patel: The States are in a majority. There are 500 States and we are only one State!

Shri D. H. Chandrasekharaiya: Regarding the point of order may I say a word ? The report of the committee on minorities does not state what kinds of minorities are dealt with under it. It may refer to any kind of minority.

The Honourable Sardar Vallabhbhai J. Patel: You are in a majority.

Mr. President: Really you cannot bring the States as a minority. Minority ordinarily refers to communal minority or cultural minority or racial minority.

Shri D. H. Chandrasekharaiya: If this report refers only to communal minorities, then I have nothing more to say.

Mr. President: The whole thing is in reference to minorities and this you will find in the Schedule. Apart from the communal minorities referred to in the report, there is no question of other minorities.

Maulana Hasrat Mohani: You are thinking of your population ratio. This means that we are thinking in terms of communities and nations. Can't you refer to any political party ? Therefore, I raise the objection that the whole of this Minority Report is based on a very fundamentally wrong principle. It must refer to political parties and not to parties on the basis of religion. The whole thing is absurd. You are wasting your time and energy in passing all these amendments. I will raise this objection when you put this final report to the House. Sir, I say, the whole thing is absurd and is a huge humbug.

The Honourable Sardar Vallabhbhai J. Patel: There is no amendment to this clause and I have not followed Mr. Hasrat Mohani. Therefore I do not propose to reply.

Mr. M. S. Aney (Deccan States) : I would request you, Sir, to call upon the Honourable Member to withdraw the word 'humbug'. It is an insult to this House. It is quite unparliamentary.

Mr. President: Did you use the words 'huge humbug'?

Maulana Hasrat Mohani: Yes, I said it is a huge humbug.

Mr. President : You withdraw that. I will now put clause 8 to vote.

Clause 8 was adopted.

CLAUSE 9

The Honourable Sardar Vallabhbhai J. Patel:

“9. Due share to all minorities guaranteed—In the all-India and Provincial Services, the claims of all the minorities shall be kept in view in making appointments to these services consistently with the consideration of efficiency of administration.”

This clause is framed with a view to see that the minorities are properly represented in the Services but it will also see that the efficiency of the administration is not affected. Keeping that point in view the State will also see that the minorities have due representation. I move this proposition for the acceptance of the House.

(Mr. Tajamul Husain did not move his amendment.)

Shri Mahavir Tyagi (United Provinces: General): Sir, my amendment is very innocent and innocuous. I only beg to request the House to drop the word “guaranteed” in the beginning of the sentence. It would assure guarantee to all minorities.

Mr. N. Gopalaswami Ayyangar (Madras: General) : I rise to a point of order, Sir. This amendment relates only to the marginal note. We do not usually propose amendments to marginal notes.

The Honourable Sardar Vallabhbhai J. Patel: This amendment has nothing to do with the proposition.

Shri Mahavir Tyagi: The word is objectionable because in paragraph 14 of the Report it is said “a proposal was made to us that there should be a constitutional guarantee of representation in the public services of the minority communities in proportion to their population. We are not aware of any other constitution in which such a guarantee exists”. The word ‘guaranteed’ was objected to there and now it has somehow or other crept in here. It was better if we had removed this word from even the heading of this section.

Mr. President: It may be left out from the heading which will read there—“Due share to all minorities.”—That will be quite enough.

Shri Mahavir Tyagi: I will be satisfied if the word ‘guaranteed’ does not exist there.

The Honourable Sardar Vallabhbhai J. Patel: It does not exist for me.

Shri Mahavir Tyagi: I hope it will not exist for others too. I would rather not press my amendment.

(Messrs. P. Kakkan and Upendranath Burman did not move their amendments.)

Shri Chandrika Ram (Bihar: General) : I want to say a few words. I do not want to move, but while withdrawing the amendment that stands in my name, I wish to say a few words.

Mr. President: The question of withdrawing does not arise because your amendment has not been moved, but if you wish to say anything I do not mind, but be short.

Shri Chandrika Ram (Bihar: General): *[Sir, in the beginning when this matter was decided, there was a good deal of discussion in the Advisory Committee. We felt that we should be given reservation in provincial services. After discussing it amongst ourselves, some of our Honourable Members suggested that we might discuss it with the Sardar, in view of the note underneath the main item. Therefore we thought it proper that there should be some statutory provision in the provincial services. We do not require (any such provision) in the central, because in the central services our position is satisfactory even today. But so far as provinces are concerned our claims have been ignored. For example, we know that in the U.P. we number more than 25 per cent. but from news-papers and other reports we gather that the seats reserved for us are only 10 per cent. In the provincial services, we have been ignored, and we desire an assistance from Sardar Sahib, that just as he is advocating for the centre, similarly in the provinces as well, services be given on population basis, because spending money on education does not mean that we should be denied our due share in services. This is a very important matter. I do not insist on moving this amendment. But I desire an assurance from the Sardar who is the mover of this clause that there will be full protection and that what is contained in this clause will find a place somewhere in the constitution.

With these few words, I withdraw this amendment.]*

Mr. President: There is no amendment to this. There is only the question put by Mr. Chandrika Ram.

The Honourable Sardar Vallabhbhai J. Patel: Mr. Chandrika Ram only wants some sort of assurance. I can only give the assurance that if this Minorities Committee Report is passed, everything will be all right for the minorities.

Mr. President: I put clause 9 to vote.

Clause 9 was adopted.

CLAUSE 10

Mr. President: Now, we go to clause 10.

Honourable Sardar Vallabhbhai J. Patel: In this clause you will see that the Advisory Committee appointed a Sub-Committee for the consideration of certain concessions which were enjoyed by the Anglo-Indian community. The Committee, the members of which are mentioned here, made a unanimous† Report and I wish to draw your attention to the report of that Committee, and I shall move the recommendations of that Committee as the motion. You will see paragraph 2 has an introductory part giving the historical background of these concessions, and clause (1) is the real motion. The motion begins from clause (i)—

“(i) The present basis of recruitment of Anglo-Indians in the Railways, the posts and Telegraphs and the Customs, Departments shall continue unchanged for a period of two years after the coming into operation of the Federal constitution. After that at intervals of every two years, the reserved vacancies shall be reduced each time by 10 per cent. This shall not however bar the recruitment of Anglo-Indians in the categories over and above the prescribed quota of reserved appointments, if they are able to secure them on individual merit in open competition with other communities. It shall also in no way prejudice their recruitment on merit

*[] English translation of Hindustani speech.

† Appendix.

[The Honourable Sardar Vallabhbhai J. Patel]

to posts in these departments, or any other in which they have not been given a reserved quota.

(ii) After a period of ten years from the date of the coming into operation of the Federal constitution all such reservations shall cease.

(iii) In these services there shall be no reservation for any community after the lapse of ten years."

This is the first part of the motion. The other part refers to educational facilities. I shall move this first. I want to inform the House that this is a sort of an agreed proposition between the members of the Advisory Committee and the Anglo-Indian community. It has been unanimously, accepted and I hope this agreement will be given effect to by this House.

Mr. President: Does any one wish to say anything about it ?

(No Member rose to speak.)

Mr. President: I shall put this to vote.

The motion was adopted.

The Honourable Sardar Vallabhbhai J. Patel: I move:

"Special educational facilities for Anglo-Indians.—There are at present about 500 Anglo-Indian Schools in India. The total Government grant to these schools is about Rs. 45 lakhs being approximately 24 per cent. of the expenditure incurred by the school. We feel that a sudden reduction in the grant will seriously dislocate the economy of these schools; and that it would only be fair to bring them gradually into line with other similar educational institutions after giving them sufficient time and opportunity to adjust themselves to the altered conditions now prevailing in the country. We also feel that in this way these institutions might become a valuable educational asset which would cater to the growing educational needs of the whole nation and not only to those of the Anglo-Indian community. We accordingly recommend that:

- (i) The present grants to Anglo-Indian education made by the Central and Provincial Governments should be continued unchanged for three years after the coming into operation of the Federal constitution.
- (ii) After the expiry of the first three years, the grants may be reduced by 10 per cent. and by a further 10 per cent. after the 6th year, and again by a further 10 per cent. after the ninth year. At the end of the period of 10 years, special concessions to Anglo-Indian schools shall cease.
- (iii) During this 10 years period, 40 per cent. of vacancies in all such State aided Anglo-Indian schools shall be made available to members of other communities.

The term 'Anglo-Indian' used in this Report has the meaning given to it in the Government of India Act, 1935."

This also is an agreed proposition accepted unanimously by the Advisory Committee and the Anglo-Indian representatives in the Advisory Committee. Therefore, I hope the House will give effect to this agreement.

Mr. President: Does anyone wish to say anything about this?

(No member rose to speak.)

Mr. President: Then, I shall put this to vote.

The motion was adopted.

CLAUSE 11

Mr. President: Clause 11.

The Honourable Sardar Vallabhbhai J. Patel: Clause 11.

“An officer shall be appointed by the President at the Centre and by the Governors in the Provinces to report to the Union and Provincial Legislatures respectively about the working of the safeguards provided for the minorities.”

This is only an administrative arrangement and I hope the House will accept this.

Mr. President: There are some amendments to this.

(Messrs. Mahavir Tyagi and Tajamul Husain did not move their amendments.)

Mr. President: There is no other amendment. Does anyone want to say anything about this?

(No member rose to speak.)

Mr. President: Then I shall put it to vote.

Clause 11 was adopted.

CLAUSE 12

Mr. President: We go to clause 12.

The Honourable Sardar Vallabhbhai J. Patel:

“12. Provision shall also be made for the setting up of a Statutory Commission to investigate into the conditions of socially and educationally backward classes, to study the difficulties under which they labour and to recommend to the Union or the Unit Government, as the case may be, the steps that may be taken to eliminate the difficulties and the financial grants that should be given and the conditions that should be prescribed, for such grants.”

This is also an administrative provision for the benefit of the oppressed and the backward classes. I hope the House will accept it.

Mr. President: There are some amendments to this.

(Messrs. Tajamul Husain, P. Kakkan, H. V. Pataskar and V. I. Muniswami Pillai did not move their amendments.)

Mr. President: There are no other amendments. I put clause 12 to vote.

Clause 12 was adopted.

The Honourable Sardar Vallabhbhai J. Patel: Sir, now all the items are over and the Report as amended by the amendments that have been passed and the resolutions that have been accepted, may be adopted.

Maulana Hasrat Mohani : Sir, I should like to have an opportunity to express my views on the whole report.

Mr. President: Now, we have considered each clause of the Appendix and the report of course will be treated as changed to the extent that it is changed by the resolution of the House.

Now the proposition is that the report be accepted. Is it necessary to put it?

Mr. K. M. Munshi: Sir, this is a report by the Advisory Committee to the Constituent Assembly, and not a draft report to be adopted by the Constituent Assembly itself. Therefore I submit this report cannot be amended so that something may be put into the mouth of the Advisory

[Mr. K.M. Munshi]

Committee. What has been done technically is that the report has been taken into consideration. The House, having decided to take the report into consideration, the decisions embodied in the report and which find a place in the Appendix, were considered. Those decisions were amended by the House. Therefore I submit, Sir, no decision need be taken on the report itself. It is a report of the Advisory Committee, and should remain as such. There have been certain amendments suggested to the report, but I submit they are out of place because the report can only be adopted by the Constituent Assembly if it is going to the world or going to a third party as the report of the Constituent Assembly. Therefore I submit, Sir, the decisions having been duly amended by the House, nothing need be done with regard to the report. That is my submission.

Pandit Lakshmi Kanta Maitra: What is there to show that the House has considered the report?

Mr. K. M. Munshi: Mr. Maitra says, "What is there to show that the House has considered the report?" A resolution was formally passed that the House do consider the report. Then it took the Appendix. The Appendix contained the operative decisions which find a place in the report. These have been either changed or accepted: but we cannot change the wordings of the Advisory Committee formulated in the report for the purpose of placing before the House. It has been placed here and there ended the matter.

Pandit Lakshmi Kanta Maitra: There should be something on record to say that the House has accepted the report with certain amendments, etc.

Mr. K. M. Munshi: The decisions have been accepted in part, have been amended in part, and the report has been before the House. My point of order is that there cannot be new paragraphs added to the report or anything subtracted from it because it is a report to the House, and decisions having been properly accepted or modified by this House, the report stands as it is.

This, Sir, is an important point of order. I want a ruling because in the past we have been talking that the report is to be either adopted or altered or some paragraphs added to it. It is a very erroneous procedure because you cannot alter the report of a Committee. This is not a sort of Appeal Court. This is only a report placed before the House for consideration.

Maulana Hasrat Mohani: I do not want either to add anything or subtract anything from the report itself. What I want to say is that whenever I stand up to make any observation, you, Sir, say that this is not the occasion. I say that this whole report should be put to the vote of the House, when I have a right to say what I want to say, while I oppose the whole thing.

Mr. President: Order, order, I am afraid you have missed that opportunity. When the proposition was moved that the report be taken into consideration, that was the right time when you could have expressed yourself. Probably you were not here.

Mr. R. K. Sidhwa (C. P. & Berar: General) : The point of order is that we have taken the vote of the House for the consideration of the report, and then clause by clause we discussed amendments, and it is always customary that after the clauses have been amended, the report which

was under consideration having been completed, should be put to the House as an amended report for acceptance. That is the usual procedure, Sir, and now it should be put that the report as amended clause by clause should be adopted. That is the proper parliamentary procedure.

Apart from this, there are resolutions given notice of in regard to draft paragraphs of the report. Those resolutions stand on a separate footing, though they may be taken up or withdrawn or the whole report may be accepted.

Mr. President: What is the particular item you have in mind at the present moment ?

Maulana Hasrat Mohani: I want to refer to the portion relating to the reservation of seats on communal lines, I say that the whole system is wrong. I want to refer to nothing else except that which refers to the reservation of seats and communal representation on communal lines. Will you allow me only a few minutes?

Mr. President: As I said earlier, you have missed the opportunity.

Dr. S. Radhakrishnan (United Provinces : General) : It is quite true that we are not accepting the report which has been sent to us by the Advisory Committee. We have amended certain of the clauses in the schedule and all those amended clauses represent our decisions. In stating the decisions which we have made, we might add one or two sentences by way of preamble "with a view to develop a homogeneous, secular, democratic State, the devices hitherto employed to keep minorities as separate entities within the State be dropped and loyalty to a single national State developed. While this should be our recognized aim, we do not wish to ignore altogether our recent past, so for a period of ten years the following recommendations are intended to secure adequate representation for the minorities. Before we put down the decisions, let us have some introductory sentences and make it clear that it is not our desire in this House to, have these minorities perpetuated. We must put an end to the disruptive elements in the State. What is our ideal ? It is our ideal to develop a homogeneous democratic State—that is why we have provided for fundamental rights, we allow no discrimination in public employment, we say, it is a secular State. If you make it an Islamic, Hindu or Christian State, it would cause apprehension to the followers of other creeds. So we must declare our objective—that it is our desire to set up here a homogeneous, democratic, secular State, and those devices which were hitherto employed to keep the different sections of society apart have to be scrapped, if we now provide for certain compromise measures, it is simply because we wish to reckon with the past. We have to effect a compromise between the ideal we have in view and the actual conditions which have come down to us. These concessions will operate only for a period of ten years.

My suggestion does not touch the specific recommendations we have made. It merely states by two sentences the central aims we have in view. Every State, Mr. President, works towards a particular kind of objective. Whether it is the Soviet State or the Nazi State or the American State. What is our objective ? Do we want to keep these minorities over all India as separate entities in the State ? Have we not suffered enough? Are not the tragic happenings of the Punjab directly traceable to the development of disruptive tendencies and deliberate indoctrination? These are not the acts of God but the acts of man. You will find

[Dr. S. Radhakrishnan]

that in the I.N.A. or in the Indian Army where we wished to develop loyalty to a single State we succeeded; where we wished to disrupt a State we have also succeeded. It is therefore time for us to put our foot down on all disruptive tendencies and take care to work for other aims and say that it is not our desire to maintain these minorities as minorities. The measures of compromise are transitional, and will be terminated at the end of the tenth year. So I move formally with the permission of the House that as a preliminary to the items in the schedule we insert the sentences I have mentioned.

Mr. S. M. Rizwan Allah (United Provinces : Muslim) : Sir, I think the first point raised by Mr. Munshi is not in order. Usually the procedure is that a report coming from any committee is considered by this House and then the House adopts it in the amended form as its own report, and then it goes to the drafting committee as such. Therefore the contention of Mr. Munshi that there is no need for adopting the report is *ultra vires* and does not hold good. In the second place what Prof. Radhakrishnan said is also out of order. He wants to lay down a new objective by means of introducing his resolution but that should have been done at the time the 'objectives' resolution was under consideration. It is a new matter which he wants to introduce and so that is also out of order.

Mr. Shankar Dattatraya Deo (Bombay : General) : Sir, we do not know what is exactly before us for consideration.

Mr. President: There are two points that have come up for consideration. The first was raised by Mr. Munshi that now that we have adopted the items in the Appendix it is not necessary for us to say anything about the report itself and it is not open to the House to put something in the mouth of the members of that committee which is not in their report. That is the point of order raised that we should not say anything about the report itself because we cannot say anything about it. And what our views are have also been expressed in the course of the decisions that we have arrived at.

Mr. Shankar Dattatraya Deo: Have you given your ruling on that?

Mr. President: I am explaining the position.

Shri K. Santhanam: Sir, I submit that only those things should be recorded which have to go into the draft and so I support Mr. Munshi's point of view. As for Dr. Radhakrishnan's point it is surely a good resolution but I do not see how it can go into the drafting at all. As a general exhortation it is all right but I do not think it will have any place in the Bill when it comes up. I think it is rather irrelevant.

Shri R. V. Dhulekar (United Provinces : General): Sir, the whole report is now before us and I submit that at this stage it is quite in order for Acharya Radhakrishnan to move that the object of this whole report is to do away with reservations of all kinds and also to do away with all disruptive forces within ten years so that after ten years we may become one homogeneous nation. So I submit that this is the proper place to bring in Acharya Radhakrishnan's suggestion and the point of order is not at all justified because there is no other place where it can come in. So I support this amendment.

Mr. President: I think we have had enough discussion on the point of order and I may now be permitted to give my ruling. I am inclined to

agree with the view that so far as this House is concerned it is only giving instructions at the present moment to the drafting committee to introduce certain clauses on certain items, and it is for the drafting committee now to take those instructions which are contained in the Appendix which we have just adopted. It is therefore not necessary to say anything more at this stage and it will be for the drafting committee to include what is contained in the Appendix as decisions of this House.

The Honourable Sardar Vallabhbhai J. Patel: Sir, for the information of the House I may mention that so far as the Advisory Committee's work is concerned, the things left over are, first, the part referring to the East Punjab and West Bengal and the other is the Tribal and Excluded Area Committee report which has now been received by the Advisory Committee, but it will take time for its consideration. The third thing is that the last time when we met in the Constituent Assembly we accepted certain fundamental rights and the remaining part of that report has still to be submitted. These proposals will be considered and the final report of the Committee will come before the House when the House meets next. For the present the Advisory Committee's report has been finished. I thank the House for the cooperation it has given and for finishing the work in the scheduled time.

Mr. President: What about the fundamental rights? Shall we take it up now ?

The Honourable Sardar Vallabhbhai J. Patel: If the House chooses to take it up I have no objection.

Mr. President: As there is no time now we will take up our normal business tomorrow at 10 o'clock; but I wish to state that this afternoon we are meeting for a short time and for a special purpose, namely, the unveiling of the portrait of Mahatma Gandhi which has been presented to this House. I therefore propose that we should meet at 3 o'clock for that purpose.

The Assembly then adjourned for lunch till three of the Clock.

The Constituent Assembly of India reassembled after lunch in the Constitution Hall, New Delhi, at three of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PRESENTATION AND UNVEILING OF THE PORTRAIT OF MAHATMA GANDHI

Mr. President: Mr. Pattani.

Mr. A. P. Pattani (Western India States) : It is my happy privilege to place the following motion before the House—

“Resolved that the Constituent Assembly of India do accept the portrait of Mahatma Gandhi by Sir Oswald Birley, bequeathed to the nation by Sir Prabha ‘Shankar Pattani.’”

It is not possible to express in words the happiness I feel today, standing in this Constituent Assembly of my country, to discharge a trust and fulfil the wishes of my late father.

The portrait that is to be unveiled presently, was painted by the great portrait painter, Sir Oswald Birley, in England during the Second Round Table Conference, and my father purchased it. I may inform the House

[Mr. A. P. Pattani]

that Sir Oswald had painted that portrait for himself and he agreed to part with it because my father wanted it and it was for India. When it arrived in India, however, it was put away carefully in its original packing. We were not allowed to see it and neither the family nor friends in England could obtain from him information as to what he intended to do with it. But some time after the Act of 1935 was passed, he told me very privately that he intended to present it to the nation when the new Government under that Act was inaugurated. Time passed, and there was no hope of that Act, coming into operation. My father, passed away in February 1938, almost within ten minutes of the time when he had planned to fly from Bhavnagar, on the 16th February, to Haripura to meet Mahatmaji. That programme and that meeting were subsequently cancelled by other circumstances. But before his death he had told me two or three times to bear in mind this portrait and his wishes regarding the same.

As I submitted, Sir, the Act of 1935 did not materialise. But when the new Government was to be established under the Act of 1947, I spoke of the message of my father—which I shall mention presently—and of the portrait, to our Prime Minister Pandit Jawaharlal Nehru. That, in brief, Sir, is the history of this occasion.

I would like to take this opportunity to say a few words about Mahatmaji. I do so with reverence and great diffidence, for I am conscious that anything I say about Mahatmaji would be like attempting to measure the mountain of Kailas with a foot-rule, or as it is said in our *Shastras* trying to, describe the beauty and grandeur of the Himalayas in pen and ink. And yet I myself and some other Honourable Members of this House may be permitted to take a little pride that we belong to Kathiawar, that land of Sri Krishna, Sudama, Narsi Mehta, Dayananda Saraswati and Mahatma Gandhi. If we take pride in this fact, we should also try and follow their examples, especially the example of Mahatmaji, whom we have lived with and seen for he has been, and is, a friend of the Princes and the people. He belongs himself really to no community. He has no country. He has no home. The world is his home, and mankind the community to which he belongs. Seeking truth and serving God, he cut across all distinctions and loved all who were honest, upright, and God fearing, and it was this high plane of the spirit that attracted my father and made him a humble follower of the Mahatma. It was Bapu himself who told me that their “sambandh”—the English language has no word like ‘samband’—began when my father first wrote to him when he was in South Africa. This was, I believe, in the last century.

The great fact of modern life, and in fact of world history, is that the Mahatma discovered at the root of all trouble both in India and in England was the influence of foreign rule in this country. Having made this discovery, he set himself to solve it; and by leading an unarmed revolt, he brought India to freedom. It is for us all to make a success of this achievement, so that the fruit that he has given us may nourish everybody and lead us to a better life.

In conclusion, it was my father's wish that the picture should be delivered to the nation in his own words; these were:—

“It is a portrait of the saint who laboured more than anyone else for peace and who preached non-violence which is ultimately the only right way in human affairs.” (*Applause*).

That, Sir, is the message I am to deliver, and there (pointed to where the portrait was installed) is the portrait. I have done my duty. I request that the portrait be unveiled.

(The President then unveiled the portrait.)

Mr. President: Honourable Members, I am sure I am expressing the sense of gratefulness of all the members of this House to Mr. Pattani for the present which he has made to this House. (*Applause*). It was a happy inspiration of the late Sir Prabha Shankar Pattani to have preserved this beautiful portrait for so many years to be handed over to the nation on the auspicious occasion when India has got her freedom, and it is a happy moment for all of us that we have lived to see this portrait unveiled in this House on this occasion. It would be presumptuous on my part particularly because I happen to be one of those fortunate many who have had the fortune and privilege to serve under Mahatma Gandhi for so many years (*Cheers*), to say anything about the work which he has accomplished. He came to us at a time when the country was looking for something which would help it out of difficulty. We had experienced a great sense of frustration which comes after attempts made which have failed. The country had made many attempts to become free it was looking for something that would give it the necessary impetus and, above all, the kind of weapon which will enable it to win its freedom. Mahatma Gandhi aroused that spirit and gave that weapon in the hands of the people, and although we may not have come up to his expectations, we have at least succeeded under his guidance and his inspiration in winning the freedom for which we have all been longing for so many years.

It is not only in the field of politics, but there is hardly any field in life of a human being which has not been in some way or other touched and brightened by Mahatma Gandhi. (*Applause*). Whether we go to a village slum, to a city slum or whether we go to a big palace of a rich millionaire or a big Maharaja, there is hardly any place where his influence has not been felt, and felt very well indeed. That influence has permeated our life to an extent which probably we do not ourselves quite appreciate and fully realise, and the greatness of the Mahatma lies in this, that as time passes, as ages pass, the influence which he has exercised not only on our lives but on the current of world history will be more and more appreciated and more and more realised. Such men are not often or easily born. They come once in a way in the History of the World to turn its course, to change its current and here is Mahatma Gandhi whom it is our privilege and our good fortune to serve under today, who has turned the current of history of mankind and who has in his own life-time seen how the work which he has started has borne fruit and is bearing more and more precious fruit everyday. The miracles which he has wrought in our life are so many that it would be impossible for any of us to recount them all in a short speech. We all know how he has made heroes out of clay, how he has moulded men of ordinary calibre into men of great capacity of great culture and of great achievements. He has not only done that he has created in the Nation as a whole apart from mere individuals, a longing for freedom and also, in a way by his work fulfilled that longing. So it is that we stand here today to pay homage to him. This picture which has been presented to us will be in

[Mr. President]

this House reminding every member who sits on these benches of the great part which he had played in our history and the World's history at a most critical and momentous time. It will remind members of the great duty which they owe to this country. It will remind all of us of the great heritage which he represents and which we all of us have got from our forefathers and above I all, it will remind us how the freedom that we have won has to be utilized for the good of all. Let us hope that this picture will serve that purpose and we shall prove worthy of the great Mahatma who had led us to this goal. (*Loud Cheers.*)

On behalf of the House I formally accept this portrait. I hope you will all agree to this.

Shri H. V. Kamath (C. P. & Berar: General) : Mr. President, may I Sir, in all humility, venture to suggest that it will be eminently in the fitness of things if alongside this magnificent portrait of Mahatma Gandhi, the father of Indian struggle, the Hall of this Assembly were adorned with a portrait of Lokamanya Bal Gangadhar Tilak, the father of Indian unrest and also that of Netaji Subhas Chandra Bose, the father of Indian Revolution. That, Sir, will be a thoroughly adequate and pictorially symbolic representation of the three distinct, the three well-marked stages of our struggle for political emancipation. I have no doubt, Sir, that this Assembly will accept such portraits with joy and gratitude. Will you, Sir, be good enough to permit the presentation of such portraits on subsequent occasions?

Mr. President: The House Will now adjourn to 10 o'clock to-morrow.

The Assembly then adjourned till Friday, the 29th August 1947, at 10 A.M.

APPENDIX

No. CA/98/Cons/47.

CONSTITUENT ASSEMBLY OF INDIA

From

Shri G. V. MAVALANKAR,
Chairman,

Committee on the Functions of the Constituent
Assembly under the Indian Independence Act.

TO

The PRESIDENT,
Constituent Assembly of India.

SIR,

On behalf of the members of the Committee appointed by you on the 21st of August 1947 to consider and report on certain matters connected with the future working of the Constituent Assembly, I beg to submit this report.

1. *Preliminary:*

2. At our first meeting on Friday the 22nd, I was elected Chairman. The Committee met also on the 23rd and the 25th.

3. Our terms of reference are:

- (1) What are the precise functions of the Constituent Assembly under the Indian Independence Act?
- (2) Is it possible to distinguish between the business of the Constituent Assembly as a Constitution-making body and its other business and can the Constituent Assembly set apart certain days or periods solely for the former?
- (3) Should the members representing the Indian States in the Constituent Assembly be given the right to take part in proceedings which do not relate to Constitution-making or to the subjects in respect of which they have acceded?
- (4) What new Rules or Standing Orders, if any, and what amendments, if any, in the existing Rules or Standing Orders should be made by the Constituent Assembly or its President?

We proceed to state our views on these terms in the order mentioned.

II. *First term of reference:*

4. The business to be transacted by the Constituent Assembly falls

under two categories:

- (a) To continue and complete the work of Constitution-making which commenced on the 9th December, 1946, and
- (b) To function as the Dominion Legislature until a Legislature under the new Constitution comes into being.

III. *Second term of reference:*

5. It is not only possible but necessary for the proper functioning of the Constituent Assembly in its two capacities that its business as a Constitution-making body should be clearly distinguished from its normal business as the Dominion Legislature. We consider that for the purpose of avoiding complications and confusion, different days, or separate sittings on the same day, should be set apart for the two kinds of business.

IV. *Third term of reference:*

6. We agree that, as implied in the wording of this term of reference, the members of the Assembly representing the Indian States are entitled to take part in the proceedings of the Assembly on all days set apart for the business of Constitution-making. They further have the right on days set apart for the functioning of the Assembly as the Dominion Legislature to participate in business relating to subjects in respect of which the States have acceded to the Dominion. Though it is competent for the Constituent Assembly to deny or limit their participation in business relating to subjects in respect of which the States have not acceded, we would recommend that no ban or restriction be placed by rule on their participation in such business also.

V. *Fourth term of reference:*

7. So far as Constitution-making is concerned, the existing Rules of Procedure and Standing Orders made by the Constituent Assembly and its President are adequate and only such amendments need be made therein from time to time as may be considered necessary in the light of experience. As regards the functioning of the Constituent Assembly as the Dominion Legislature, under section 8 (2) of the Indian Independence Act, the relevant provisions of the Government of India Act as adapted and the Rules and Standing Orders of the Indian Legislative Assembly have generally to be followed. It will however, be necessary to make modifications and adaptations in these Rules and Standing Orders in respect of matters common to both the classes of business, to be transacted by the Assembly. We have not been able, within the time at our disposal, to attempt a detailed examination of these Rules and Standing Orders with a view to make suggestions as regards the modifications, adaptations and additions that may be necessary. We would suggest that necessary modifications, adaptations and additions be made under the orders of the President.

8. We desire to refer to three matters of importance which, besides being relevant to the main issue remitted to us for consideration, have a bearing on the question of the need for the making by the Constituent Assembly or its President of new Rules or Standing Orders and the amendment of existing Rules or Standing Orders.

9. The Provisions for the election of a Speaker in Section 22 of the Government of India Act 1935 have been omitted. This read together

with the other modifications carried out in that Act show that the President of the Constituent Assembly is the person to preside over it when functioning as the Dominion Legislature also, unless other provision is made in the Rules of Procedure of the Constituent Assembly itself for the election of an officer for the purpose of presiding over the Assembly when transacting ordinary legislative business. It has to be remembered that though transacting two kinds of business, the Assembly is one and can have only one President who is the supreme head of it both on its deliberative side and on its administrative side. We would, however, point out that it would be constitutionally inappropriate for the person presiding over the Constituent Assembly when functioning as the Dominion Legislature being also a Minister of the Dominion Government. It is obviously desirable that steps should be taken for avoiding this anomaly. We would suggest that for this purpose the following alternatives might be considered:

- (a) The President of the Constituent Assembly should be a person whose whole time is given to the work of the Assembly both when engaged on Constitution-making and when transacting business of the Dominion Legislature.
- (b) If the President of the Constituent Assembly is a Minister, provision may be made in the Rules of the Constituent Assembly for the election of an officer to preside over the deliberations of the Assembly when functioning as the Dominion Legislature.

10. Under the Government of India Act as adapted, the power of summoning and proroguing the Dominion Legislature vests in the Governor-General. We consider that, consistently with the powers which of right belong to the Constituent Assembly and with the Rules already made by it and with a view to secure proper co-ordination of the work of the Assembly in its two spheres, this power of summoning that Assembly for functioning as the Dominion Legislature and proroguing it should also vest only in the President. A new Rule to this effect may be added to the Constituent Assembly Rules of Procedure and a further adaptation of the relevant section of the Government of India Act may be made to bring it into conformity with this new Rule.

11. At present five members of the Dominion Government have no seats in the Constituent Assembly. These Ministers have the right to participate in the business of the Constituent Assembly when functioning as the Dominion Legislature, though they will not have the right to vote. They will, however, not have the right even to participate in the work of the Constituent Assembly when it transacts business connected with Constitution-making. We, however, recommend that such Ministers may by a suitable addition to the Rules of the Constituent Assembly be given the right to attend and participate in its work of Constitution-making, though until they become members of the Constituent Assembly they will not have any right to vote.

Yours sincerely,

G. V. MAVALANKAR,
Chairman.

NEW DELHI,
DATED THE 25TH AUGUST 1947.

BLANK

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 29th August 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

MEMBER TAKING PLEDGE

The following member took the pledge:

Lt.-Col. Brijraj Narain (Gwalior State)

ELECTION OF MEMBERS TO THE HOUSE COMMITTEE

Shri Satyanarayan Sinha (Bihar: General) : Sir, I beg to move the following motion:—

“Resolved that the Constituent Assembly do proceed to elect in the manner required under Rule 44 (2) of the Constituent Assembly Rules, two Members to be Members of the House Committee.”

As you know, Sir, two of our Members who were Members of this Committee, Mr. Abdul Ghaffar Khan and Mr. A. K. Das have ceased to be Members of the House. According to the Rules, they have ceased to be Members of the House Committee too. Therefore, there are, two vacancies to be filled in the manner prescribed by the Honourable the President.

The motion was adopted.

Mr. President: Nominations to the two vacancies in the House Committee will be received up to 5 pm. today, and elections, if necessary, will be held between 3 pm. and 4 pm. tomorrow in the Under Secretary's room (Room No. 25), Ground Floor, Council House, in accordance with the principle of proportional representation by means of the single transferable vote.

COMMITTEE TO SCRUTINISE DRAFT CONSTITUTION

Shri Satyanarayan Sinha: Sir, I beg to move—

“This Assembly resolves that a Committee consisting of—

- (1) Shri Alladi Krishnaswami Ayyar,
- (2) Shri N. Gopaldaswami Ayyangar,
- (3) The Honourable Dr. B. R. Ambedkar,
- (4) Shri K. M. Munshi,
- (5) Saiyid Mohd. Saadulla,
- (6) Sir B. L. Mitter,
- (7) Shri D. P. Khaitan,

[Shri Satyanarayan Sinha]

be appointed to scrutinise and to suggest necessary amendment to the draft Constitution of India prepared in the Office of the Assembly on the basis of the decisions taken in the Assembly.”

Sir, you will remember, last time when we were discussing the Union Constitution and also the Provincial Constitutions, on your suggestion, the House approved that a Drafting Committee should be appointed to give proper shape to the decisions which we have taken in this House. With that end in view, this Committee is going to be appointed. This is purely an expert committee. I hope the House will approve the names suggested.

Mr. H. V. Kamath (C. P. & Berar: General) : On a point of order, Mr. President, Saiyid Mohd. Saadulla, as you, are well aware was unseated as a result of the Sylhet Referendum and has been only recently re-elected. He has not yet signed the Roll of Members and taken his seat in this House. As such I think he is not eligible for election to any Committee. Will you, Sir, be so good as to tell the House whether, as far as Mr. Saadulla is concerned, the motion is in order?

Mr. President: He will begin to function after signing the Roll.

Begum Aizaz Rasul (United Provinces: Muslim) : Mr. President, though I have not given notice of this motion, I would like to move with your permission that this House gives the Honourable the President the power to nominate any other Member to this Committee, if any Member who has been nominated on it is not able to serve for any reason. I hope the House will kindly accept this amendment of mine and give this power to the Honourable the President.

Mr. President: Have you given notice of this amendment.?

Begum Aizaz Rasul: I said just now that I have not given formal notice of this motion, but that I hope the House will kindly accept my motion.

Mr. President: I shall consider this matter a little later. In the meantime the other amendments may be moved.

The Honourable Shri B. G. Kher (Bombay: General) : Mr. President, Sir, the amendment of which I have given notice is suggested with a view to express more clearly and give effect to the intention of the mover, Mr. Satyanarayan Sinha. It reads this way:

That for the words “to scrutinise and to suggest necessary amendments to the draft Constitution of India prepared in the Office of the Assembly on the basis of the decisions taken in the Assembly” the following be substituted:—

“to scrutinise the draft of the text of the Constitution of India prepared by the Constitutional Adviser giving effect to the decisions taken already in the Assembly and including all matters which are ancillary thereto or which have to be provided in such a Constitution, and to submit to the Assembly, for consideration the text of the draft Constitution as revised by the Committee.”

It makes provision for two things. One is that for the purpose of giving effect to the decisions taken already in the Assembly—the Constitutional Advisor will prepare the draft. That draft has to be scrutinised by this Committee. Then, Sir, we have not here considered all the points which are ancillary to the decisions which we have taken or which are usually necessary and have to be provided in the Constitution. For example, we have laid down a principle that all the action to be taken in the Provincial Constitution will be taken in the name of the

Governor. There are a number of things which have to be put in order to give effect to this decision which the Assembly has taken and which have been given a place in the Government of India Act. Then there are provisions which are ancillary in the other constitutions, and some other provisions which must usually find a place in the Constitution. All these will have to be included in our draft even though they may not have been discussed or decided here up to now. I do not think it proper to make any lengthy remarks on this amendment. It was not possible for us to discuss and provide for every necessary matter but without them the constitution will not be complete. We have taken decisions on almost all important points. Those will be given effect to but the draft will also contain things which are ancillary to these and also all such things as are otherwise necessary. The draft containing all these matters is bound to come up before the House for discussion and decision. I hope, Sir, this House will accept this amendment.

Mr. President: Those amendments which go to the merit of the resolution will first be considered.

Shri Satyanarayan Sinha: I accept the amendment, Sir.

Mr. A. P. Pattani (Western India States) : Mr. President, I wish to submit that the Motion that is being placed should be shortened and it might be just said that this Committee be appointed to assist the Constitutional Advisor in drafting the Constitution. I wonder whether it is necessary to entrust the task of drafting the constitution to a large Committee. It would be much better if the Constitutional Adviser who is the one experienced adviser is given the work, because all the details are only known to him. The draft cannot be made in sections but as a whole. Consequently those members of the Committee that are appointed will be of help to him in framing the Constitution, to draft it on the lines of the amendments that have been accepted in the House here. So instead of scrutinising, etc., it will better serve the purpose, if the House simply says that this Committee will assist the Constitutional Adviser in drafting the Constitution.

Shri M. Ananthasayanam Ayyangar (Madras: General) : Sir, I am not in favour of the suggestion just made by the previous speaker. It is not right that the work should be entrusted entirely to the office, however eminent the officers might be. We have now taken decisions on various matters that have been placed before us by way of the draft Constitution. It is up to us to appoint a Committee of the leading men to frame the Constitution. There are a number of things in which we have moved amendments to the draft that was placed before us, approved of other things which normally find a place in any Constitution and which are taken for granted and even in respect of lists we have to consider them. It is wrong to leave these Lists—whether they are good or bad—to the decision of the officer who has to frame it. We have been looking for guidance from time to time to many Honourable Members of this House. For instance, the Honourable the President many a time has asked Mr. Alladi Krishnaswami Ayyar what is his opinion and likewise various others have also contributed. They have got all the amendments that have been tabled. No doubt, the amendments have not been formally moved, but they will be taken into consideration. Therefore, I suggest that this Committee may introduce a draft bill which will be considered clause by clause later on by the Assembly.

[Shri M. Ananthasayanam Ayyangar]

I also agree in a way to the suggestion made by the Honourable Lady Member that in case anyone of the Members may not find it convenient to come and the work cannot wait, the power to fill in or co-opt such of the members who may find it convenient or who are prepared to shoulder this responsibility must be given to the President, Sir, if the House accepts, I would like to clothe the President with that power also. It is not for two or three members to meet and share the entire responsibility. For instance, Mr. Santhanam has been here taking a great interest in these matters. He continues to be in Delhi. These gentlemen may be requested to attend in case others do not find it convenient to appear. Therefore, with the modification of vesting the general power in the President, the amendment of Mr. Kher may be accepted.

Shri K. Santhanam (Madras: General) : I support the amendment of Mr. Kher, but I should also like to have some information upon a few important points. We have left certain material particulars undecided in this House so far. For instance, we have yet to decide upon the definition of citizenship, upon the procedure for change of constitution, upon the emergency powers and upon the financial clauses of the Constitution. Now, I would like to know whether this Committee is to begin work now or whether it is to wait till we have decided these matters in the next session. This should be made clear unless this Committee is to sit quiet and practically not function at all. I would myself suggest that the Committee should proceed to draft all the clauses. But they should keep the matters which have been already decided distinct. The other portions may be put in big types or italics so that when we meet here we may adopt a different procedure for the two parts. So far as the parts containing our decisions are concerned, only the verbal part of it will be scrutinised and no material amendments of principle will be adopted. As far as those parts which contain matters which are not decided are concerned, we shall proceed to table amendments on principle also. Therefore, I do not think this Committee need wait till we have decided the points which have not yet been decided.

Let them prepare a tentative draft and let the whole draft be brought before the next session. Let us then consider verbal amendments to those parts which have already been decided and in case of the other sections of the constitution which have to be considered *de novo*, we can table amendments of principle. Thus we can save the time of the House. Otherwise, another session to determine all these unsolved particulars will be a great strain on the Members. Therefore, I hope that when we meet in November, we will have a complete draft of the whole Bill including all matters which we have decided and other matters which we have yet to decide, so that we can adopt this procedure. I hope this will be acceptable. Mr Kher's amendment should be interpreted in the more liberal fashion that I have suggested.

Seth Govind Das (C. P. & Berar: General) : *[Mr. President, one very important matter has not yet been decided and in this connection I want to say what should be our language. You had said that the

*[English Translation of Hindustani speech begins.]

constitution, which we will draft, will originally be in our national language, and if it is deemed necessary it will be translated into English. I want to know in what language the committee that is being set up will transact its business. I want to know whether this matter will be considered by the Committee or not.

The other thing that I want to know is, as to whether the bill that we are drafting will be originally in our language, as you had said, or whether it will be in English. I want to suggest that these matters as well should be decided now, and also that the Bill that we are drafting should initially be in our national language. It can later be translated into English. What our national language should be, must also be decided just now.]*

Mr. M. S. Aney (Deccan States) : Mr. President, Sir, I have come to make some observations because my friend Mr. Santhanam has made a suggestion which appears to me to be unconstitutional. Mr. Santhanam has asked that the Drafting Committee work should be to prepare a draft showing those clauses which are based upon our decisions in some form to be distinguishable from the rest of the clauses. He further stated that those clauses which are based upon the decisions already taken here should admit only of verbal amendments here and there; and any substantial amendment to modify those clauses should not be permissible. I submit, Sir, that the right of the House cannot be restricted in that way. (*Hear, hear*). It is one thing when you take the decision now. When the whole draft of the Bill is before you, in the light of that, it may become necessary for you even to go back upon certain decisions that you have taken before. No hard and fast restriction is, in my opinion, desirable. I have come here mainly to emphasize this particular thing.

Secondly, a suggestion has been made that it should be open to the President to nominate anybody he likes in addition to the names on the list. Ordinarily, nobody will take any objection to this. The main reason why we have thought of giving certain names is to relieve the President of his invidious responsibility in a matter of this kind. It will be putting him in an awkward position if ten persons go and tell him, "I think I am very competent to deal with the matter and so my name should be there". It is better that the names that are given in the list are adopted. It is not necessary for anybody to be on the committee itself to assist the members by making suggestions.

Therefore I oppose the particular suggestion which has been made by the lady who spoke and who was supported by my Honourable friend Mr. Ananthasayanam Ayyangar.

Mr. R. K. Sidhwa (C. P. Berar: General) : Mr. President, as I have understood, the object of this Committee is to proceed immediately with the business that has been adopted by this House. That is to say, all the proposals that this House has considered as far as the Union and Provincial constitutions are concerned, will be duly framed, excepting those subjects, namely language, citizenship and the principles of the first part which are to be held over. The Committee cannot discuss these matter until these and other subjects which are not yet

]* English Translation of Hindustani speech ends.

[Mr. R.K. Sidhwa]

decided by this House have been discussed threadbare again in the next session. But that would not prevent the Committee from proceeding with its business. Mr. Santhanam's apprehension therefore is not tenable. The object of this Committee is to proceed immediately with its business and therefore, I feel, Sir, there is no necessity for Mr. Santhanam to be apprehensive.

Secondly, as Mr. Pattani has suggested, I do feel that the constitution could be prepared by one expert gentleman. Personally, I would have felt a Committee of three persons to scrutinise it would be enough. As it is stated that some members may be absent, seven names are suggested. I am not in favour of asking the President to fill in names for those persons who are absent. Three even would be sufficient; five would be more than that and seven much more. Therefore, I feel that as proposed by Mr. Kher and Mr. Santhanam, the names which are there should be allowed to stand without giving power to the President to take any more in the event of a vacancy for persons who are absent, and that the proposal as made by Mr. Kher with the names that have been proposed should be accepted.

Dr. D. Pattabhi Sitaramayya (Madras: General): Mr. President, Sir, we cannot read into the resolution more than the wording permits and therefore I am not perturbed by what Mr. Santhanam has suggested. As a practical politician, he expects that the Bill to be ready must be complete and cannot be full in certain parts and absolutely blank in other parts, and so he thinks that the Bill should be a complete one. When it is made a complete one, his suggestion comes into operation. Whether there is to be a complete Bill and his suggestion should be permitted to come into operation is the issue that we have to consider. If that is to be accepted, then it will be taking away the powers of the whole House and constituting the Sub-Committee into a kind of Committee Delegate of the Constituent Assembly, a step that is not desirable by any means. As Mr. Santhanam has himself categorically described the first three Chapters of the Union Constitution Committee and the last two bits of the same, as well as the Provincial and concurrent and a good half of the Federal lists of the Union Powers Committee constitute a big chunk which has been left out and has yet to be considered by the whole House. For instance, the Union Constitution Committee and the Model Provincial Constitution Committee had a joint sitting and appointed a Sub-Committee in regard to linguistic provinces and its recommendation has been considered by the Joint Committee of the two Committees. What is to happen to that hereafter? Should it be dangling in the air like Trisanku, neither in heaven nor on earth? Should it be given the go-by? Should it be passed over? I mention it only as an example, not that I am a faddist about the question. The matter has to be taken as an illustration. I ask; "When on November 6th, this Assembly reassembles, for what purpose is it going to reassemble? Is it going to be presented with a Bill, complete in every detail, and then consider it as a matter of course?" In that case, it will have embodied in it portions which have not been considered at all by this House even primarily. If that is not so, then, the November 6th Session will have to address itself to a consideration of the left-over points in which case no Bill can be ready by that time. This is the difficulty that presents itself to me logically. Therefore, I would like the President to make the position clear and also if possible to convene a Session of this House in the month of September or October in order to complete all the points which have been left unconsidered. Then the material that

will be presented to the draftsmen or the drafting Committee or the scrutinising Committee will be ample and complete and then only they can deal with the matter. I make this suggestion in order to have in our mind a clear idea as to what is going to happen and if possible to persuade the President to convene a session in the month of September or October for completing the business by attending to those other matters which have been left over.

Pandit Lakshmi Kanta Maitra (West Bengal: General) : Mr. President, the amendment moved by my Honourable friend Mr. Kher deserves very careful consideration and in that connection the observations that have been made by Mr. Santhanam should also be closely scrutinized. I am sure that most of the members of this House have not yet got any clear picture as to what is going to be done in the next session. Mr. Santhanam says that a portion of the Union Powers Committee's Report has not yet been dealt with by the House. Nobody knows whether the House is in a position to accept it *in toto* or to modify it. He seemed to suggest that there will be drafting of the decisions that have already been taken by the House and that it would be open to the members to make certain small verbal alterations only if necessary. I want to tell this House that this is not an ordinary piece of legislation or an *ad hoc* piece of legislation which a legislature is called upon to enact. You are going to enact a Constitution Act for Free India and, therefore, it is incumbent, nay, it is imperative on everyone of you to scrutinise closely every single provision in the Constitution Act and to satisfy yourself that it meets with the requirements of the nation. If you simply restrain the powers of the members of this House and restrict them to mere verbal alterations. I think you will be doing the greatest possible injustice to this house and also to the country. It may be that when a full picture is presented to the House they may be constrained to make certain drastic modifications of certain portions of clauses of the Constitution Bill in the light of the decisions that we may be able to take mean-time. How can you say beforehand that, the draft that will come up before you would be only amenable to certain formal or verbal alterations? Does Mr. Santhanam 'seriously suggest that because we have accepted certain principles in this House in connection with the reports of the Union Powers Committee and the other Committees, therefore, that will operate as a *res judicata*, that they cannot be reopened, that it is, not open to any member to go back on them or to modify them to suit the necessity of the law itself or the constitutions itself so that it might fit in with the rest of the provisions? If that is the view held by him, I will join a straight issue with him. I cannot too strongly emphasise the point that it is the Constitution Act of this country which you are going to frame.

Then, Sir, I thoroughly agree with my Honourable friend Mr. Kher when he said that the drafting should be entrusted to certain responsible persons and that too many cooks would spoil the whole broth, and that these responsible persons should be entrusted with the specific duty of seeing that The decisions that have been taken so far are really embodied in the Bill with such alterations as may have been suggested. I want to ask you, Mr. President, to indicate to us whether or not, when the draft bill is prepared and formally introduced in the House for consideration, you are going to allow a Select Committee of this House, elected by members of this House, representing it all sections (and 'by all sections' I mean also the States) to go into and examine the whole Bill that is presented for the consideration of the House. Unless in my opinion, a

[Pandit Lakshmi Kanta Maitra]

Select Committee is appointed to go into the whole question to examine the bill with meticulous care in respect of every single provision of the Constitution Act, I am sure we are not going to get satisfactory results. Let us not forget that once a Constitution Act is passed, it is not changed within three, or six months or even within a year and a half. Therefore, we must take every possible care and precaution so as to make it as faultless as is humanly possible. No human institution is perfect, I know. But we must take all possible care to see that the Constitution Act framed by us is nearly faultless as possible. We will defer our judgment for some time until we are satisfied with all provisions of the Constitution Act. Therefore before we put the final imprimatur or seal of approval on the Constitution of India, I ask you carefully to consider whether you will not insist that on the presentation of the Bill there should be a Select Committee to examine the whole Bill and all its provisions with the utmost care and caution and then when the report of the Select Committee is presented before the House, you should have the final opportunity of carefully discussing every single section of the Bill. Personally speaking, I do not feel that we need proceed with the drafting of the constitution at the terrific speed now when we are going to introduce rules and regulations by which this Constituent Assembly will also be functioning as a Legislature. While functioning as a legislature this House can carefully examine the provisions of the Constitution Act as well. With regard to the portions that have been left out, I would suggest that if it is insisted that a complete draft should be presented to this House by the November Session, then the draftsmen may proceed on the assumption that the portions of the report of the Union Powers Committee that have not been so far discussed by this House or left over, have the approval of the House. If, however, we find that these recommendations in the report of the Union Powers Committee will not ultimately meet with the approval of the House, then we will modify them, and if the principles are not later accepted, the draft also will be modified accordingly. Therefore I do not agree with my Honourable friend Dr. Pattabhi Sitaramayya that an intermediate session would be necessary to complete the programme that was placed before us. I do not think it will be possible in the whole of September to convoke another session of the Assembly to go into this matter. I must say that the November Session should first of all discuss the portions that have been left out and which can be pieced together towards the end. The draft can follow. We shall expect the draft of the Bill in three month's time. After all the constitution of a country is not a small matter and cannot be lightly treated. I would therefore request that you, Sir, should give a clear indication to the House as to how we want to proceed. So far as I am concerned, I do not know if I am voicing the feelings of my Honourable friends here, but I am inclined to think that the final draft of the constitution should be in the hands of Honourable Members of the Constituent Assembly for at least three weeks before it is taken up. Unless you give them sufficient time carefully to read and scrutinise the provisions that you make in the draft, you will be simply taking a terrible lot of time here. You cannot stop the flood gates of amendments that would be pouring in from all directions, if you give them insufficient time. I do not think that for the scrutiny of the draft constitution of the country three weeks' time is too much. I mean that the draft will be prepared and circulated to the members at least three weeks in advance of the session. If you can do that, then the Honourable Members would come prepared thoroughly, and the amendments that may be tabled in connection with the different clauses probably will not be so numerous as they would otherwise be, if the Bill

is drafted in haste and if the draft is circulated to the members only a few days before the session commences. This is a very important matter. Sir, I do not mean to cast any reflection on your office, Mr. President, but from our experience of the Central Legislative Assembly Department, I may say that your secretariat is not half as efficient as that of the Central Legislative Assembly. That is what we find from the way in which papers,—daily order papers, are circulated to us. On the question of the supply of the draft constitution, if we are confronted with excuses such as “shortness of time” or “we sent to your address” or “we could not send it” and so on and so forth, that will be disastrous. Therefore I would say that it is very necessary to see that these drafts are sent to us in time.

Then, Sir, I would submit that it will be for you to take counsel with the other important members of this House and consider whether you envisage the appointment of a Select Committee to go into the whole Bill before it is taken up clause by clause by this House. Unless that is done we may not be able to safeguard ourselves against pitfalls.

Mr. Alladi Krishnaswami Ayyar (Madras: General) : Sir, on a matter like this it is as well we are sure as to what exactly the import of the resolution is. One thing must be made quite clear, namely, that in regard to the decisions already reached, they will be treated as binding, though if errors are discovered or unforeseen difficulties arise, it will always be open to the House to review the decisions. The analogy of a Select Committee in the case of an ordinary bill that is introduced by Government is misleading. We have taken nearly a year for the consideration of various subjects by certain committees of the House. There has been a Fundamental Rights Committee, the Union Powers Committee, and the Union Constitution Committee and they have considered and placed their decisions before this House. In regard to matters which have already been considered by this Assembly and in regard to which decisions have been reached, the scope of review at a later stage must naturally be limited. The analogy of an ordinary Bill introduced by Government without reference to the Assembly is misleading. There the Government Department prepares a Bill without reference to the legislature and places the Bill before the legislature. Then the House appoints a Select Committee which goes into the question. If you treat the whole question as a draft without reference to the decisions already reached on various important matters and if clause after clause were taken and discussed, I think it will be like beginning again. There will always be a beginning to the procedure, never an end of the procedure started in this House. I think it is as well that it is made clear that in regard to matters in respect of which no decisions have been reached they stand on a different footing.

But difficulty arises on account of my friend Mr. Santhanam's suggestion that this committee must take into account the other set of provisions in regard to which no decision has been reached. I do not say that it is not open to the House to review the entire decision but there must be some degree of finality in regard to the work already done for about eight or nine months, so that we do not begin again as if it is the case of an ordinary Bill placed before a Select Committee ignoring the reports that have been submitted by the committees, the discussions of this Assembly on clause after clause and the votes that have been taken on the floor of the House. I do not know whether it is the wish of the House that this Committee should consider all matters. Sections which have not become the subject of decisions by this House is another matter. At any rate, some distinction must be drawn between cases in which decisions have

[Mr. Alladi Krishnaswami Ayyar]

been reached in this House yesterday, the day before and during the whole of the various sessions of this House. We have discussed clause after clause and there have been very long and elaborate arguments on the floor of the House. We owe a duty to the public, to make them feel that all this time is not to be treated as waste of time. That is the only point I want to make clear.

Dr. P. S. Deshmukh (C. P. & Berar: General) : Mr. President, Sir, I am sorry I cannot find my way to agree with the suggestion and the speech made by Mr. Alladi Krishnaswami Ayyar, or Ayyangar—I am afraid I am not able to pronounce his long name correctly, but whether it is Ayyar or Ayyangar, probably it makes no difference. In any case, he can be fittingly described as the previous speaker. His suggestion, Sir, is that the time that we have spent in this House should not be wasted. But this is, Sir, the important legislation which could never be altered lightly, and whatever procedure we may lay down in the House, it is bound to be very hard to amend it. We will have also to take into account the fact that many of our friends have already made up their minds that we are going to have a very large number of representatives coming from the States. We all know that the States are a conservative element in India and they are sure to put in their weight against any alterations. It is absolutely certain that if we try to amend the constitution, they would be on the side of maintaining it rather than permit it to be altered.

Apart from that Sir, what is the exact situation in which we find ourselves today? Sir, Alladi or Mr. Alladi said that we have spent a year on this work. I am afraid, Sir, that is not strictly correct. For the first time we met in the month of December. What was the business that was transacted then? Very little. The sum-total of the work we turned out in that session does not come to much especially from the point of view of being of much practical use. Then we met again in January, but that also was a very short session. We merely passed a resolution giving out the objectives of this Assembly. As a matter of fact, if we carefully look into the proceedings and records of our work, we will find that the work that we have done so far, is in my humble view, of a very perfunctory nature. We have had several committees, but in most cases we have had only interim reports, provisional suggestions, tentative proposals and things of that sort. That is the sort of thing we have been dealing with. We have not yet had a complete picture of the Constitution. As a matter of fact, the most important chapters in the Union Powers Committee are yet to be decided on. Then, how can we possibly say that we have before us a skeleton of the constitution? I say there is not even a skeleton constitution before us. Therefore, it is but proper that we should have a very comprehensive committee a committee got up of members from all sides of this House containing the best intellect and competence that we have in this House to look to the shaping of the Constitution. Not to give such an opportunity and to rush legislation like the framing of a Constitution would be highly improper. I hope, Sir, that the suggestion made by Mr. Santhanam and supported by Mr. Alladi Krishnaswami Ayyar will not be accepted by this House and that the counter-suggestion made by other friends of mine and supported by Mr. Aney on this side will be accepted by the House.

As I said before, we have been dealing with the Constitution in a very piece-meal manner and unless we have the whole picture before

us, the House should not be regarded as having committed itself one way or the other. Of course, in some matters, as in the case of the Minority Committee report, etc., there was so much of unanimity that the decisions arrived at are not likely to be disturbed. But there are so many ancillary things, and things that arise as sort of corollaries to the main propositions. It is fit and proper that they should be decided afresh. It should not be supposed that the decisions that we have already taken in respect of these are unalterable. They should be alterable with as much ease as possible till we have the whole picture and till we have had a proper opportunity of discussing every word, every section and every principle involved in the Constitution. Till such time none of our decisions should be regarded as in any way unalterable.

Mr. Tajamul Hussain (Bihar: Muslim) : Sir, I rise to oppose the motion of Mr. Satyanarayan Sinha. In my opinion it will be wrong to appoint a committee at this stage. I do not believe in doing work piecemeal. I think it is far better in our own interests that we sit here till we have finished the consideration of all the Reports. I think it will not take more than about a fortnight to finish the consideration of the Reports. If we continue the work now, I think, that by the 12th of September we will be able to finish it. If Government, for certain reasons, are not prepared to do so, being busy elsewhere—let us adjourn for a few days and meet again. But let us not end this session, now. Let us adjourn for a few days, meet again and finish the work which we have taken on hand. When all the Reports are finished let us then appoint a Committee, and then adjourn for about three months. I think it will take the Committee about two months to scrutinise the whole thing and submit its report in the form of a Bill. And then we will take at least one month to consider the Bill and then we can come to the Assembly to deal with that Bill. Therefore, I say, let us go on till the end or at least till the middle of September and finish consideration of these Reports. Suppose we go to the end of September, we can adjourn for October, November and December, and meet again in January and then go on till we finish this work. I think if we sit for two months during, January and February, then by the end of February we shall finish the work. For the three months we can stay here as the Members of the Union Parliament. During these three months, part of the time can be spent in this way. Then we can sit from the beginning of March to end of March or middle of April for the Budget Session of the Central Legislature. I think, Sir, for the smooth working it would be better that we continue now, and appoint a committee after the entire work of considering the Reports is finished. I have come here to oppose the original motion of Mr. Satyanarayan Sinha.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim) Mr. President, Sir the process of constitution-making has been going on for the last eight or nine months. This Assembly appointed certain committees to go into several topics, and to recommend a constitution for the Province and for the Centre, and some committee were appointed to make reports on special subjects such as the Powers of the Union, the Minorities Rights, the Fundamental Rights and so on. After these committees had gone into the several matters referred to them, and after great care and scrutiny, they made their reports to this Assembly. Most part of the reports has been discussed and debated upon in this

[Mahboob Ali Baig Sahib Bahadur]

Assembly, and this Assembly came to certain conclusions, and decided certain matters this way or that. So we have reached a certain stage now. After the committees had studied the questions and prepared their reports, these reports were discussed and debated in this Assembly and most of these questions have been decided upon and only a few topics have been left over. Now, two questions arise. The first is, whether a select committee to draft the Constitution should be selected now, or whether it should be selected after the remaining topics also have been decided upon by this august House. That is the first question to be decided. The second question is whether the decisions that have been taken by this House can be re-opened again at the stage when the draft Bill comes before it. These are the two questions to be decided on this motion. I am clearly of the opinion that there is no room, nor justification for reopening the decisions on those topics that have already been decided upon. As my friend Mr. Alladi Krishnaswami Ayyar put it they have been debated upon, they were scrutinised on reports drawn up by committees competent to consider them. They were again thrashed threadbare and debated upon by this body. Therefore, Sir I think no useful purpose would be served by reopening then again at this stage, nor is it right and proper.

Shri C. Subramanyam (Madras: General) : Sir, on a point of order Rule 32 of the Rules of Procedure is as follows:—

‘No question which has once been decided by the Assembly shall be re-opened except with the consent of at least one-fourth of the members present and voting.’

Therefore, it is clear that we have provided for the reopening of questions already decided upon. That being the case. I want to know why there should be any debate on this point at all. We have already provided for the reopening of decisions. So I submit there need not be any debate regarding the reopening of decisions once arrived at.

Mr. President: You should have raised this point of order when the first speaker raised the question. Now that the debate has proceeded so far it cannot be stopped in the middle. But all the same, I think this question has been discussed at great length and I would request Honourable Member to cut short their remarks as much as possible.

Mahboob Ali Baig Sahib Bahadur: The second question is about the select committee for drafting the Bill. I entirely agree with my friend Dr. Pattabhi Sitaramayya that the topics left over should also be debated upon, discussed and scrutinised by this House and when we have done that, then that will be the time to appoint this drafting committee. I do not see any reason why certain topics which have been left over should not be discussed by this Body. Is it considered that the topics left over are not of as much importance as the others? It is clearly not so. One Member has said that after the Bill is presented to the House it should go to a select committee. I do not think that is necessary at all after this larger body, the whole Assembly, had once gone into the whole question and decided on the issues one way or the other. Therefore there is no necessity for a select committee to be appointed before, which the Draft Bill should go and I submit that just as we have decided on many topics the remaining topics also should

be decided by this body so that what is left to the Drafting Committee will be only placing the topics that have been decided on, on which decisions have been arrived at, in a legal form and providing any consequential provisions that may be necessary from those decisions That is all. When the draft Bill comes before the House it should be very much easier for us to get through the business and pass it in a shorter time than would be necessary if we were to go through it *in extenso*. Therefore, I submit that it is not open to us, at any rate, normally, to reopen the question at the time the draft is placed before us. At the same time I am of opinion that this House should decide, as it had decided other topics beforehand, regarding matters that had not been decided and it is not necessary for us at this stage to appoint a Committee.

Shri Raj Krushna Bose (Orissa: General) : Mr, President, I do not have to say much in this connection. In my opinion it would have been proper if we had maintained continuity and consistency in the proceedings hitherto. From the discussion today it appears that we are deviating from the course which we were following. As first, we had thought of determining the principles for drafting of the constitution. You set up two committees and they have settled the principles. When principles have once been decided, it would have been proper for us to express our opinion on them. This could not be done, because the present session finishes before the 31st of August. Therefore, I desire that hence forward, whenever we are summoned we should have clear indications as to how many days we would be required to stay. We do not get any indications in this connection and we come on the understanding that after finishing the work of the Assembly in a few days we will be able to go back to our respective constituencies. But in future, we should have clear indications as to how long approximately the session will continue so that the members may not say that they are not prepared to stay so long. I want to submit most respectfully that we should have liked to express our opinion on the principles which the two Committees have agreed upon after so much labour and hard work. To do otherwise is a mistake and I think that we are not doing our duty. When you have decided that we shall not sit after 31st, then I submit that for expressing our opinion on the Union Constitutional principles on which we have not yet given our opinion, another session should be summoned either towards the end of September or the beginning of October. After that, the draft should be prepared which we will pass of course. If there is some mistake of language we will correct it. When the draft comes before us we can amend it if necessary, but we have no right to go against the basic principles. Then we will not be able to say that the Governor should be elected on the basis of indirect election instead of adult franchise. If we go on changing the principles like this, then the task of the Constituent Assembly becomes very difficult, and the work will never come to an end. Therefore, I submit very respectfully that consistency should be maintained with what has so far been accomplished, and in order to ascertain opinion regarding the remaining principles of the Union and Provincial Constitutions, another session should be summoned either at the end of September or the beginning of October. After that, we will give time to the Constitutional Adviser to prepare the draft, and when the completed draft comes before us, we will give our final opinion. Therefore, it is essential that continuity be maintained.

As I have already said, from now onwards when the Constituent Assembly is summoned an indication should be given that we will have

[Shri Raj Krushna Bose]

to stay here for approximately so many days. The members will therefore not form their own idea that the work will be finished in so much time and make their arrangements accordingly. On the contrary, they will make their programme on the basis of your directions and then these difficulties will not arise.

Mr. Jaipal Singh (Bihar: General) : Mr. president, Sir, I oppose the Resolution that has been moved because I feel that it is not right for us, at this stage, to appoint any Committee, whether of experts or otherwise, which can pry into things which we have not yet decided. I can fully understand that decisions that have been made may be put into the melting pot by them and turned out in constitutional language, but it has been insinuated by some, speakers that this Committee would also look into matters where the House has not taken its decision. A great many important subjects are yet left over. They have not been decided by this Assembly and I don't see how we can delegate our constitution making power to any Committee at all. I do not think there can be any difference of opinion on that. I do admit that, as far as the question of clauses and other things that have already been decided by us, is concerned, a Committee may reproduce them in suitable constitutional language. Here, a point has been raised that some sort of finality should be reached. True we are making a constitution and that very word itself means that we are not to change it every five minutes, but at the same time, before finality is reached, I think we should have ample opportunity of reviewing the situation. It may be that we shall have to unmake our decisions. The House is a sovereign body and it has the right to make decisions and unmake them. It seems to me that, by appointing a Committee at this stage, we are putting the cart before the horse. More and more have we realised that it does not pay us to rush things. We have appointed Committees of experts; they have produced their reports; and what has happened is that those reports when they have appeared before this Assembly have been thrashed out and there have been very many important changes in the recommendations of the experts. This may be the case with the Drafting Committee also when it submits its report. I think, in that case, we shall just be wasting time. I think the better thing would be that we should complete whatever remains to be done and, then, the Drafting Committee will be in a position, having been in full possession of all decisions taken by this Assembly to produce a Bill which can come before us to make up our mind finally whether we want to change the language or the subject matter contained in that Bill. Sir, I particularly feel that it should not be left to this Committee even to draft in constitutional language clauses in regard to tribal matters, for instance. Now, the Tribal Committee, one of the Sub-Committees appointed by the Advisory Committee which again has been appointed by this Assembly, has yet to complete its work. We have, I know, submitted an *interim* report. Does it mean that this Committee of experts, expert draftsmen, are going to submit in the Bill matters which have not yet come before the Assembly? I think, that would be a preposterous thing for us to do. The House must have the right to make its decisions and I suggest that we can never delegate our constitutional power to any Committee, however great the experts might be. We have seen their we are grateful for the work they have produced, but our experience has been that even experts have to be shifted when the matter they produce comes before the floor of the House.

Mr. Hussain Imam (Bihar: Muslim) : Mr. President. I do not wish to take up the time of the House. I simply wish to point out the conditions under which we are working. At the moment there is so much distress and disturbance in the country that it seems unnatural for us to sit here, and not be at our posts. A suggestion was made that this Session should be continued. I think it would be disastrous for this Session to be continued for a day longer than is absolutely necessary. We must terminate the Session as soon as possible and go back and give the message of peace to the countryside. It is our duty as citizens of India to see that peace is restored. The motion by Mr. Satyanarayan Sinha is very simple and I do not understand why there has been so much distrust shown by Honourable Members. Let us examine this in a cool way. An Assembly of this nature cannot possibly go into and examine the things in detail. Everywhere the detailed scrutiny is left to Select Committees. Here, too, we had the advantage of double scrutiny. Firstly, you had the Union Powers Committee and then the Union Constitution Committee. These two have gone into the matter, sifted the whole thing and framed their recommendations. They have then been examined by the House. But let me tell the House, that no doubt there have been a large number of amendments moved, but the amendments that have been carried have been mostly inspired amendments and the Committee that has been proposed consists of experts whose opinions have prevailed in this House. You have the guarantee that after the double scrutiny there will be a third scrutiny by the experts. Now there is no question of usurpation of the rights of the House. The House being a sovereign body, has the right to change everything which it has not approved in the first instance. Only those are sacred which have been approved by the House, and after the approval of the House, you, as a sovereign body, respect yourself and impose a self-denying restraint and do not go back on your own decision. Therefore if any item is brought in which has not been approved of by the House, it will be open to the House to examine and reconsider and change. No one can deny the right of the House to amend those proposals which have not been approved in principle but this is what I want the House to realize. We are talking in riddles. We are really different parties and decisions are taken therein. No matter whatever people might say but it is only if the majority of the party feel that an amendment should be approved, then only it will be put as a party question and even those who were against it will vote for it. This is the reality of the situation. Therefore it is idle to say that suggestions have a better chance of being carried here if the Committee is not formed. Whether the Committee is formed or not, the party machine will move and as such only the inspired amendments which can have the approval of the machine of the party can get through. I therefore suggest that it is idle to make objections to the procedure. The procedure is quite all right. You have appointed the best people available to examine the draft put up by the office and it will not be difficult to go back on those recommendations of this Committee which have not been specifically approved by the House. I therefore feel, Sir, that this motion should be approved unanimously by the House.

Shri Shanker Dattatraya Deo (Bombay : General) : Sir, I move closure.

Mr. President: Closure is moved. I put it to the House.

The motion was adopted.

Mr. President: Mr. Satyanarayan Sinha may reply.

Shri Ramnath Goenka (Madras: General) : Certain amendments have not been moved.

Mr. President: I shall take up the amendments later. I am taking at the present moment the amendment relating to the text of the Resolution.

Mr. Satyanarayan Sinha: Sir, I confess I have not been able to appreciate the misgivings and doubts expressed by many of my friends here. I think the Drafting Committee's Report will be before this House and this House has got an inherent right to alter, modify and change anything it likes. I think the Assembly has the right to change even the decisions it has taken but it will not be fair if it goes on changing the decision which it has once taken and therefore I think the House will not agree to change the decisions on important principles which were discussed and decisions arrived at. But with regard to those principles which might be incorporated in drafting the whole bill on which we have not expressed our opinion or taken any decision, to that extent I think this House has every right to modify, change and alter. I don't see any reason for any fuss. The Committee's report will be before this House and it will have every opportunity to change or modify anything it likes.

Mr. President: I think it is necessary for me to make the position clear before I put the Resolution to vote. I do not think there is any intention of taking away any of the powers of the Members of this House and even if there were any such intention, that intention can have no effect. The idea is to place before the House at its next Session a draft in a more or less complete form so that the Members may be in a position to give their attention to the draft as a whole and then come to their conclusions and pass the draft section by section. We have already discussed and adopted the principles underlying some of the most important items and there are some about which we have not yet had any discussion. The idea is that the Committee which is now being suggested should have the draft ready, not only of the principles which have already been accepted, but also of those which we have not considered. Of course both will be before the House but they will be on a somewhat different footing. Those relating to the portions which have already been accepted will be considered by the House from one angle of vision. The House will ordinarily try to conform to its previous decisions and not to alter them unless it finds that there is something which calls for a revision. But with regard to the items which we have not yet discussed, the House will naturally scrutinise the draft with a greater degree of latitude or freedom and I think that will be the best course to save time, so that the House may consider the whole thing and may have an opportunity of forming a comprehensive view of the constitution as it emerges. I have this to say, that I am anxious that the Constitution should be completed; but at the same time I am equally anxious that we should do nothing in a hurry and that every clause, every sentence of a clause and every word of the clause will be weighed and carefully weighed by all the members before it is finally adopted. (*Hear, hear.*) Therefore when the draft comes up before 'in its final form for consideration, we shall take as much time as is considered necessary for giving it the fullest possible consideration and the members will have an opportunity of considering every word that is used there and of giving their own decision on the draft. I think with

that the members will be pleased to accept this resolution in the amended form which gives the Committee a somewhat larger latitude in preparing the draft in regard to matters which do not come exactly under the principles which we have decided but which are implied in them. I now put the amendment of Mr. Kher to the House.

An Honourable Member: What about your announcement that the Bill will be in Hindi or in the National language?

Mr. President: We will have it in Hindi. When the time comes. I shall place it before you.

Another Honourable Member: How many weeks will you give us to study the Bill?

Mr. President: Reasonable time would be two to three weeks. I will now put the amendment of Mr. B. G. Kher to vote.

The question is:

“That for the words ‘to scrutinise and to suggest necessary amendments to the draft Constitution of India prepared in the Office of the Assembly on the basis of the decision taken into the Assembly’ the following be substituted:—

‘to scrutinise the draft of the text of the Constitution of India prepared by the Constitutional Adviser giving effect to the decisions taken already in the Assembly and including all matters which are ancillary thereto or which have to be provided in such a Constitution, and to submit to the Assembly for consideration the text of the draft Constitution as revised by the Committee.’”

The motion was adopted.

Mr. President: I now put the resolution, as amended to vote.

The motion was adopted.

Mr. President: Now, with regard to the names of the Members who are to constitute the Committee I find that there are several amendments.

Honourable Members: We are not moving the amendments.

Dr. P. S. Deshmukh: I request all friends, who have given notice of amendments, adding my name to the list of names already suggested, kindly not to move their amendments. I am most thankful to them for their kindness in proposing me as a member of the Drafting Committee.

Mr. President: So then we have dispersed of the amendments to include new names to the list.

There is one suggestion made by Begum Aizaz Rasul and that is that in case any of the Members are unable to attend the Committee or if any vacancy occurs I should be given power to fill it. I take it that that suggestion was made in view of the fact that Mr. Saadulla is unfortunately not keeping fit and may not be able to serve on the Committee. I take it that the House will give me leave to fill up the vacancy if it actually occurs. (*Members:* “Yes”)

[Mr. President]

The question is:

“That original list of names suggested in the Resolution moved by Mr. Satyanarayan Sinha be adopted.”

The motion was adopted.

REPORT OF THE CONSTITUENT ASSEMBLY FUNCTIONS COMMITTEE

The Honourable Dr. B. R. Ambedkar (Bombay: General) : Mr. President, I beg to move that this Assembly do proceed to take into consideration the Report on the functions of the Constituent Assembly under the Indian Independence Act, 1947, submitted by the Committee appointed by the President in pursuance of the decisions of the Assembly on the 20th August 1947.

Sir, the Report of the Committee has already been circulated to the Members of the House and, I do not think that, at this stage, when the Report has been in the hands of the Members at least for the last two days, I need expatiate at great length upon the work of this Committee. I think it would be enough if I, in the first instance, draw attention to the recommendations of the Committee.

All together the Committee has made five recommendations. Its first recommendation is that it is open to the Constituent Assembly to function as Legislature and that it should function as such; (2) that while functioning as Legislature it should adopt the rules of the Legislative Assembly as far as possible with necessary amendments; (3) the necessary amendments should be made under the orders of the President of the Constituent Assembly; (4) the work of the Constituent Assembly as a Constitution-making body and as an ordinary legislature should be separated and should be conducted in separate sessions to be held on separate days; (5) the power of prorogation should vest in the President and not in the Governor-General as found in the Adaptation of the Government of India Act. After having made these recommendations, the Committee considered whether there were any difficulties which would stand in the way of giving effect to their recommendations and found three which they had to resolve in order to give effect to their recommendations.

The first was whether one and the same person should preside over both the bodies, the Constituent Assembly and the Legislature. This difficulty arose because section 22 of the Government of India Act, which related to the office of the Speaker, has been dropped by the Adaptations which have been carried out under the Indian Independence Act with the result that the President is the one person who has to preside over both, the Constitution-making body as well as the Legislature. Ordinarily speaking, this should not create any difficulty, but in the circumstance where for instance the President is a Minister of the State, this difficulty may arise. For instance, it would be an anomalous thing if the President who is a Minister of State also were to preside over the Constituent Assembly when it was functioning as a lawmaking body. Consequently the Committee thought that either of two courses has to be adopted; either the President should cease to be a Minister, or, if he continues to be a Minister, the Assembly should elect another officer to be called the Speaker or Deputy President whose functions it would be to preside over the Constituent Assembly when it is in session for the purpose of making laws.

The second difficulty which the Committee came across was with regard to the representatives of the States. The House will remember that the Constituent Assembly, when it will be meeting for the purposes of law making, would be operating upon the whole field which has been included in List No. 1 of the Seventh Schedule to the Government of India Act. The House also will recall that the States at the present moment have joined the Constituent Assembly on a basis of what is called the Instrument of Accession which does not altogether tally with the subjects included in List No. 1. In fact the subjects included in the Instrument of Accession fall considerably short of the subjects included in List No. 1. The question, therefore, that arises is this, whether a body of people, who are Members of the Constituent Assembly and who are bound by the Instrument of Accession and have responsibility for a shorter number of items, should be permitted to take part in motions and in debates relating to certain other subjects which were not included in the list contained in the Instrument of Accession. There were of course two ways of dealing with this matter. One way of dealing with this matter was to adopt the procedure of what is called 'in and out', that they should sit in the Assembly and vote when an item which was being debated was common to both the Instrument of Accession as well as List No. 1, and when an item was being discussed in the House which did not form part of the Instrument of Accession, they should not be permitted to participate. The Committee came to the conclusion that although theoretically the second course was more logical, from a practical point of view such a distinction need not be made in the circumstances in which we stand and, therefore, the Committee made the recommendation that notwithstanding the subjects contained in List No. 1 and the Instrument of Accession, the representatives of the Indian States should continue to take part in all motions that may relate to all subjects irrespective of the distinction between the two lists.

The third question which the Committee felt they had to deal with was the position of the Ministers. As the House knows, there are certain Ministers who are at present not Members of the Constituent Assembly. They are five in all who fall in that category. The question therefore arises for consideration whether the Ministers who are Members of the Constituent Assembly should take part in the proceeding of the Constituent Assembly and also in the Legislature. So far as their participation in the work of the Legislature is concerned, the position is safeguarded by reason of the fact that Section 2 sub-clause (2) of the Government of India Act is retained by the Adaptation and Members of the House know under the provisions contained in Section 10 sub-clause (2) a person, notwithstanding the fact that he is not a Member of the Legislature, may still continue to participate in the work of the Legislature and be a Minister. Under that, therefore, the Ministers who are not Members of the Constituent Assembly will be eligible to sit in the Constituent Assembly when its functions as a Legislature, without ceasing to be Ministers of State.

The question that remains is, what is to happen with regard to their relationship to the Constituent Assembly. At present, as they are not Members of the Constituent Assembly, they are not entitled to participate in the work of the Constituent Assembly so far as it relates to the making of the Constitution. The Committee came to the conclusion that it was necessary that their guidance should be available to

[The Honourable Dr. B.R. Ambedkar]

the Constituent Assembly in the matter of constitution-making and therefore just as Section 10 sub-clause (2) permits them to participate in the work of the Legislature so also the Constituent Assembly should make a provision which would permit Members of Government who are not Members of the Constituent Assembly also to participate in the work of the Constituent Assembly.

Sir, there are two other matters about which the Committee has made no recommendation and it is necessary that I should refer to them. The first matter is the question of double membership. As the House knows there are certain Members of the Constituent Assembly who are also Members of the Provincial Legislature. So far there is no anomaly, because the Constituent Assembly is not a Legislature. But when the Constituent Assembly begins to function as a Legislative Body, this conflict due to double membership will undoubtedly arise. I might also draw attention to the provision contained in Section 68 (2) of the Government of India Act which deals with this matter. Section 68 (2) did not permit a member to hold double membership of two Legislatures, the Central or Provincial. But this provision has now been dropped by the adaptation. Consequently, it is permissible for Members of the Constituent Assembly when they are functioning as Members of the Legislature also to be Members of another Legislative Body. The anomaly, of course, purely and from a strictly constitutional point of view does remain. It is for the Constituent Assembly to decide whether they will accept the principle embodied in the omission of Section 68 (2) and permit double membership or whether notwithstanding the dropping of Section 68 (2) they will take such suitable action as to prevent double membership.

The second question about which the Committee has made no recommendation is relating to the administrative organization of the Assembly. As the administrative organization in the Assembly is a single unified organization it is under the exclusive control of the President of the Constituent Assembly. So long as the Constituent Assembly had only this single and solitary function to perform, namely, to prepare the constitution, there was no difficulty, in this matter. But when the Constituent Assembly will function in its double capacity, once as the constitution-making body and another time as a law-making body with another person at the head of it, namely, the Speaker or the Deputy Speaker, questions with regard to the adjustment of the staff may arise. But the Committee thought that they were not entitled under the terms of reference to deal with this matter and therefore did not make any reference to it at all.

Sir, I do not think it is necessary for me to take the time of the House any more than I have done. I think what I have said will sufficiently remind Members of what the Committee has done and will enable them to proceed to deal with the report in the best way they like.

Mr. President: Mr. Munshi has given notice of a Resolution embodying the recommendations of this Committee. I think it will be best if that motion is taken up first and the discussion may follow later.

Dr. P. S. Deshmukh: Would it not be better if we first take the motion that the report to be taken into consideration and after a decision on that take up the other amendments?

Mr. President: Is it necessary to have a separate discussion on the motion for considering the Report? I think both can go together if the House permits. Strictly speaking, that Resolution which Mr. Munshi moves is practically the same thing.

Mr. K. M. Munshi (Bombay: General): I move the Resolution which stands in my name. The paragraphs of the Resolution which I seek to move are almost in the words of the Report, except one or two things to which I will presently draw the attention of the House. The clauses are taken bodily from the Report which has been explained to the House by the Honourable Dr. Ambedkar. I need not, therefore, go over the same ground again, but I would like to draw the attention of the House to one or two changes which I have made and which I think were necessary in the interests of giving proper effect to the Report.

Para. (iv) runs as follows:

“Suitable provision should be made in the Rules of the Constituent Assembly for the election of an officer to be designated the Speaker to preside over the deliberations of the Assembly when functioning as the Dominion Legislature.”

In this connection, I have to mention that the Report has placed before the House two alternatives:

Alternative (a) is that the President of the Constituent Assembly should be a person whose whole time is given to the work of the Assembly both when engaged on Constitution-making and when transacting business of the Dominion Legislature. They have also stated another alternative: If the President of the Constituent Assembly is a Minister, provision may be made in the Rules of the Constituent Assembly for the election of an officer to preside over the deliberations of the Assembly when functioning as the Dominion Legislature.

Sir, as you happen to be a Minister, I have selected the second alternative and embodied it in my paragraph (iv) with the result that the House will have to elect an officer to preside over the deliberations of the Assembly when it functions as a Dominion Legislature.

The only other change that I have ventured to make is the name of the officer whose election I have suggested, that upon election, the officer should be designated Speaker, so that when the House sits as the Constituent Assembly, we will have the President presiding over it and when it sits as a Legislature, the officer elected will preside and we will address him as Speaker. The word Speaker being of sufficient significance, it will convey that we are sitting as the Legislature and not as the Constitution-making body. That is the only change which I have ventured to make. I submit that the motion as have moved may be accepted by the House.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, on a point of order, the motion has not been read out and moved.

Mr. K. M. Munshi: I will read it out certainly. I am much obliged to the Honourable Member for drawing attention to this and I stand corrected. My motion stands as follows:

“That with reference to the Motion by the Honourable Dr. B. R. Ambedkar regarding the consideration of the Report on the functions of the Constituent Assembly under the Indian Independence Act, it is hereby resolved that—

[Mr. K. M. Munshi]

- (i) The functions of the Assembly shall be—
 - (a) to continue and complete the work of Constitution-making which commenced on the 9th December, 1946, and
 - (b) to function as the Dominion Legislature until a Legislature under the new Constitution comes into being.
- (ii) The business of the Assembly as a Constitution-making body should be clearly distinguished from its normal business as the Dominion Legislature, and different days or separate sittings on the same day should be set apart for the two kinds of business.
- (iii) The recommendations contained in para. 6 of the Report regarding the position of representatives of Indian States in the Assembly be accepted.”

I have incorporated para. 6 of the Report. The operative part of that para is as follows:

“We agree that, as implied in the wording of this term of reference, the members of the Assembly representing the Indian States are entitled to take part in the proceedings of the Assembly on all days set apart for the business of Constitution-making. They further have the right on days set apart for the functioning of the Assembly as the Dominion Legislature to participate in business relating to subjects in respect of which the States have acceded to the Dominion. Though it is competent for the Constituent Assembly to deny or limit their participation in business relating to subjects in respect of which the States have not acceded, we should recommend that no ban or restriction be placed by rule on their participation in such business also.”

Coming to my resolution,

“(iv) Suitable provision should be made in the Rules of the Constituent Assembly for the election of an officer to be designated the Speaker to preside over the deliberations of the Assembly when functioning as the Dominion Legislature.

(v) The power of summoning the Assembly for functioning as the Dominion Legislature and proroguing it should vest in the President.

(vi) Ministers of the Dominion Government, who are not Members of the Constituent Assembly, should have the right to attend and participate in its work of constitution-making, though until they become members of the Constituent Assembly they should not have any right to vote.

(vii) Necessary modifications, adaptations and additions should be made—

(a) by the President of the Constituent Assembly to the Rules and Standing Orders of the Indian Legislative Assembly to bring them into accord with the relevant provisions of the Government of India Act as adapted under the Indian Independence Act 1947.

(b) by the Constituent Assembly or the President, as the case may be, to the Rules and Standing Orders to carry out the provisions of para. 9 of the Report and where necessary to secure an appropriate adaptation of the relevant section of the Government of India Act to bring it into conformity with the new Rule.”

In this connection I may mention one fact which I omitted to mention in the beginning. The power of summoning the Assembly and proroguing is, according to the Resolution moved by me and according to the report, to be vested in the President. As already stated, under the Government of India Act, as adapted, for the moment it rests with the Governor-General. That of course means, Governor-General as advised by the Prime Minister. But our legislative function being only an aspect of the Constituent Assembly as a whole, it is necessary that the Constituent Assembly should remain independent of the Governor-General. Therefore, it was thought that the President would be the proper person to summon or prorogue the Legislative Council.

These are all the remarks that I have to make and I hope the House will accept the resolution.

Mr. President: I have got notice of certain amendments. I find that four of these amendments are covered by the Resolution which Mr. Munshi has moved and therefore they need not be moved. There are two amendments of which I have noticed which are not covered by Mr. Munshi's Resolution, one by Mr. Ananthasayanam Ayyangar and the other by Mr. T. T. Krishnamachari.

(Shri M. Ananthasayanam Ayyangar did not move his amendment.)

Shri T. T. Krishnamachari (Madras: General): Sir, I am not moving the amendment; but I would like to say a few words on the motion before the House.

Mr. President: There is no other amendment. The resolution is now open for discussion. You can speak now.

Shri T. T. Krishnamachari: Mr. President, my object in speaking on this motion moved by Dr. Ambedkar and the amendment thereto of Mr. Munshi is to obtain elucidation on a few points, because as things are one feels he is in a maze of conflicting proposals. The first point that I would like to draw the attention of the House to is in regard to sub-section (vi) of Clause 1 of Mr. Munshi's amendment. The Honourable Dr. Ambedkar in moving the main motion drew attention to the fact that the Report had taken cognisance of Section 10 sub-section (2) of the Government of India Act thereby providing the members of Government who are not members of this Assembly the right to participate in the proceedings. This is again reiterated in the resolution which is moved as an amendment to the main motion. Sir, I would like to know whether the limitation that exists in sub-section (2) of Section 10 of the Government of India Act, namely, that those members of Government can continue in the capacity and hence can participate only for a period of six months and not more and during that time they have got to be qualified by becoming members of the Assembly applies to the members of the present Government. That is a point that I would like either Dr. Ambedkar or Mr. Munshi to make clear.

The second point I would like to mention is in regard to the designation of the officer that has been suggested to preside over the Dominion legislature. I am afraid there is some conflict between the adaptation of the Government of India Act and what Mr. Munshi stated. The adaptation of the Government of India Act deals rather drastically with Section 22 which refers to the presiding officers of the Legislature under the 1935 Act. Sub-sections (1), (2), (3), and (5) of this section have been omitted and sub-section (4) reads thus in its original form:—

“There shall be paid to the President and Deputy President of the Council of States such salaries as may be respectively fixed by Act of the Federal Legislature, and, until provision in that behalf is so made, such salaries as the Governor-General may determine”. The adaptation merely says that in sub-section (4), for “and the Deputy President of the Council of State”, substitute “of the Dominion Legislature”. So the provision remains more or less intact so far as sub-section (4) is concerned, except the change that is contemplated in the nomenclature of the legislatures and the words the Council of State and the Lower House have been removed and the words “the Dominion Legislatures” substituted. So when the entire scheme has been changed and the name Speaker has been wiped out in Section 22 of the Government of India Act, and in the following Section 23, I do not know if it is quite right or legal for the name Speaker to be introduced here. It would

[Shri T.T. Krishnamachari]

probably be better to adopt the wording of the original report namely 'an officer to preside', whatever the designation he might get ultimately.

The third matter on which I would like some elucidation is this. That is sub-clause (v) of Clause 1. The position taken up in this sub-clause is quite correct from our point of view since this is a sovereign body entitled to frame its own rules of procedure and appoint its own officers. But so long as we shall be functioning under the Government of India Act which we have adapted as a legislature, why not take the adaptation a little further and make it state that the Governor-General shall not have the power a proroguing and summoning the Assembly which shall be vested in the President? I do not think there is any legal bar to an adaptation of this sort. As I said, at the start I am open to correction: But I think that the position could be suitably rectified by proper legislative procedure rather than by means of a motion and an amendment thereto, or by an explanation by the mover of the amendment. I refer to Mr. Munshi.

Sir, yet another matter which I would like to mention here and which relates to the amendment of which I had given notice, is this. We are dealing with a number of anomalies because the position in which we are now placed is not of our own creation. A number of factors have come into play by reason of the rapidly changing political position of our country and we have to carry on as best as we could. In the circumstances, without going into personalities, I think it best, Sir, that the sphere of action of the presiding officers of the Constituent Assembly over its two functions should be clearly defined and that is why I wish Mr. Munshi had reproduced in his amending resolution those words in paragraph 6 of the Committee's report which had clearly stated it has to be remembered that though transacting two kinds of business, the Assembly is one and can have only one President and that the President should be the supreme head of it, both on its administrative side and on its deliberative side. I may at once assure the House that in bringing to the notice of the House this Particular clear and precise enunciation of the functions of the President and the consequent delimitation of the functions of any officer that the President or the House might appoint, I have no intention of either trying to put extra power in the hands of anybody or take away the power of anyone else. Only I feel that when we are dealing with circumstances over which we had no control,—we are trying as best as possible to get on with the work that we are obliged to do—let us have a precise definition here and now so that later on, whatever happens, if by any chance there is any conflict, it will be known exactly who is the supreme authority. I wish Mr. Munshi had put this idea in his amending resolution. It is quite adequate for our purpose if it is acknowledged by the mover that the wording of the report of the Committee is supreme and that it cannot be altered even by the amending resolution which has been moved. I think that assurance will serve the purpose. After all the position that we are envisaging now might last only for six or eight months. Thereafter, this Assembly will function principally as the Dominion Legislature, until the new Constitution comes into operation, and there might have to be other changes also in the status and powers of the presiding officer. But for the time being I think a precise definition of the sphere of his activities and emphasis on the fact that the President of the Constituent Assembly, notwithstanding the fact that he concedes with the permission of the House some powers to another person, still remains the supreme head both in regard to the administrative and deliberative

sections of the House, will go to satisfy fears and doubts in the minds of Members. I also hope that either Dr. Ambedkar or Mr. Munshi will try to clarify the doubts that I have stated in regard to items (iv) and (vi) of Clause 1 of the amendment moved by Mr. Munshi.

Mr. D. H. Chandrasekharaiya (Mysore State): Mr. President, I rise to a point of order. It is this. Whenever a report is brought up for consideration before this House the motion made is that the report be taken into consideration. After the Report is considered, the decision of the House is taken on the motion, and then clauses are taken up one after another. What has happened now is that the motion stands undecided and Members are permitted to move their amendments, and then even the amendment which Mr. K. M. Munshi has moved is so omnibus in character and covers so many points that it will be difficult for the Members to discuss them all together. What I would suggest is that a decision might first be taken on the motion moved by the Hon'ble Dr. Ambedkar, and then each one of the points covered by Mr. Munshi's amendment might be taken up separately for discussion and decided. This is my point of order.

Mr. President: I think the point of order which has been raised now was raised at an earlier stage, and at that time I found generally the desire of the House was that it would serve no useful purpose to have two discussions, one on the motion to take the report into consideration and another on the Resolution of Mr. Munshi dealing with the details, and therefore I allowed both to be taken up together. Both are now under discussion and Members are at liberty to speak on the Resolution which has been moved, in which all the details covered by the Report are put in.

Dr. P. S. Deshmukh: Mr. President, Sir, I would not go so far as to describe the present situation created by the presentation of the Report and the proposals embodying the proposed decisions on the Report as a messy situation, as has been done by my friend who preceded me, Mr. Krishnamachari. But I must say, Sir, that I consider the Report not very satisfactory. If we analyse the contents of the Report, I think many Members, if not most, will agree with me that the Report states either what is most obvious or what is a matter of pure commonsense for anybody. Secondly the Report contains certain alternative proposals. For example, it says you can have one President or two as you like. Stating alternative is, I submit, Sir, of no use. What we expect such a committee to do is to give us proper guidance. It is clear that the Ambedkar, that they relied more upon logic and on what was political, rather than giving this House a direction as to what was legal and constitutional. I refer to the recommendation as regards the States representatives. Let it be remembered that we have no quarrel whatever with the States representatives whether they have come here on behalf of the rulers or the people. I welcome them; I would like them to be absolutely identical with us and have all the privileges and all the right that any of us coming from other parts of India have. But nonetheless I believe it was the duty of the Committee to tell us what the legal position was so far as the exercise of the rights of these persons coming from the States and sitting in this House was concerned. It was not necessary to tell us what was logical and political. We can and shall exercise that discretion ourselves. The direction that we really wanted was as to what is constitutional and what would be legal and then ultimately there might have been a sentence or two with regard to the property of their proposal. And I should like to, make it clear that I mean no offence to any particular member of the Committee and

[Dr. P.S. Deshmukh]

least of all to Dr. Ambedkar—but there is a fair number of members in this House who characterise the work that is done by several of our committees in the same terms as I have been compelled to use in connection with this particular report. And that is the reason why they have not been satisfied with some of the reports that we got from time to time at least from some of these committees.

Even so, Sir, I think it would be futile for me to hope that it will be possible for you to give us more time for the consideration of the Report or to refer the Report back to the same Committee for further consideration. That is too much to expect. I have been sufficiently long in politics and in the legislatures to know that wise counsels do not always prevail. So I am not going to indulge in requesting you that the Committee's report should be turned down or it should be referred back. All that I wish to point out is that what is before us is not satisfactory. We have not been guided and directed on the lines on which we should have been directed, and as such the whole situation is very unsatisfactory. I will take only one or two points. I was very glad that Mr. Krishnamachari made a very cogent speech and pointed out quite a few vital defects in the Resolution that has been moved by Mr. Munshi. In fact the main purpose and the main thing with which members of the Committee should have concerned themselves was as to what is the result of the adaptations which have been made behind our back. There is reference to only one or two modifications that have been made. But all that is a *fait accompli*. We have the whole Government of India Act altered to suit. God knows whose convenience, or according to whose intelligence and dictation. But we have certain ready-made decisions before us and we are trying to tinker with them in certain places by means of this Report and the Resolution. We have as a matter of fact at least two definite things before us. Although we have been given the powers of a Legislative Assembly and called a Dominion Legislature the adapters of the 1935 Act removed the Speaker, the section referring to the election of Speaker having been omitted. Secondly, we have all been agitated about the question as to whether M.L.A.'s from the different provinces should sit here as full-fledged members of both the Legislature and the Constituent Assembly or not. The position is that that section by which a person was prevented from being a member of two legislatures has been quietly removed from the 1935 Act and this was Imposed upon this House. We have no quarrel with it; we want to get on with the work. I am merely mentioning this point by way of showing that the position is unsatisfactory. I do not question the right of any one to change or modify the sections but the whole situation is not sufficiently clear and not of such a nature as to enable the members to be clear on any particular matter. Of course when things are proposed and resolutions are moved we have got to support it in whatever condition it is, and we are so anxious to get on with decisions and Constitution-making that we do not mind in what messy or unsatisfactory condition it is. But at the same time I want just by way of criticism to suggest that it is not a very happy situation, and if it is possible for you or the Mover of the Resolution or for the Mover of the amendment to do something to attend to our grievance and redress it at least in part I shall be obliged and I am sure many other Members of the House also would feel obliged.

Shri Biswanath Das (Orissa: General): Sir, I have very little quarrel with the Resolution that was so ably moved by Mr. Munshi but

I must frankly confess that I am not happy with the Report that has been presented to us. The Report seems to support the adaptations which I am afraid very few Members of this House will do. Both the Report and Mr. Munshi's Resolution therefore proceed on the basis that the Constituent Assembly which has been the Dominion Parliament from the 15th of this month has to function in absolutely two different capacities, namely, the Constituent Assembly and the Dominion Parliament. Having taken up this stand, namely absolute separation out and out, they necessarily follow the same course throughout their plan and that in where the parting of the ways comes in. A reading of the Indian Independence Act of 1947 shows that the Constituent Assembly is the supreme legislature of this country. That is a position which has been accepted by the Constituent Assembly, or if not by the Constituent Assembly, at least it has been accepted by our leaders and the Constituent Assembly is a party to it from the 14th August. This Constituent Assembly has accepted the Indian Independence Act, has elected its leader and has authorised the leader to go and invite Lord Mountbatten to be the Governor-General of India. In that view of the question, the Constituent Assembly as such, has accepted the position assigned to it by the Indian Independence Act of 1947. Therefore there is no use saying, today at this late hour, that we function as two different bodies, that we function differently and absolutely for different purposes. The purposes are one and the same; and while on the one hand we have to prepare a Bill for the future constitution of India and pass it into an Act we have also to look to the day to day administration of the country and also undertake such other legislation as might be necessary. Therefore the proposal of the Committee to function in a dual capacity and also the Resolution of my Honourable friend Mr. Munshi giving the silent approval of the House to the same cannot be accepted by us. That is where my complaint is. Sir, if once we accept this principle it means two Secretariats and that we will have the same experience of the Secretariat of the Constituent Assembly who are not efficient nor very polite and should undergo some training in politeness and good manners.

An Honourable Member: Can you prove that?

Shri Biswanath Das: Yes, if necessary I can cite examples. An Honourable friend spoke about their inefficiency. I must say that the Secretariat of the Constituent Assembly is not efficient. In these circumstances, these are mainly additional arguments as to why we cannot take these two functions as dual functions. If we undertake to do the work of the Constitution-making on different days, with which suggestion I fully agree, it is not because we are different, but for convenience of the transaction of the business. To quote another illustration, let us take the disposal of the business in the High Courts. There we have civil matters on one day, criminal on other days and so on. In the same way this one single body will undertake the disposal of Constitution-making on certain specified days, and ordinary legislative business on some other days.

Mr. H. V. Kamath: The mike has become inefficient.

Shri Biswanath Das: It is a question of opinion. (*Laughter*)

Some Honourable Members: The mike is not working.

Shri Biswanath Das: I am very sorry. I will speak loud. That being the position, I feel that the time has come when a little plain

[Shri Biswanath Das]

speaking is necessary and we have to make it very clear that we function here as absolutely one legislature for no different purposes, except one of convenience for the transaction of our business. Only to that extent am I prepared to agree with the Committee that we may allot different days for Constitution-making and different days or hours on the same day for ordinary legislation or for the discussion of other measures an executive work. That being the position, I suggest that this duality of functions should cease.

Mr. President: I am afraid the current has failed and so the mike is not working. I take it the Members will just raise their voices so as to be audible to the other Members.

Shri Biswanath Das : Yes, Sir, Having done that, I came to the second question on which I wish to address the Honourable Members of this House, and that is the question of adaptations. Sir, adaptations have been undertaken without consulting the Honourable Members of this House and important alternations have been made to which I must record here a note of protest. Let me illustrate my point. We have met here in the Constituent Assembly, in a single session. We have no session except one, namely we begin and we will close as and when we decide. Our rules are very clear in this, If we adjourn from time to time it is because for our own convenience and for the convenient transaction of our business. But the fact remains that the Constituent Assembly functions as one single body till its main business is over, namely, the preparing and passing of our constitution. Sir, having seen those rules, the Parliamentary Act has been framed which means it has been accepted. Therefore the position remains that the Constituent Assembly sits all along, be it for one year, or two years or six months, it is all one session. This being the position, I strongly protest against the adaptations wherein it has been laid down that the Governor-General has to summon us to sit in sessions of the Parliament to transact business. It is no concern of his, no business of his. We are members of the Constituent Assembly and the Constituent Assembly meets and adjourns at its pleasure. We cannot delegate its functions to the Governor-General however much we may love him, like him or respect him. Nor do we delegate this important function to the Honourable President, though we love him, like him, and esteem him. Sir, this adaptation is very unfortunate and I think it is fair that we should record our protest.

Secondly, I come to prorogation. We have met and we ourselves shall prorogue. No authority, no power on earth can make us prorogue this Assembly and we cannot delegate this function to any other authority except the Constituent Assembly itself. In this view of the matter, I am not prepared to accept the adaptation. I have just picked up a few and there are a number of other items on which adaptations are not necessary, nor are they fair to us.

I now come to the third question, the participation of the States. My Honourable friends, the Members of this Committee have recommended to us that they, the States representatives should be with us. We are prepared to have them here. But is it their proposal that they should not only participate in our deliberations and discussions but also in the matter of voting? I must frankly confess that I must take more time to think over the question than what has been given. So far as the States representatives are concerned, they constitute about 6 Members—a fairly good fraction of the strength of the legislature. It would

be very hard, very difficult for us to agree without further consideration whether these 62 Members of the Constituent Assembly should be allowed to vote with us also in a budget for which they have absolutely no responsibility—except in respect of the three subjects.

Before closing. I would beg of you to consider the question, that we have got a Legislative Assembly Secretariat, well-trained, efficient and ready at hand to do the work. Under these circumstances, why should we have a duplicate Secretariat, which means puzzle, expenditure and inefficiency? Under these circumstances I would beg of you to consider this question from the point of view of finance and from the point of view of efficiency.

Mr. Hussain Imam: Mr. President, I was very sorry to see that some of our colleagues have taken objection and exception to the work of the Committee. As a member of the Committee, I have come here to explain the position in which we worked. We were restricted by the term of reference which was originally framed here. The Members who are being wise now did not suggest any modification in the term of reference. But now, having worked under that restricted term of reference we are being criticised on two counts. Firstly, that we have exceeded our limits and the other that we have not done enough. These two self-contradictory charges have been levied. Now what was the position of the committee? A committee is never superior to the parent body which has created it. The parent body is always supreme and has the right to modify or change the suggestions of the committee. The committee cannot impose its will. What it really does is to bring forward before you in a concrete form all the pros and cons of a particular course of business. Now, it is obvious that the Constituent Assembly has dual functions. Even that has been attached by the *ex*-Prime Minister of Orissa, that it should have no dual functions. Now, this is what was regarded by one Honourable Member as obvious and by the other Honourable Member as wrong. But what is the position? Please remember that after the Indian Independence Act, the whole power for making the constitution for today and tomorrow vests in you; for the whole of the administration of today and till such time as the new constitution starts functioning, the power vests in you. This House being in that position, it cannot and should not ignore one of the two functions. The genesis of this Committee was that a question was raised here and discussion took place that at the present moment we should have some forum to question the Executive Government on the actions which they are taking in the present circumstances. Pandit Jawaharlal Nehru was present and after a lot of speeches, he said that it would be better if some Committee were to sit and examine all the implications and suggest ways and means. We were working really in order to make arrangements for dual functions to be performed simultaneously. The two functions are so separate that they could have been kept in watertight compartments. We might have sat in August, say, as the Constituent Assembly, and in September as the Legislature. That was one of the courses open to us. The other course open to us was that we should have separate days in the same session. The third course was that within the same day we should have separate hours. All these subjects were referred to us and as conscientious people we have not given any preference to any one of the three courses. We have pointed out all the three courses that are open to you. You can have either

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different hours in the same day, or you can have separate sessions, but we have indicated that instead of different hours, we prefer different sittings. You can have a morning sitting for one purpose and an afternoon sitting for another purpose. That is all we have done. We have left the discretion entirely, to you and the better course would have been to allow the Executive Government which is responsible to the House to use its discretion and give us the time for the legislative business just as they do for non-official business in the sessions. We can similarly have two kinds of days, Constituent Assembly and the Legislature. A time may come when the Constituent Assembly function may become so small that even one day would be enough in the week and four days may be devoted to legislative business, or at other times you may have it the other way round. I mean, you may be doing the Constituent Assembly work for four days in the week and one day only for the legislative work.

Now, the question arises of duality of control. We have stated in so many words that the President shall be the head of both the legislative and Constitution-making work. Now, it is open to the House, if it thinks that a particular type of executive is required to carry on the secretariat work of the Constituent Assembly when acting as Legislature, to make that rule. If it thinks that it is necessary to have an amalgamation of the two sections, it can do that also, or if it wishes that one side should be dismissed and another set appointed, it has perfect power to do it. Why ask the Committee to take up the burden when it is not in the terms of reference? It would be something of an imposition. We are really there not to impose our will on you, but to point out to you what are the courses open to you and what would be the implications thereof. In fact, it has been said that we have exceeded our terms of reference. In two instances, that was necessary because we found that we were up against certain things which, though not strictly in the four terms of reference, were nevertheless so pertinent and so germane to our discussions that we could not ignore them and therefore we have submitted some observations on those subjects. But we have taken care not in any way to impose our will on you.

The question which was put about Section 10 (2) of the Government of India Act, while it lays down that a Member of Government must become a member of the Legislature within six months or vacate office, is also one of those Sections which you can change and if the Executive Government feels that a change is necessary it can make that change; or if it feels that it is necessary to bring them into the Constituent Assembly, there are openings enough for those Members to be brought in. I therefore think that it is really making a mountain out of a molehill to suggest that any adaptation of the clauses will stand in the way of the work. Knowing that it is a little bit difficult and takes time to make adaptations, we have suggested a better course, that the Constituent Assembly being a sovereign body and having the right to have these rules framed as it likes, we have recommended that the work which we think to be very essential and immediate should be done by means of rule-making power. For instance, the question of summoning the Legislature. Instead of suggesting that the clause should be changed and the power should vest in some other authority than the Governor-General we have suggested that the Constituent Assembly's own rules should be so adapted as to enable the President to have the power. But to say that not even the President should have power to fix the date

and it is so important that the House cannot surrender that right to anybody is, in my opinion, showing too much suspicion. Knowing the state of affairs through which we are passing, we have to rely on our officers, on the President, to do the right thing. The President is always subject to the House. Although he is the supreme head, nevertheless, under the democratic theory he is subject to the vote of the House. So if he does wrong you can always correct him, but for executive functions you must have an executive head. There are certain things which democracy even delegates to executive, and it is one of those functions, *i.e.*, The summoning of the Legislature, which is sought to be given to the President. We always give directions. The executive carries them out. For instance, the exact dates had not been fixed for the last session. The last session was called on a date which the President found suitable and no one raised an objection to that. So far the President has not used his discretion in a wrong manner.

All these are human elements. We must not be creatures of rules and regulations or theories. Let us remain human beings and regard things from that angle and trust where trust is necessary and distrust where you must distrust. Otherwise work cannot proceed. I therefore suggest that Mr. Munshi's resolution may be adopted.

Shri R. V. Dhulekar (United Provinces: General): *[Mr. President, I rise to support the report which has been put before the House. So far as the principles in it are concerned they are very appropriate and no one can have any objection against them. In this connection I want to say a few things as follows.

The first is that no one can have any objection to what is said in Section 1 to the effect that our Constituent Assembly should continue to work until the constitution is completed, and even after that it should continue to work until the new Lower and Upper Houses are brought into existence. I desire to say only one thing in this connection. It will be proper if we confine the use of the words "Dominion Legislature" which constantly come to our lips, to the Indian Independence Act. The reason is that the word "Dominion", somehow does not sound very good. In 1929, Dominion Status was very much discussed and we had passed resolutions against it and in favour of complete independence. Even though Dominion Status appears attractive to many, yet if it is translated into Hindi, its meaning will be—the place of slavery. And if it is translated into Persian or Urdu, then also it would have the same meaning. Therefore I feel that if on some suitable occasion, either the drafting Committee or our Assembly or the President were to give it some such name as Indian Parliament, or Parliament of India, then it would be very proper.

Besides, there is one more question about which many people have misgiving, and that is as to what should be the rights of the representatives from the States. I think that these representatives should be able to discuss our problems and also vote upon them. I want to tell those who have any misgivings that their fears are not proper.

*[English Translation of Hindustani speech begins.

[Shri R.V. Dhulekar]

We must now consider the whole of India as a single unit, and every individual who takes his seat here, every member who comes here should find an honourable place. I think it would not be proper if we tell him that he can speak only for a short while, or, when the occasion arises to express a definite opinion (which comes only when hands have to be raised either in support or opposition), we tell him that he has no right either to vote or to express his opinion.

One other thing I want to say to those who think that those representatives who are the Princes' nominees should not have full liberty of expression, because the States are backward. We see that some of our Provinces are very progressive whereas some are backward. In some Provinces rules and regulations have been framed which are democratic and popular in form. Many good laws have been made for the workers and peasants. In our United Provinces, "Gaon Hukumat" Bill and "Prajantra Rajya" Bill have been passed by the Assembly and now they will go to the Upper Chamber, the Council. Such a Bill has not yet been passed by any other Province. Therefore, it is not proper to say that States' representatives should find no place here, only because the States are backward. Some have also suggested that those representatives who have been popularly elected should be given the opportunity to speak whereas those who are nominated by the rulers, should be denied such facility. I have to submit that they also should be given full facilities so that they may be able to occupy their rightful place. I think that if they get opportunity to see clearly, what democracy is, how legislative assembly proceedings are conducted and what collective wisdom they contain, then very soon they will endeavour to extend democracy there. It is for this reason that I believe that it is not proper to insinuate that the nominated representatives of the States should not have full rights. I am of opinion that it is a very great task to take democracy a step further and this task has been accomplished by our Dr. Ambedkar and his colleagues, and I want to congratulate him very warmly.

There is one more question and that is that we are going to appoint a Speaker for the Legislative Assembly—which is a popularly elected law-making body. This is a very good suggestion. I do not approve of giving power to the Governor-General for two reasons, firstly because he is a foreigner and secondly because the word Governor-General does not sound well. Therefore he should not have, the power of summoning or proroguing the Assembly. It now remains to be settled as to who should have the right of summoning and proroguing the Assembly; whether it should be the President or the Speaker. When it was stated that the Honourable President should not be the Speaker, because he is a Minister, then my opinion was that when we appoint a Speaker, he should be given the right of summoning or proroguing the Assembly. Because the argument which applies to the first point also applies to the second one. If a Minister should not have the right to sit in the Legislative Assembly as our President, then this argument can be applicable there as well. But I also agree that there is no harm in accepting the statement of some of our members that we should not go into constitutional matters and their provisions.

Now the question of double-membership remains. Some members have perhaps suggested that because of the presence here of many representatives of Provincial Assemblies their work is likely to slacken

and therefore they suggest that double membership should be abolished. It has been said that the Constituent Assembly should consider whether double membership should be retained or not. My humble submission is that Constituent Assembly has nothing to do with this question. Provincial Assemblies have the right to send their elected representatives to the Constituent Assembly; and the Provincial Assemblies have sent those men here in whom they had full confidence; and these men are working here. My opinion is that when we have worked in the Constituent Assembly from the very beginning, then at this stage our ideal should be that there should not be any such alteration in the Constituent Assembly as may make it difficult for those, who come after us, to understand the task which we have already accomplished. I admit that most of the prominent men of all provinces are here and it can be said that the provinces may have to suffer some loss on that amount. But my submission is that the distinguished men are here because they were considered the fittest by the Provinces. Therefore there is great force in the argument that double-membership should be retained till a new Legislative Assembly is set up on the basis of new elections, and my humble submission is that this question should not be over-emphasised.

Now I will conclude after saying this that in our existing constitution there are many things which our Constituent Assembly has not yet considered; and I suggest that the Constituent Assembly should be summoned at least once before the meeting of the Legislative Assembly in which we will consider the whole legal position. Before meeting as the Dominion Legislature there should be a session of this Constituent Assembly in which all remaining matters may be considered and the committee drafting the constitution may have our collective opinion on all matters so that it may be able to draft a good constitution. With these remarks I conclude my speech.]*

Mr. President: Mr. Tajamul Husain may speak now. I would ask him to be brief. I want to finish the discussion at one o'clock.

Mr. Tajamul Husain: I will be brief, Sir. Sir, the question before us is, how was this Assembly constituted? Was it constituted by any Act of Parliament or how? Sir, it was not constituted by any statute or by any law. It came into existence by means of the Statement of April 16. After that, it assumed power and it became the Sovereign body for the whole of India. As such it is in existence now and is continuing. We know there is no difference between the Constituent Assembly as a constitution-making body and the Constituent Assembly as a legislative body. Both are absolutely one and the same. There is no difference. This Constituent Assembly has been summoned. To suggest now that the Governor-General should go out of his way and summon us again would be meaningless. You as President here, in my humble opinion can summon us as Members of the Constituent Assembly to make a Constitution for India or to make laws for the day to day administration of the country.

Sir, now a point has been raised whether there should be another President and another Speaker when we sit as a legislative body. I think, Sir, that the President of the Constituent Assembly can continue to function as President or Speaker of the legislative body. But the only difficulty is that you happen to be, unfortunately or fortunately also a Member of Government. Therefore, it has been suggested that it will not be right or proper for you to sit there, because many questions will be asked

] * English Translation of Hindustani speech ends.

[Mr. Tajamul Husain]

about the departments in your charge and the difficulty will be in your having to answer them as Member of Government or as Speaker. You have got power given by us to delegate your power to anybody you like. you can appoint a Deputy Speaker or some other functionary from any one of us to discharge your duty. Now I will give you an instance for a precedent. In Bihar, Dr. Sachidananda Sinha (who happens to be a Member of this Assembly) was President of the Council at the same time a Member of the Executive Council of the Government. He functioned in both the capacities at the same time. If such a thing can be done under the British rule, why can it not be done under our own rule, Sir? Therefore I submit that there is absolutely no necessity for the Governor-General to call us again in different capacities. We are already in existence and continuing and a meeting can be called by you at any time you wish. It will be proper for you when necessary to leave the Chair and appoint a Deputy Speaker in your place to carry out your duties.

Pandit Hiralal Shastri (Jaipur State): *[Mr. President, my friends Dr. Deshmukh and Mr. Dhulekar, have asked me to make my humble submission before you. Some are of opinion that from the Constitutional and legal point of view the representatives of Indian States should not be given equal rights here; others have suggested that even though the States are backward, they should be allowed to participate fully. I revere this Constituent Assembly and I deem it an honour to be elected as its member. But I cannot help saying that this Assembly has been summoned under special circumstances and many persons of different shades of opinion are included in it. There are many who have come here through the Provincial Assemblies and many have come from the Indian States. Even among those who come from the States there are different categories. There are some who have been nominated by the rulers, some who are self-nominated and some who are called elected representatives though there can be genuine objection against calling them elected. There are some who are themselves ruling chiefs, though small. One class is of those who are Princes and there are others who can be called Heirs-apparent. In this fashion, many different types of men have come here. Circumstances were pressing; we were invited hesitatingly and we reached here after many obstacles. I will not repeat these matters; you all know them very well. But today we have taken our seats here just like the representatives of the Provinces. I hope you do not think that we have come here as beggars, or that we have to beg against the law and the Constitution. There was a time when the fight for the country's freedom was being fought here. In that fight the Indian States' people took part without any invitation. and fought shoulder to shoulder with you. They did not require any invitation. Therefore today, we have not come uninvited. We are here on invitation of some sort or other, and we are here in this gathering. Now, having come in, there is a talk of serving different kinds of purposes. We may be told "Look here, friend, you can deal with three matters but you must not touch the rest, because it is against your Interest." This can be said but you should not say it. You can count on us that we ourselves will stay away from that which is not proper for us to discuss. We may ourselves not take part in those things; but if that is the decision then I have nothing to ask for, from you. It is our misfortune that our rights have not been fully recognized, but if we are here by right, then no matter whether they be

*[English Translation of Hindustani speech begins.

Rulers or Princes, or Heirs-apparent, whether they are nominated (by these rulers) or self-nominated or whether they are Prime Ministers, they are all equal. They are, in no way backward, but are progressive and they also include men of action. All have come here without any distinction of caste or creed and their rights should be equal. That is my opinion.]*

Mr. President: I think we have had enough discussion on this, I would now call upon Dr. Ambedkar to reply.

The Honourable Dr. B. R. Ambedkar. Mr. President, the report made by the Committee obviously has received a mixed reception. Some members of the House have described it as a messy document. I do not propose to give any reply to those who have described the Report in those terms, because personally I think that the arguments advanced by them do not deserve sufficient consideration. All that I propose to do in reply is to meet some technical points which have been raised by my friends Dr. Deshmukh and Mr. Biswanath Das. Dr. Deshmukh refers to two recommendations made by the Committee. One was the recommendation relating to the permission to be granted to the Members representing the States for taking part in all the deliberations of the Committee. The second recommendation to which he referred was the recommendation in respect of the Ministers of the State to whom the Committee said it might not be desirable to permit to take part also in the proceedings of the Assembly, Dr. Deshmukh said that all that the Committee observed was logical or convenient. The Committee did not say whether this was constitutional. I am very much surprised at that question particularly because Dr. Deshmukh happens to be a lawyer. As a matter of fact he ought to have realised that we have really no constitution at all. The Constituent Assembly is making a Constitution, and anything that the Constituent Assembly does would be constitutional (*Hear, hear*). If the Constituent Assembly say that the State representatives should not take part that would be perfectly constitutional. If the Constituent Assembly said that they should, that would also be perfectly constitutional. Therefore that sort of observation I thought was entirely misplaced. With regard to the point raised by my friend Mr. Biswanath Das, I also feel a considerable amount of surprise that he should have thought fit to make the observations he made. If I remember correctly what he said, his observations related to two points. He said that the Committee was dividing the Constituent Assembly into two parts, that it was an indivisible body, that it was functioning as an integral, one whole. Well, I do not know whether he is not in a position to appreciate that the working of a constitution is quite different from the making of ordinary law. The distinction, it seems to me to put it in a nutshell, is that the Constituent Assembly, is not bound by the Constitution. But a Legislature is bound by the Constitution. When the Constituent Assembly functions as a legislature it would be bound by the Government of India Act as adapted under the Independence Act. Anybody would be in a position to raise a point of order. Anybody would be in a position to say whether a particular motion is *ultra vires* or *intra vires*. But such a question can certainly not arise when the Constituent Assembly is functioning as a body framing the Constitution. And I thought that was a sufficiently substantial distinction to enable us to understand notionally at any rate that the two functions were different that the purposes were different, that the work was different and if we are intending to avoid confusion, the practical way of doing so would be to let the Constituent Assembly

]* English Translation of Hindustani speech ends.

[The Honourable Dr. B.R. Ambedkar]

meet in a separate session as distinct from a legislature. He also raised some grouse against the adaptations. Now, I must frankly say that no one here is responsible for the adaptations that have been introduced in the Government of India Act, 1935.

If he refers to section 8 sub-clause (1) of the Indian Independence Bill, he will realise that under that section the power of adapting the Government of India Act of 1935 to suit the new status, which the Constituent Assembly has as a legislature, has been vested entirely in the Governor-General. I think it is possible that the Governor-General did take advice from some source in order to decide what adaptations to introduce. Therefore, at the present moment, nobody is responsible for it. If the Constituent Assembly is not satisfied with the adaptations which have been introduced in the Government of India Act, the very same section 8 sub-clause (1) states that the Constituent Assembly would be perfectly within its competence to change the adaptations and to introduce any other that it may like. I therefore, submit, Sir, that there is no substance in the points that have been raised by the critics of the Committee.

One other point to which my friend Mr. Krishnamachari referred: He said that Mr. Munshi's resolution omitted to take into account the second part of the report which dealt with the question that the President was the sole authority both on the deliberative and administrative side. He questioned why the resolution which has been framed and submitted to us by Mr. Munshi, practically accepting all the proposals of the Committee did not contain this particular provision. I should like to say that if Mr. Krishnamachari reads the report carefully, he will find that that particular part of the report is an observation on the part of the Committee and not a recommendation and therefore, I submit my friend Mr. Munshi was perfectly justified in not referring to it.

Pandit Lakshmi Kanta Maitra: Sir, I want to ask Dr. Ambedkar certain information. First of all, I want to know from him whether or not he is convinced that there is necessity for re-adaptation and if so, is it in his contemplation to bring any fresh adaptation in respect of certain matters before the next session of the Constituent Assembly or at any earlier date. For instance, the abolition of Speakership in the Government of India Act and its introduction in this recommendation here. There are also certain other matters: for instance, Ministers who are not members of the Constituent Assembly but who are required to be members. Is it contemplated to bring in any other measure for re-adaptation in respect of such parts?

Secondly, he has just referred in his speech to the fact that he did not go into the question of the administrative control of the department that is going to be set up and he said that it was beyond the terms of reference, if I understand him aright. There is some apprehension in our minds that there is likely to be conflict in the event of another independent machinery being set up for this Organisation when it is to function as the legislature.

The third question is whether or not the proposal as made in the resolution which has been moved by Mr. Munshi, is going to be a purely temporary one, only for the period we continue to function in a dual capacity, as a constitution-making body as well as the legislature?

An Honourable Member: Is it a speech or a question?

Mr. President: I would remind Pandit Maitra that he cannot make a speech. He has put the question and Dr. Ambedkar will answer if he chooses.

An Honourable Member: Even the question is out of order.

Pandit Lakshmi Kanta Maitra: Why is it not permissible? when the honourable member replies to the debate and an honourable member does not understand, he is perfectly within his right in asking further questions to get points cleared up.

Mr. President: You have put the question. Dr. Ambedkar will reply.

The Honourable B. R. Ambedkar: I shall be brief. The first question was whether we contemplate any change in the adaptations of the Government of India Act. My answer is that that is a matter for the House to determine what adaptations the House wants. But I want to assure my friends here that we have got the power to change the adaptations. The Government of India Act with its adaptations is not entirely binding on us in the sense that a change is not beyond our purview. If the House, on a reconsideration of the matter, finds that certain adaptations ought to be changed, it would be perfectly possible to undertake that provision.

The second question which my honourable friend Mr. Maitra put to me was whether the unity of administration is likely to be affected and there is likely to be a conflict in view of the fact that there may be two offices, one President presiding over the Constituent Assembly and secondly a Speaker presiding over the legislative body. What the Committee has said is that there is a theoretical possibility of conflict. But I take it that there need not necessarily be a conflict. In practice, it should be perfectly possible for the two offices, the President and the Speaker of the Assembly to work in union and to so arrange the timing of the Constituent Assembly as well as the legislative body in perfect order so that notwithstanding the fact that we have two offices, we need not be afraid that there would necessarily be a conflict.

With regard to the third question, obviously, the arrangement that we are making now for the purpose of converting the Constituent Assembly into a legislative body, undoubtedly will be temporary. It would last so long as the function of constitution-making has not been completed. When the function of constitution-making is completed, obviously, one or the other arrangement would vanish and we shall then continue only to function as a legislature.

Mr. Naziruddin Ahmad: One more question. The honourable member has said that readaptation may be made by the House. Is it possible for the Governor-General to make further adaptations?

The Honourable Dr. B. R. Ambedkar: It is a question of law. This House has power to change the adaptation.

Mr. Naziruddin Ahmad: I do not deny that. That question is whether in the opinion of the honourable member, the Governor-General can make further adaptation.

The Honourable Dr. B. R. Ambedkar: He can not, because he will have to act on the advice of his Ministers.

Mr. Naziruddin Ahmad: Whether he can do so on the advice of his ministers?

An Honourable Member: Is this a law court, or a cross examination?

The Honourable Dr. B. R. Ambedkar: I am not sure and I do not like to give an offhand answer.

Mr. President: I think we have to put the motion clause by clause as was suggested. Clause 1.

“(i) The functions of the Assembly shall be

- (a) to continue and complete the work of Constitution-making which commenced on the 9th December, 1946, and
- (b) to function as the Dominion legislature until a legislature under the new Constitution comes into being.”

The motion was adopted.

Mr. President:

“(ii) The business of the Assembly as a Constitution-making body should be clearly distinguished from its normal business as the Dominion Legislature, and different days or separate sittings on the same day should be set apart for the two kinds of business.”

The motion was adopted.

Mr. President:

“(iii) The recommendations contained in para. 6 of the Report regarding the position of representatives of Indian States in the Assembly be accepted.”

The motion was adopted.

Mr. President:

“(iv) Suitable provision should be made in the Rules of the Constituent Assembly for the election of an officer to be designated the Speaker to preside over the deliberations of the Assembly when functioning as the Dominion Legislature.”

The motion was adopted.

Mr. President:

“(v) The power of summoning the Assembly for functioning as the Dominion Legislature and proroguing it should vest in the President.”

The motion was adopted.

Mr. President:

“(vi) Ministers of the Dominion Government, who are not members of the Constituent Assembly should have the right to attend and participate in its work of Constitution making, though until they become members of the Constituent Assembly they should not have any right to vote.”

The motion was adopted.

Mr. President:

“(vii) Necessary modifications, adaptations and additions should be made—

- (a) by the President of the Constituent Assembly to the Rules and Standing Orders of the Indian legislative Assembly to bring them into

accord with the relevant provisions of the Government of India Act as adapted under the Indian Independence Act, 1947.”

The motion was adopted.

Mr. President:

“(b) by the Constituent Assembly or the President, as the case may be to the Rules and Standing Orders to carry out the provisions of para. 9 of the Report and where necessary to secure an appropriate adaptation of the relevant section of the Government of India Act to bring it into conformity with the new Rule.”

The motion was adopted.

Mr. President: The question is:

That the Resolution as a whole be adopted, namely:

“1. That with reference to the Motion by the Honourable Dr. B. R. Ambedkar regarding the consideration of the Report on the functions of the Constituent Assembly under the Indian Independence Act, it is hereby resolved that—

- (i) The functions of the Assembly shall be—
 - (a) to continue and complete the work of Constitution making which commenced on the 9th December, 1946, and
 - (b) to function as the Dominion Legislature until a Legislature under the new Constitution comes into being.
- (ii) The business of the Assembly as a Constitution-making body should be clearly distinguished from its normal business as the Dominion Legislature, and different days or separate sittings on the same day should be set apart for the two kinds of business.
- (iii) The recommendations contained in para. 6 of the Report regarding the position of representatives of Indian States in the Assembly be accepted.
- (iv) Suitable provision should be made in the Rules of the Constituent Assembly for the election of an officer to be designated the Speaker to preside over the deliberations of the Assembly when functioning as the dominion Legislature.
- (v) The power of summoning the Assembly for functioning as the Dominion Legislature and proroguing it should vest in the President.
- (vi) Ministers of the Dominion Government, who are not members of the Constituent Assembly, should have the right to attend and participate in its work, of Constitution-making. Though until they become members of the Constituent Assembly they should not have any right to vote.
- (vii) Necessary modifications, adaptations and additions should be made,
 - (a) by the President of the Constituent Assembly to the Rules and Standing Orders of the Indian Legislative Assembly to bring them into accord with the relevant provisions of the Government of India Act as adapted under the Indian Independence Act, 1947.
 - (b) by the Constituent Assembly or the President, as the case may be to the Rules and Standing Orders to carry out the provisions of para. 9 of the Report and where necessary to secure an appropriate adaptation of the relevant section of the Government of India Act to bring it into conformity with the new Rule.”

The motion was adopted.

Mr. President: Now that this resolution has been carried, I purpose to take up the adaptation of the rules and the Standing Orders and also such sections of the adapted Government of India Act as are necessary.

With regard to the question which has been raised in the course of the discussion about the staff. I propose to appoint a committee consisting of the officials on the staff of the Constituent Assembly and on the staff of the Legislative Assembly to prepare a scheme for re-organizing the two Departments so as to make the work as efficient and as economical as possible.

Mr. K. M. Munshi: May I point out that the day after tomorrow is a holiday and Members are anxious that the Assembly should close tomorrow ? The day after tomorrow is a Hindu holiday and most Members want to return to their homes.

Mr. President: The matter is in the hands of the Members. I propose to close the session tomorrow.

The Assembly then adjourned till Ten of the Clock on Saturday the 30th August 1947.

CONSTITUENT ASSEMBLY OF INDIA

Saturday, the 30th August 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (the Honourable Dr. Rajendra Prasad) in the Chair.

SUPPLEMENTARY REPORT ON FUNDAMENTAL RIGHTS— (*Contd.*)

Mr. President: We have now to take up the consideration of the Supplementary Report of the Fundamental Rights Committee.

The Honourable Sardar Vallabhbhai J. Patel (Bombay: General): Sir, the House is already aware that my letter of 23rd April 1947, submitting the Report of the Advisory Committee on Fundamental Rights was considered and most of the main proposals were accepted. The report was to a certain extent incomplete because we had to consider several matters which were referred back to us, and some proposals were received direct, which had also to be considered. There were two parts of the report: one contained fundamental rights which were justiciable and the other of the report referred to fundamental rights which were not justiciable but were directives* more or less which would be useful for the governance of the country. Now the Advisory Committee considered both these parts and completed its work. This report which I place before the House contains, first, two or three important matters regarding justiciable rights which were not finished and which were referred back to us: One is regarding clause 16 which reads—

“No person attending any school maintained or receiving aid out of public funds shall be compelled to take part in any religious instruction that may be given in the school or to attend religious workshop held in the school or in premises attached thereto,”

meaning thereby that there should be no compulsion in religious education in schools maintained by the State or receiving public aid; and the Committee has accepted this, and recommend that the House should accept it.

Then there is clause 17, which refers to conversion. It reads—

“Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law.”

The Committee came to the conclusion that this general clause is enough so far as fundamental rights are concerned. On further consideration this clause seemed to us to enunciate a rather obvious doctrine which it was unnecessary to include in the constitution, and we thought it better to leave it to the legislature.

Then about clause 18(2), which reads—

“No minority whether based on religion, community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on them.”

*Appendix A.

[The Hon. Sardar Vallabhbhai J. Patel]

There was another paragraph in which it was recommended that the latter portion of the clause, namely, "nor shall any religious instruction be compulsorily imposed on them" be dropped because that is covered by clause 16.

Then we have examined the question as to whether the scope of the clause should be extended so as to include, *State-aided* educational institution also, and the Committee came to the conclusion that in the present circumstances we would not be justified in making any such recommendation.

Then the Fundamental Rights Sub-Committee in their report to us had recommended the adoption of Hindustani, written either in Devanagari or the Persian script, as the national language of the Union, but subsequently this question was held over because the matter was considered by the Union Constitution Committee: and as the Constituent Assembly is already seized of the subject, we thought it better not to deal with the subject. So we have not said anything 'about it, and it will be considered separately. Several other amendments were moved. We have considered them individually, and we have come to the conclusion that the fundamental rights should not be burdened with all such amendments that have been moved.

There is another part of the report which contains, in addition to justiciable rights, certain directives of State policy which, though not cognizable by any court of law, should be regarded as fundamental in the governance of the country. The provisions that the Committee have considered are included in Appendix A which is added to the Report.

The appendix which has been circulated with the Report is also with you. So I suggest that the Report be taken into consideration.

Mr. President: The Resolution is that this Assembly do proceed to take into consideration the Supplementary Report on the subject of Fundamental Rights submitted by the Advisory Committee. If any Member wishes to say anything, he may do so now.

Mr. R. K. Sidhwa (C. P. & Berar: General) : Mr. President. Sir, you will remember this House passed a memorable Resolution in its first and second sessions Which is popularly known as the Objectives Resolution. Out of the several good measures that are indicated therein, one is in connection with social and economic equality. While moving this Resolution the learned Pandit Jawaharlal Nehru made a memorable, speech and placed before this House some ideas about which I would, like to remind members just to refresh their memory. Among other things, the Resolution states—

"Wherein shall be guaranteed and secured to all the people of India justice, social, economic, and political; equality of status, of opportunity, and before the law;..... "

And while moving that Resolution he said—

"I stand for Socialism and I hope, India will stand for Socialism and that India will go towards the constitution of a Socialist State and I do believe that the whole world will have to go that way."

Sir, after this clear statement of the objectives, when the justiciable rights came before us, I was expecting to see that in our Constitution equality, social and economic, would play a prominent part. Not having found it in the justiciable rights I expected to see this in the non-justiciable

rights. I searched and searched, but searched in vain. Sir, it is all very well to say that we want to give absolute power from the villages right up to the cities so that the economic conditions are so adjusted that the people, the average people may be happy and prosperous. But I may state, Sir that however much we may try and introduce measures like the *Grama Udhar* and village Panchayats and village uplift, unless economic conditions are considered equitably, these measures are not going to prove of any use or be successful. Sir, what are the conditions today ? I can tell you from experience. I have the honour to be the President of the All India Local Bodies Association. These local bodies have been given the power, but they have not the money to spend. Therefore, they are quite helpless. Without money they cannot function. The powers that have been given to them are in no way useful to them. These are the conditions in which the Local Bodies suffer today.

While I was listening to the Union Powers Committee's Report and the items presented to the House the other day, we were making capital of strengthening the Centre with greater financial powers. But it must be admitted that the economic conditions of the Provinces are so poor that they are not in a position to give that help to the local Bodies that is necessary. The Local bodies suffer from insufficiency of money, and when they approach the Provincial Government, the Provincial Governments express their inability to help them on the ground that the Central does not contribute them the money that is due to them. Sir, in the Local Bodies, the electricity tax, the entertainment taxes, the betting taxes, these legitimately belong to the Local Bodies but they have been appropriated by the Provincial Governments. An enquiry was set up by the various governments and it has been laid down definitely that unless contributions are made by the Provincial Governments, Local Bodies will not function successfully.

Sir, the Local Bodies are the root, the basis of our economic conditions in India and unless the better financing of the villages is properly considered and enough money is given to them. I can tell you with confidence, that we are not going to make our average citizen happy and prosperous. We may give them power. We are all anxious to give them authority; but if you do not give them money, what will they do ? How can they proceed further ? I expected, Sir, that at least in these non-justiciable rights—they are pious—I mean to say they are pious measures because they are non-justiciable—I expected that even in these pious measures there may be some mention about the equality of social rights. I do not for a moment suggest that our popular governments both in the Centre and in the Provinces do not care for them. They are as eager as some of us, or most of us here to do the right thing. But they are also confronted with the difficulties of money and I may tell you that unless financial conditions improve, they will not be able to advance in any direction or do any good for the average man of the country, whom we have been telling for ages that when we achieve freedom we shall see that the average man really gets real happiness. Sir, it is stated in the Resolution that all the citizens, men and women, have the right for an adequate means of livelihood. It is all very well to say "adequate means of livelihood." Where is that to come from. We have to make provision for that. Of course, I do admit that merely making a provision here will not achieve the end. But certainly if there is a provision to that effect it would be very difficult for the administration to overlook it.

[Mr. R.K. Sidhwa]

Sir, the distribution of wealth in this country has been in such a miserable state of affairs that unless we bring them into a state of equality, conditions are not going to improve. I will give you two illustrations, real illustrations.

In a case when the head of the family died, he left nearly 11 crores of rupees for one issue to enjoy them. Fortunately or unfortunately, that issue also expired after about a year of the death of the father. The whole amount was distributed among the various members of the rich family who already possessed crores of rupees. If we had an equitable distribution of this wealth, this money would have come to the State.

I have known another family of a father with three children leaving Rs. 50 lakhs of rupees. Two sons within three years squandered their share and the third son was a miser and by speculation and other means made two crores out of his share. What kind of economy is this? In this country, Sir, there are only a few hundreds or few thousands who roll in crores, while millions have no proper food. This is the state of affairs. How are we going to improve it, unless this system of inequality of wealth which has been confined to a few people in the country is to be abolished? I am sure without imposing further burden upon the average person by various kinds of taxation, if this wealth is properly distributed the State will have ample money to put this nation building programme into operation very successfully. I know, Sir, our popular Members of the Government are alert and they may be looking into the matter. I don't for a moment say they are unmindful of it or they are indifferent about it. But what I would state is that a place should have been found for this provision in some part of the constitution. These non-justiciable rights are merely to adorn the pages of the constitution and to just give a little consolation, but I would prefer them to be a part and parcel of the constitution so that every citizen may be proud to state that 'Now my time has come to enjoy equality and wealth, so that I may not remain poor for all time'. That is my point. I tried to move a Resolution in the Fundamental Rights Committee and was told that it was not the proper place. So I waited. Now the proper place has come and I want to see provision made in the non-justiciable rights.

What I submit is that if you want to improve the socialist system of economy, then you have to nationalise your big industries, and if you want to provide proper wages to your wage earners, and maternity and other benefits do not think for a moment this is a stock argument which I am advancing, but I sincerely feel that the time has come for this argument to be fulfilled. We don't want the strikes. We don't like them. But every morning you get up from bed and go to the market and if you had paid 10 annas the previous day for an article, you have now to pay 12 annas or 14 annas. What will be the effect of this on the average serviceman, who depends entirely on his monthly budget? How can he adjust his budget. I submit, Sir, the whole economic structure has broken down to pieces. While we don't want these strikes, while we want more production, we should not find absolute fault with the labourers if they go on strike. The fact is they cannot make both ends meet. Prices have gone up. If you go to the bazar what is the conditions? Upper class people, wealthy class of people send their servants to the bazar; they don't know the condition. But the man who is absolutely

dependent on the income he derives, he goes to the bazar himself and when he finds that he has got only Rs. 180 to spare and he has to pay Rs. 200 he becomes desperate. Conditions are getting worse and worse, and the popular Government, notwithstanding whatever difficulties might exist, have to face these facts. I know, Sir, in this very House there is a mixed variety of people—upper class people, wealthy people, lower class people and poor people, and it is not possible for us to bring in a measure of this sort in this Assembly. But as Pandit Jawaharlal has rightly said in the Resolution, the time has come when, whatever the position may be, we have to adjust according to the times and see that this wealth is evenly distributed.

Sir, I lay emphasis on this point, namely that whatsoever objectives you may put down, whatsoever provisions you may put down, unless you provide village panchayats, notified area committees and sanitary committees with sufficient money at their disposal, not within the power of the provinces to appropriate the same, you are not going to improve the social structure of this country, which has gone down. That is the main cause of all this trouble and it requires immediate attention.

Mr. President: Will the Honourable Member now come to the point? *(Laughter.)*

Mr. R. K. Sidhwa: Mr. President, if these were not the points for insertion in the constitution, I don't know what are the points. My friends here clapped their hands when the Honourable President asks me to come to the point. I anticipated this and I said in a mixed House of this kind, it is not possible to have such a measure passed. If that is the desire of the House, that such a provision should not be made in the constitution, then let them please themselves. But I want to express my view. I feel strongly on this and state that the constitution ought to provide such a clause if you want this land to be happy. I shall state my view, no matter what the opinion of this House may be. Besides it is not only my own view. It is the view of the various important bodies in this country, of which I have the honour to be the President.

I therefore suggest, Sir, but I know it may be argued that these are some of the social adjustments that are borrowed from the Russian constitution. I know there are many irreligious things in the U.S.S.R. constitution which could not be made applicable to India; but there are many good, very good points which are quite suitable to India and it is certainly in our interests that we copy some of the good things from the U.S.S.R. constitution. I want to state that any good means which would bring good results to the country I shall certainly be in favour of borrowing them. With these words, Sir, while I congratulate the Committee for bringing up this proposition, I would have preferred a clause of this nature to have been inserted. It has not been inserted but I do hope, Sir, that in the governance of this country and its administration, this view point will be borne in mind particularly that unless you change your economic conditions and improve them, you are not going to bring any kind of happiness and prosperity to this country.

Mr. B. Das (Orissa: General) : Sir, when the first draft of the Fundamental Rights was discussed on the floor of this House I expressed grave doubts about Clause 3 regarding citizenship. After much discussion it was sent back for redrafting. The *Ad hoc* Committee redrafted it and it was presented to the House for acceptance by the Honourable Sardar Patel. At the time when the *Ad hoc* Committee's Report was presented

[Mr. B. Das]

I had my doubts as to whether that new draft would suit the requirements of the people of India. I accept the clause to-day. Some slight changes have also been made in the body of the text of clause 3. Sir, I would like to be assured by the Honourable Sardar Patel whether Government intend to change the laws of the Union as envisaged in the proviso of clause 3. Many things have happened since we discussed Fundamental Rights in April last. India has been divided up and Indian citizens who are born in both parts of India now can claim citizenship in either Pakistan or Hindustan. There may be families that may have a brother in Pakistan acquiring the citizenship of Pakistan while others may be citizens of India, Particularly, Sir, I find many officials and non-officials whom I always took as citizens of India, have gone to place their services, their best energies in the service of Pakistan. So it is natural that Government should legislate that everybody must declare whether he is a citizen of Pakistan or Hindustan. One would not like the best brains of India to go to Pakistan and when they come back to India will they be taken as Indians or only recognized as citizens of Pakistan because they have served after the separation in that country ?

Sir, as to the other changes of the Fundamental Rights, I accept the recommendations on clause 16 and I also accept that clause 17 and sub-clause (2) of clause 18 should be deleted.

Sir, while we are talking of Fundamental Rights of the people of India, I would like to state that certain citizens, particularly in the services of the Constituent Assembly, were so unnecessarily and deplorably criticised yesterday. They have no representation on the floor of this House—it is the office of the Constituent Assembly—to reply to any charges that may be made on the floor of this House. I think it was wrong to make such statements on the floor of this House. If any member had any grievance, he ought to have approached the Staff and Finance Committee to make any enquiry about the efficiency or non-efficiency of the Constituent Assembly office. Personally I know they have discharged their onerous responsibilities with great intelligence, tact and loyalty to Independent India. They were part of the old bureaucracy and yet they came up to the high standard required of them and they have served India as faithfully and as loyally as any of us have served India. So far I record my grateful appreciation of their work and services.

Sir, I will then come to the next part of the Report which deals with the Fundamental principles of governance. My Honourable friend Mr. Sidhwa had made some observations and I agree with him and regret that these pious recommendations should find no place in the Statute. I consider that the fundamental principles of governance Means—Dharma of the Government—the path of duty of the Government. But we don't lay down in the Constitution Act what the Government should do and what are the responsibilities of Government to the citizens and the people of India. We say that the Government may do this and it is expected that we, members of the Constituent Assembly should be treated like children in our homes, and shout and agitate for something from the Government and then the Government, whether they may be the present Government or successor Government will legislate for the betterment of the conditions of the people of India. I am not satisfied

with the opinion of the legal servants and great authorities on law in this House who interpret the functions of Government as justiciable and non-justiciable. They have said that we cannot include in the Union Constitution of India what the Government has to do for the people. I think it is the primary duty of Government to remove hunger and render social justice to every citizen and to secure social security. Sir, I am not satisfied, although Portions of the Soviet Constitution or the Irish Constitution are somehow made into a jumble and included in these 12 paras, that they bring any hope to us. The teeming millions do not find any hope that the Union Constitution that will be passed two months hence will ensure them freedom from hunger, will secure them social justice, will ensure them a minimum standard of living and a minimum standard of public health. In the principles of Constitution we have approved so far, be it the Provincial Constitution or be it the Union Constitution or be it the Union Powers I do not find anything that makes it obligatory on the Government, on the State, to discharge their obligatory duties to the People of India about common welfare and well being of the people. So better it is that these pious clauses find their way to the Appendix and not to the main Constitution Act! It is no consolation to the people of India that they elect the Constituent Assembly which elects the Dominion Government. The Government has a corresponding obligatory duty to the people to govern them properly, to look after their social welfare and their general well-being. We have appointed yesterday a body of draftsmen to draft the Union Constitution. I hope it is not too late for the legal talents of this House to find ways and means for making it obligatory on the part of the Government to function and to, exist for the welfare and well being of the people of India. Too much is made of 'justiciable' and 'non-justiciable'. I do not understand how the Irish Constitution included some of these noble principles in the body of the Constitution. If the Irish Constitution can do it, the Indian Constitution must do it. But then, Sir, we are up against a brick wall of lawyers. Legal talents are there and they rule that these are justiciable and others are non-justiciable. The result is that this House is reduced to the status of children and made to function as children. The Government, though it is democratic, must follow, they say, the precedents and the traditions of the bureaucratic Governments of the past. If it does so, it cannot effect any improvement in the social conditions of the people.

This is very alarming. We are framing our Free Sovereign Constitution. Perhaps ours is the last Constitution framed in the 20th century. One would have expected that we would have profited by the knowledge, by the suffering and by the experience of other countries. I do not want this Constitution to be drawn up to last only for a year or two. There are rumblings; there are signs of the times. And if we go by the precedents of the French Constituent Assemblies we may not achieve much. The people of France elected three successive Constituent Assemblies to draft their Sovereign Constitution and there were three successive Constitutions. The French Government under the last Constitution, has not yet been a stable one. Our Government is expected to be stable and is stable today. But nobody can be a prophet and say that it will be stable for more than a year or two. And if I, a Gandhite, am not satisfied with this Draft, how can I expect the Socialists and the Communists and the others to be satisfied with it? Let us make a more acceptable draft Let us make the draft fit in with the conditions in India. Let us tell the world through our draft Constitution that Indians have a civilization and culture, ten thousands of years old. We should

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draw up a democratic Constitution whereby the State serves the people and the people, the State. Let our Constitution bear the Stamp of the culture and civilisation of India.

Dr. P. S. Deshmukh: (C. P. & Berar: General) : Mr. President, Sir, before I speak on the motion itself I wish to suggest that, since this is the last day of the session, we might probably devote the whole day for the discussion of the principles which have been placed before us.

The House knows, Sir, that we have left many things incomplete. Many Reports have been presented to us and we have only dealt with parts of them. A good many sections or clauses for instance of the Union Constitution Committee, the Union Powers Committee etc., have been left over for further consideration. The same, I submit, should not happen to this particular Report. This Report, in my opinion, is the most important of all because it represents that part of the Constitution which the masses of India are looking forward to for the fulfilment of the promises made to them by their leaders. They are watching how far we are serious in our promises to ameliorate their condition and better the standard of living of the average man. From that point of view, Sir, I submit, this particular portion of the Constitution should be given more importance than the other parts and every opportunity should be given to the members to express themselves. I would further submit that the recommendations be not taken into consideration in this session if the criticism that I wish to level and many of my friends have levelled are going to have any effect on the sponsors of the measure. Only if this is done shall we be able to go to the people and tell them that we are striving to protect their interests not only temporarily but permanently.

My first criticism against the present Report is that it is, like some other reports, exceptionally perfunctory. The framers of the Report will pardon me if I use somewhat strong words. The attitude of the Members of the Committee is, I think, very correctly reflected in one of the sentences to be found in a book that has been provided by the office to us. I will read that one sentence: "Great difficulty has been experienced in selecting provisions for inclusion" of course in the draft of Fundamental Rights in the Indian Constitution—as "there is no absolute standard as to what constitutes 'Fundamental Rights', and the basis of classification varies from country to country." This, it is clear has been the sole sheet-anchor of the Committee. They have delved into various books on Constitutions of the world to select a section here and an item there so as to suit the Indian conditions and conform to their ideals. I submit to you and to the House, Sir, that this is not the correct attitude to take when dealing with fundamental rights. India, our country, is totally incomparable with Ireland. What is there in Ireland, that we should bodily adopt its fundamental rights for our country? What may be useful for them may not be worthy of consideration by us. The total population of Ireland is only 29 lakhs which is the same as, if not less than the population of the State of Baroda. And what is the character of this particular Constitution which has been considered worthy of imitation? I have not seen any important book on Constitutional History

or Constitutional Law bestowing any special praise on the Irish Constitution and I fail to see what there is that makes it fit to be adopted whole-sale. In my opinion the Committee viewed the whole question from an utterly wrong stand-point. Our Constitution framers appear as if they merely studied the existing Constitutions and chose what they thought would probably serve as a sop to the socialists and communists. This I think summarises and properly expresses in a nutshell what has been presented to us. They did not want in any case to go very far; but none the less they were not in a position to leave out the social and economic aspects of the Constitution altogether untouched. In this half-hearted manner they have dealt with it. Therefore it is that we have something that cannot be accepted by a very large section of people either here or outside.

We expected, Sir, that the Indian society would in the future be regulated on definite principles. What are the principles that have been embodied here that people have a non-justiciable right to a means of livelihood, that the pay of man and woman would be equal, that youth and childhood will be protected etc.? All these things and everyone of the items that have been put down here are a matter of common knowledge and any modern Government would be ashamed not to own what has been embodied here. It is the absolute minimum that every modern Constitution and Government must avow. We do not want the hollow avowal of the minimum. We may not insist upon the maximum also and I am prepared for a compromise; but we do not want to depend upon mere platitudes and pious wishes, because that was not what we came here to achieve. At least since the year 1942 the character of the Congress has altogether changed. The change was due to the fact that there was a solemn promise that the Government of Independent India would be that of the peasants and workers of India and none others. That was what impelled so, many rural people, so many youths from the rural population to sacrifice themselves in the Revolution of 1942. If you analyse the figures you will be started, Sir, to find that none of the vested interests, none of the erstwhile patriots sacrificed themselves. They were the purely the backward and illiterate people from the rural communities who sacrificed themselves. Very few indeed of the people from towns who belonged to any of the higher and well-known families were ready to join them. That being so, it is our duty to look to the promises that we had held out, and in considering the Report we should have kept that ideal in view and not tried merely to make half-hearted recommendations so as to be able to say to the Socialists that we are also socialists of a sort and to try to say to the Communists that we also respect some of their theories. A friend of mine said, Sir, that there was an admixture of the Russian and the Irish constitutions in these recommendations. I would like to inform my Honourable friend that he is labouring under a misapprehension. There is nothing of the Russian constitution in all these recommendations. Now what is the sanctity of these recommendations ? They are supposed to be directives. Instead of having all these several items, let the framers of our Constitution give us a definite programme that they are determined to give effect to. The whole of India is thirsting for it. Instead of all that we are merely going to hold out some distant and indistinct hope without providing in our constitution any effective means as to when and how they are going to be realized. Sir, I submit that it will be far better if the framers of this Report would kindly utilize the interval between this session and the next for reconsideration of their recommendations in

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the light of the criticism that may be levelled against the Report on the floor of this House. We may then hope to have something better than what we have here today unless the whole thing is to go to the drafting Committee whether the report is fully discussed here or not. If this happens we would be required to consider the draft. But if this comes up against for our consideration in the form of a report, we hope it will be in a different shape.

Actually, Sir, these are described as fundamental rights and fundamental rights, Sir, are in my opinion primarily intended for the protection of the-life, liberty and comfort of an average man. The fundamental rights idea is actually something like the principles of the *Magna Charta* against possible oppression either by a monarch or by some body of people who can get into the Government. My view is that in the framing of our present constitution there was not much need of having fundamental rights as such. All the principles, the inclusion of which we thought necessary and especially this portion of the fundamental rights which are merely recommendatory, it not being incumbent upon any Government to carry out, could, I submit, Sir, have been either embodied as ordinary provisions in a constitution or radically altered. What are the difficulties that we the people of India suffer from ? Our difficulties and impediments are diverse. The first is the poverty of our people, then ignorance and illiteracy, then lack of food, lack of vitality lack of morals, inhuman greed and consequent exploitation, ruthless profiteering and consequent oppression—moral, mental, social, spiritual and last but not least economic. To what extent are these fundamental rights going to protect us from this oppression, that is the question. And to what extent we can regard this as something on Which we can go and remove these difficulties and reorganise our society, so that there is no poverty there is no ignorance no starvation, no unnecessary concentration of wealth in a few hands, etc. None of these things have been dealt with. In a word I say, Sir, they have been dealt in a deceitful manner. I Understand the implication of the word 'deceitful' and yet I have no hesitation in using it I say so, Sir, because once you have these as fundamental rights you will prohibit anybody going further than that. I wish it to be clearly understood that the intention is that not only should we not go further, but we should also prevent anybody else coming after us to go further. That is the intention behind the wording. I wish I could take the time of the House to read out and analyse the words used in every particular recommendation to prove the truth of my statement. But it is clear that the language used does not only not go for enough for the Indian situation, but the recommendations are so framed as not to permit anybody else coming after us to change the fundamentals and go ahead in a way that should be the only way that India should go. Our problems are huge, our population is big and we cannot merely sit and take portions from here and from there and especially from an Irish constitution. After all what is this Constitution ? We have parts of the Irish Constitution copied out and we have three-fourths of the Government of India Act of 1935 copied out. If this is the Constitution which we are rushing through, I think there is no reason for any hurry at all. It should be remembered that we have got a very well considered adaption of the Government of India Act and that should suffice for our purpose. I am sure, Sir, the representatives who have come here are such that I do not expect any Indian Assembly would contain any better people than those we have here.

Sir, we have the best talent in the land assembled in this Assembly. Why not take the opportunity of fashioning something original, something that is in keeping with the genius of our people and something that will be in perfect conformity with the historical background of the ancient civilization of this land ? That is my submission, Sir, I hope Honourable members will confine themselves only to general criticism of the recommendations of the Committee that we have here and I think they will do a distinct service if they do not let these recommendations be passed hurriedly. In fact when I said that the decisions taken by the House should not be binding, this was at the back of my mind. I feel that when we have the whole constitution before us, we want ourselves to have, the liberty if need be of changing the whole structure.

Yesterday I said that we had not even a skeleton. Even supposing we have a skeleton closer examination will show that the skeleton is in some parts human and in other beastly. It is a skeleton which is not in keeping nor in harmony with the rest. This being the state of affairs, I submit to you, Sir, that since we are not going to meet hereafter and today is going to be the last day of our meeting, let us confine ourselves only to the general discussion of these recommendations. Passing of one or two items would not advance our cause in any way. If at all it will only damage it. And probably we may have to alter even those later on.

With these observations, Sir, I shall cut short my speech as I do not want to take too much of the time of the House especially because I spoke twice yesterday, I hope my observations will commend themselves to you and to the House.

Shri Vishwambhar Dayal Tripathi: (United Provinces : General): *[Mr. President, I welcome the report on fundamental rights, which has been presented before the House. Even though I am not satisfied with all that has been said in it, I warmly welcome some of its specific provisions. I want to invite the attention of the members of the Assembly particularly to Section 8. It has been said therein that within ten years our *Swaraj* Government will fully extend primary education to every poor man in every village. What it means is this that within ten or twelve or fifteen years, though every old and young man may not be educated, yet the Government will try to make full arrangements for the education of the children at least, and there shall not be any child in our country who shall not get an opportunity of education. I specially welcome this clause. Other clauses also are very important and they are appropriate as far as they go. I do not think that this report and its clauses are merely meant as a pious wish. I think what if we act fully according to them, there is no doubt that we will take the country a long way on the road to progress. But in spite of it all, there are some clauses in it which even though appropriate, are altogether inadequate. In this connection I want to invite your attention particularly to clauses 3 and 4. There are some other provisions also which should have been included in this report but they are not there.

On examining the amendments I discover that they are coming before us in some form or other, and when we consider each clause separately

*[English Translation of Hindustani speech begins.

[Shri Vishwambhar Dayal Tripathi]

the new principles involved in them will also come before us, and I hope that we will accept them only after full consideration. Once before also a report regarding fundamental rights was presented and we adopted it. It laid down justiciable fundamental rights. These Principles which have been adopted in the second report are no doubt fundamental principles of administration but we cannot have them translated into action through the Courts. Our Constituent Assembly had a different status when the first report was presented. Even though we desired that it may have full powers, there were some restrictions, due to which we were unable to frame our constitution freely. But after the 15th August, although we got Dominion Status alone and not full freedom yet the Constituent Assembly is going to frame such constitution as will bring full freedom to our country. Now the situation is very different from what it was before 15th August. Therefore it has become necessary that when the Constitution comes before us once again, we may think over the principles which we accepted earlier. The reason for this is that at that time we had several mental reservations, because of which we could not think freely. But now when the complete draft constitution comes before us, we will be able to consider it more freely Sir, I am happy to know that yesterday you gave us permission to discuss the constitution when it comes before us and to make our suggestions. I want to draw your attention to clauses 3 and 4 in particular. Matters relating to economic rights have been mentioned there. What ever has been said in them is appropriate but I wonder if in spite of it we will be able to accomplish the task which it is necessary for us to do. At the present juncture when we are taking over the reins of administration we have to give it serious thought. This is not merely my desire, but that of every Congressman. I think that it is the desire of every inhabitant of our country that the lot of our poor people be improved and the poor be no longer dependent on the rich. Nowadays, the rich dig wells, build *Dharamshalas* and *Gaushalas* for the poor and loudly proclaim that they are helping the poor in every day. This is a blow to the self-respect of the poor and in this manner they can never rise. The need is that the poor may realise and feel that they have also the strength to rise to the highest level and that they also have the same facilities for advancement as others have. This feeling can be roused in the poor only when we alter the fundamental principles substantially and mould our society on socialist line. There is some indication of it in clauses 3 and 4. But these clauses have a place in all the constitutions of the world. In spite of this the poor are denied the justice that should have been extended to them. Today practically in every country the poor are dependent on the rich. Therefore I am unable to say what effect these principles will have in our country.

The leaders have made many sacrifices and led a very austere life for the liberation of the country during the last twenty-five or thirty years. In our midst, we have our Honourable President who, during his life time, has set an example of sacrifice before the world. Many of our leaders have also done the same and they are in our midst. We hope that in their presence justice will be done to the poor. But the Constitution that we are making today is not for the present only but for centuries to come. Therefore we should include in it the principles on the basis of which justice may be done to the poor and whether our present leaders are living or not the basic principles of the constitution

may be brought in the action. We see today that even though the Government is in our hands, and the Congress has made so many sacrifices, and in spite of our efforts and desires, the influence of the capitalists, is continuously increasing. Does not each one of us know that all the prominent newspapers are one by one passing into the hands of the capitalists; the chains of newspapers are coming under the control of the capitalists. If one wants to say something against capitalism, it is impossible to get it published in leading newspapers. To-day the redeeming feature is that we have as our leaders those men who have spent their lives in making sacrifices and in the service of the poor. But after ten or fifteen years when these people will be advanced in age and when they will have no energy left to work, or when the ordinary people who have not made sacrifices, will come up, as leaders, then, it is difficult to imagine as to what will be the condition of the country. Therefore at this time we must frame such a constitution as may prevent such a contingency.

In my opinion when we are framing a constitution for the coming generations of India, it is necessary that we should include in it *inter alia* four fundamental rights. Some of these four rights are already there in an indirect form, some are coming in the form of amendments, and some would probably come at the time when the full draft of the constitution will be placed before us. We will put forth our suggestions at that time, but I want to speak to you here and now about the four fundamental rights which I have mentioned before.

The first basic principle of our constitution should be that the poor man should have full right to rise to the highest station in life, he should have the facilities to do so, not out of somebody's compassion, but by his own strength and the assistance of society. Very respectfully, I submit not by way of criticism but because I feel that we included many things in our constitution, laid down many Principles and made an effort to solve many national and international questions, but we did not write even a word for removing the poverty of the poor. Except for goodwill, no other word is found in the whole constitution. Except for the right to vote, the poor man has not yet got any other right under the constitution. Being a representative of the poor I am grateful for this right to vote, but this is not enough. Therefore, I submit very humbly that we should make such rules and regulations as may make it clear and necessary that when our constitution will be ready and acted upon, it will not result in the rule of a few capitalists and vested interests and they alone will not dominate the administration and the people would not be dependent on them. There are a few friends of mine who feel irritated at the very word socialism. I do not want to irritate them and in fact there is no need of irritating them by making a mention of socialism. But I simply love this word. A time will come when socialism will reign supreme both in our country as well as in the world as was remarked by Pandit Jawaharlal Nehru while speaking on the Objectives' Resolution. Even then, if there are some who feel irritated at it, I am not so petty as to use this word repeatedly to annoy my colleagues and friends. Therefore, if you dislike the word socialism, let it go, do not use it. But you must make such regulations as may prevent the domination of vested interests, capitalists and those who desire to keep the poor under subjugation. I would request you at least to prevent the capitalists and vested interests from standing for the membership of the

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legislature or from holding high posts or those in the Ministry. I am sorry to say so, but whatever I have said is not by way of criticism. When I go to old or New Delhi, I hear people wondering how such and such men have got into such and such committees. The public is suspecting as to whether the Constitution—that is being framed is for the poor people or for vested interests. The names of those people generally appear for these committees who represent the vested interests and not of those who made tremendous sacrifices for their country during the last thirty years. I do not know what we should tell the people. We admit that up to a certain stage we may require the capitalists but it is not proper that they should wield influence under the Constitution. The country will never approve of it and I know that our leaders also who have suffered for our country do not approve of it. And if they also will not approve of it, some such provision should be included as may prevent these capitalists subsequently from gaining power. This is very necessary and it can be done in either of these two ways. You can either provide that our constitution our future social structure will be on socialistic lines. If however, you do not wish to use the word socialism, you can provide that you are not prepared to retain, capitalism in any form, and so long as capitalism has to be retained, you may, provide that no one who is engaged in profit-making can occupy high Governmental position. You can know who joins the Government with profit motive and how he takes unfair advantage of his position. You people understand the ways in which people take unfair advantage. I therefore respectfully submit that it is very necessary that we include some such provision in these fundamental rights as may be a safeguard against these dangers. Until we make such a provision, the poor people of this country will not be benefited by this constitution. Today we are engaged in fixing the salaries of Governors and Ministers and the allowances of members. But the greatest need at present is that of finding out ways and means to increase the income of the most lowly among the people. We have not to increase his income out of somebody's charity but we have to make such provision as may help him in making his life happy and in increasing his income. This is the foremost and the most important task facing us. Today when we go out we find people asking us as to what place we are giving to the poor in the new Constitution and what we are doing for them, and they openly point out that unless some thing is done for them, this Constitution is useless for them.

The Other thing that is necessary is that we have to make the nation strong and compact. Many things are needed to make a nation compact. The most important of them all is that there must be cultural unity amongst us. For Cultural unity, among other things there should be one State language. I want to invite your attention to the speech of my learned friend Chaudhri Khaliq-uz-Zaman. When Pakistan was in the offing, he made the declaration that the language of Pakistan would be Urdu. I think that no one should have any objection to it. In one nation, there can be only one national language. It occurred to me on reading his statement that as a matter of principle it is very appropriate; and therefore it is necessary that in India too we may decide that in our country also there shall be one language. Until we decide this there is no doubt that we can strengthen neither our cultural unity nor our national unity. There has always been one culture

in our country. By adopting one language we can strengthen it and thereby strengthen the Indian nation. We admit that ten to twenty thousand of our Muslim brethren came from outside but undoubtedly it is difficult to say as to who are their progeny and where they are. Nowadays about 99 per cent. Muslims, 100 per cent. Hindus, 100 per cent. Christians and 100 per cent. Sikhs are the descendants of common ancestors. Some of our Muslim brethren, may under misguidance hurl abuses at Rama and Krishna. But there is no doubt, that in the near future when conditions stabilize and this virus of ill-feeling and communalism is destroyed, every Muslim will consider Rama and Krishna as his ancestors just like Hindus. It has been a feature of the History of the World that in spite of change of religion cultural unity has remained intact. It was unfortunate that ill-will continued to grow amongst Hindus and Muslims in our country and its result was that we were continuously separated from each other. We have cultural unity and everyone has contributed towards it. Our culture has its roots in antiquity and every religious sect of our country has contributed towards it. Muslims have also made their own contribution. In the circumstances if we adopt one language as our State language we will be strengthening our culture and our nation. I am happy to know that very soon a resolution will come before you proposing that our State language be Hindi and that the script, be Devnagri. I think all members of this Assembly and every man, woman, and child in the country will welcome this resolution.

The third thing, that is presently coming before you and which should also form part of fundamental rights, is very useful from the point of view of our culture and economy. Our country has all along been predominantly agricultural and no matter how much we may expand our trade, so long as we do not become imperialistic—which we should not be—our country will undoubtedly remain agricultural. Cow protection is very important for an agricultural country. I am happy to know that a resolution to this effect is coming before you in a very nice form, and I hope that this Assembly will adopt it unanimously. This matter too was hotly discussed. Not only from financial point of view but from cultural point of view also, I think it is necessary to make adequate arrangements for cow-protection. From both the points of view, financial as well as cultural, it is necessary and proper that we should take steps for cow-protection, and I am happy that a resolution to that effect is coming before you.

The fourth important matter has not yet come before you, but I think, that when the draft constitution including the fundamental rights will be placed before you, this also will come before you. And that is, how to make our nation strong and powerful in the shortest possible time. We do not want to attack any country of the world. We do not want that there should be any conflict in the world. But everything does not depend upon our wishes. If any country desires 50 per cent. peace, we want 100 per cent. peace and we will make all possible efforts to bring about peace in the world. This we can accomplish only when we are strong. From the point of view of population our country is the largest in the world and therefore it is our duty that we put an end to the tendencies of violence that we find in the world today. But we can stop them only when we ourselves are strong and for that it is necessary that every youngman of our country should receive military training. I want that we should make a law that every youngman of our country

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will receive military training unless he is physically unfit and the State should compel him to receive such training. To make the nation strong, and also to remove the indiscipline that has crept into us owing to our dependence for centuries it is necessary that physically fit men should be conscripted and given military training.

These four things are very necessary and I confidently hope that when these matters come before you from time to time, you will consider them and the House will support them unanimously. I said at the very outset that so far as the principles contained in this report are concerned, I welcome them, but I think that they are inadequate. Until these fundamental principles are added, neither can the poor masses of the country be fully benefited nor can our country become strong. I hope that the Honourable Members of the Constituent Assembly will welcome this report and will support the inclusion of the fundamental principles stated by me.]*

With these words I welcome once again the report. *Jai Hind.*

Mr. Satyanarayan Sinha (Bihar : General) : Sir, I move:

“That the question be now put.”

Mr. President: The question is:

“That the question be now put.”

The motion was adopted.

Mrs. Renuka Ray (West Bengal : General) : Sir, yesterday you said in the House that the clauses of the Report would be discussed at a later stage. Some of us have amendments, particularly to clause 16. I hope we shall have an opportunity to bring up these amendments at a later stage.

Mr. President: At present we have taken up the motion that the Report be taken into consideration and if this motion is carried, then we shall take it up clause by clause and any amendments to the clauses may be taken up at that stage. Does the mover wish to say anything in reply?

The Honourable Sardar Vallabhbhai J. Patel: I am glad the discussion is over. We had a very interesting general discussion on the Supplementary Report. The discussion on the main Report was shorter than that on the Supplementary Report. So far as the Supplementary Report is concerned, the general discussion is based on the non-justiciable rights, and on the few clauses which have been submitted in this Report about the justifiable rights there has been practically no discussion. The real prolonged discussion has been on the other part of the Report.

This Report lays down certain administrative objectives. We have already passed the main Resolution defining the objectives and therefore whether you have this prolonged debate or not is more or less an

] *English translation of Hindustani speech ends.

academic thing. Therefore I suggest that the Report be taken up for consideration and when we come to the clauses, one by one, if any amendments are moved, then I may have to say something, but now I have nothing more to say except that the Report be taken into consideration.

Mr. President: The motion is:

“That the Report be taken into consideration.”

The motion was adopted.

Mr. M. S. Aney (Deccan States) : Sir, I want to point out that it is the general rule that when a reply is made the Member who is replied to should be present in the House to hear the reply to his attack. This is a recognised rule of debate in all legislatures.

Mr. President: I hope the Members will bear in mind this advice of as experienced legislator like Mr. Aney.

CLAUSE 16

The Honourable Sardar Vallabhbhai J. Patel: Sir, I move clause 16:

“No, person attending any school maintained or receiving aid out of public funds shall be compelled to take part in the religious instruction that may be given in the school or to attend religious worship held in the school or in premises attached thereto.”

We recommend this clause to be accepted by the Assembly in its present form. That is the final recommendation of the Advisory Committee. After a long discussion, considering all the amendments, we finally came to the conclusion that this is the most suitable form for incorporation into the Fundamental Rights and I move that this clause be accepted by the House.

Mr. President: I have notice of several amendments to this Clause.

Shri R. V. Dhulekar (United Provinces : General) : Sir, I want to suggest a slight verbal change, that instead of the word “school” in the clause, the words “teaching institution” may be used.

Mr. President: But you have given no notice of any such amendment?

Shri R. V. Dhulekar: No, Sir.

Mr. President: Mr. Dhulekar suggests that the words “teaching institution” may be used, in the first line of this clause, in place of the word “school”. He has given no notice of any amendment.

Mr. K. M. Munshi (Bombay: General): Sir, that will enlarge the meaning. The whole idea will be changed, it may mean a college, post-graduate school, or anything. The whole idea is that right should be restricted to a school. It is not a simple matter of changing one word by another.

Mrs. Purnima Banerji (West Bengal: General): Sir, I move.

That in clause 16, the following new paragraph be added as an explanation—

“All religious education given in educational institutions receiving State-aid will be in the nature of the elementary philosophy of comparative religions calculated to broaden the pupils’ mind rather than such as will foster sectarian exclusiveness.”

The object of the clause, Sir, is, as the Mover of the Report has suggested, to prevent the students attending these schools being forced to attend the religious classes, if they do not wish to do so. With that I am in perfect agreement. But I know there are a large number of institutions which are run on religious lines and which came into the field of education much before the State came in. There are in my Province ‘Maktabs’ and ‘Pathasalas’ which perform the function of importing education to children of school-going age. But we have seen that the religious instructions given there are of such a nature that, instead of broadening the mind of the child, they miseducate the mind and sometimes breed a certain type of fanaticism and religious bigotry as a result of receiving education in these ‘Maktabs’ and ‘Pathasalas’. It is a controversial point as to whether we should give any aid to denominational schools at all—I do not wish to open that subject at all because there are experts appointed for this purpose and their report is awaited and I am sure after that the legislature will enter into that subject in fuller detail. My object in, moving the amendment is that the education imparted in these institutions should be restricted or controlled by the Government without any fear of interfering with anybody’s religion. The curriculum should be in the control of the Government and should be of such a nature that it broadens the mind rather than create an exclusiveness. When we were discussing the Minority Rights Report, we said that our aim should be to form a united nation and we have done away with separate electorates and agreed on fundamental rights and given each the right to follow his own religion. But I do believe that however secular a State you may wish to build up, unless one member of it appreciates the religion of another member of the State, it would be impossible for us to build up a united India. Therefore, without interfering with the religion of anybody, the State should be perfectly entitled to see that, in the formative age of the child, when he is of the school-going age, the religious instruction is controlled and that the syllabus is of such a nature that the child will develop into a healthy citizen of India capable of appreciating each other’s point of view. We may be united by political parties, but if we do not appreciate each other’s religion. We shall find that instead of having really men of religion in our midst, we shall be breeding a type of exclusiveness which will be most harmful and on that type of mind, I am afraid, the future of the nation cannot be built up. With these few words, Sir, I move my amendment and I hope the House will agree with me and accept it.

Mrs. Renuka Ray: Mr. President, Sir, I move my amendment leaving out the first part, namely,—

That for clause 16, the following be substituted:—

“No denominational religious instruction shall be provided in schools maintained by the State. No person attending any school or educational institution recognised or aided by the State shall be compelled to attend any such religious instruction.”

Sir, I feel that the framers of this Report did not intend to imply what this clause does imply, namely, that instruction given in schools maintained by the State or out of public funds may be of a denominational character. Surely denominational schools cannot be run by a democratic secular State. Such schools may be recognised or even aided, but as the State we envisage under the new Constitution will be secular having no State religion as such, it cannot set up denominational religious institutions as State schools. I do not want to make a long speech; I merely want to point out that if my amendment is substituted for clause 16, then this interpretation will not be possible and what this clause is intended to convey will be brought out better. I hope the House will realise the necessity of making this substitution.

Sir, even before we had freedom, the Central Advisory Board of Education decided that the education that was to be given by the State in this country should not be of a denominational character and that religious education of a denominational character was the responsibility of the community and the home to which the child belongs and not of the State. I am sure that now that we have to fashion our own destinies and we are in a position to usher in that free, and democratic State for which we have striven and for which so many have sacrificed and died, it is open to us to say that we do not want to be inconsistent. We do not want to bring in an educational system whereby the education given by the State will be in direct contravention to the ideals and the interests of the State itself. I do not say that denominational religious education should not be allowed. But education given by the State should have the teaching of moral and spiritual values; it cannot by the very nature of the State be of a denominational religious character. I hope that Sardar Patel will accept this amendment, because it is not in contravention to the desire of the Committee. It merely tries to clarify the issue. The clause as it now stands may be misunderstood to mean that we are submitting to the State having denominational educational institutions as a part of its educational programme of policy.

Mr. President: There are only two amendments of which I have notice. Both the amendments have been moved. Now, the resolution and the amendments are open for discussion.

Shri K. Santhanam (Madras: General): Sir, I strongly support the amendment moved by Shrimati Renuka Ray. I think it carries out more fully the intentions of the Sub-Committee. In our country, even in the same religion there are any number of denominations. We want, the village panchayats to control education; we want the local boards to control education. In a particular village or a particular area, a particular Hindu denomination may be in a majority. We don't want Saivaites to give Saivaite instruction; the Vaishnavaites to give Vaishnavaites education; the Lingayats to give Lingayat instruction. We do not want to give even the slightest loophole for such controversies. Therefore, it is essential that all schools maintained by the State should have no religious instruction whatsoever. Let other agencies provide this instruction, if they so choose, in 'out of class' hours. That is a different thing altogether. I am not objecting to religious instruction as such, nor I am objecting even to denominational character of religious instruction, but our public institutions should be absolutely secular. They should be beyond the reach of all religious controversies. Therefore, this amendment says that where schools are maintained by the State, no denominational religious instruction shall be provided in them. It carries out the intentions of the Committee much more precisely and fully. If an institution is recognised or receives aid from public funds then there should be no compulsion. There may be religious instruction in an aided

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school, but where any parent of a minor or—if a student is an adult—such student does not want to attend the classes, he should not be penalised in any way. He should be allowed to absent himself from such religious instruction. I think both these clauses are fundamental and I hope that they will be unanimously accepted by the House.

Mr. H. V. Pataskar (Bombay : General): Sir, I would like to have clarification with regard to one point. The clause states. “No person attending any school”. In the beginning Mr. Dhulekar suggested to replace the word “school” by “educational institution”. As I understand it, the word “school” is used in a wider sense implying any class of institution where education is provided, but if it is the idea that we are going to exclude colleges, for instances, which are in one way schools where education is given, then I think what it would lead to is that in schools which are aided by Government you cannot make religious instruction compulsory, but in colleges, if we use the word ‘school’ in its restricted sense, you can make it compulsory. I know of some colleges in the city of Bombay where some time back this religious instruction was compulsory. So I hope the Honourable Mover will clarify this point when replying.

Mr. President: It seems to me that nobody is willing to speak on this motion or the amendment. Will Sardar Vallabhbhai Patel reply.

(*B. Pocker Sahib Bahadur, Madras: Muslim, stood up.*)

Mr. President: Oh, you want to speak?

B. Pocker Sahib Bahadur: Yes. Sir. I only want to say a word as regards amendment No. 34. The object of this amendment seems to be to unify all the people of this country towards one religion or something tending towards it. If that is the object then I certainly oppose it. I must say that in some previous speech in Hindustani on the general discussion. some similar suggestion was made; of course, I have not been able to follow that and I am not proficient to deal with that. But generally, I would say that any attempt towards the unification of all religions or towards giving instruction in public schools which is intended to unify religion is fundamentally opposed to the other clauses of fundamental rights which we have passed.

Now, Sir, I would like to point that the carrying out of this amendment No. 34 will be opposed to the other clauses and it would be opposed to the Fundamental Rights upon which we have been working so far and the introduction of this amendment will create not only discontent but it will take away the very basic principles upon which this Constitution is to be built. Then, I have no objection to the amendment No. 59 but I would point out that even though no denominational religious instruction may be provided in schools maintained by the State, what we find is in all the text-books which are prescribed for the various classes in the Schools we find so many religious topics are introduced particularly topics which deal with Hindu religion or some other religion I would like to say that subjects which deal with the moral aspects only without having any religious idea introduced may find a place but if it does find a place in the text-books it may be from all religions, alike and not from any particular religion alone.

Therefore I would oppose this amendment No. 34 and support the original clause as it stands but I would only add that there are so many educational institutions which are intended to promote some particular minorities or religious minorities because of their backwardness in the matter of education. I submit that such institutions should not be affected by this clause.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): This is rather an important matter and my preference is for the original proposition, *i.e.*, as framed by the Committee. I am in entire agreement with the mover of amendment No. 59, Shrimati Renuka Ray, whose aim is to have secular education not influenced by any kind of religious or spiritual worship or education which must be the aim. The amendment by the other lady member is somewhat controversial. What would be the fundamental education that should be given to the child would be a matter of opinion and it might lead to controversy. So, Sir, the amendment No. 34 cannot be taken into account at all. It will do more harm than good. For, this elementary philosophy of comparative religion is very difficult to define. While as I have said I generally support the amendment of Shrimati Renuka Ray where it aims that in no State Schools there should be any religious instruction, it does not contemplate prevention of religious education being given by other recognized and aided schools. So the objective may not be the same by the amendment of Mrs. Renuka Ray. Allowing the proposition, rather the original motion, as framed by the Committee, is very sound. It may be that there are some institutions where religious education is given and some State aid may be given and if there is no compulsion that no pupil can be compelled to receive such education, there is no harm in it. It might stand. So, I think, Sir, that the clause 16 as amended and placed before us by the Committee is better and I support that.

Sriyut Rohini Kumar Chaudhury (Assam: General): Mr. President, Sir, I rise to give my whole-hearted support to the Motion which was moved by our Honourable friend Mrs. Purnima Banerji. It is not the personality of the Mover which has promoted me to do so but I think, Sir, taking the two motions side by side, the motion which was moved by Mrs. Banerji would take us nearer to the goal of our ideal of secular education. My Honourable friend, Mrs. Renuka Ray, has made an earnest appeal to the Honourable Sardar Patel and I am sure he is not relishing the position of having to choose between either of the two amendments but, as is well known, he is capable of surmounting any difficulties and I am sure he will get over this difficulty and give regard to the appeal of Mrs. Renuka Ray and also accept the motion made by Mrs. Banerji.

Mr. K. M. Munshi: Mr. President, Sir, my first proposition with regard to this Fundamental Right is that the words 'Public Funds' should be really 'State Funds'. Mr. Kamath's amendment was evidently lost sight of. When the original Fundamental Right was accepted, wherever the words 'Public Funds' were found, they were substituted by 'State Funds'. The object was that the money collected from public subscription should not be considered the same as State Funds. Therefore I appeal to the Mover that this verbal change might be accepted. My second submission is with regard to the amendment moved by Mrs. Banerji. However laudable the object, the House will remember that this is a justiciable right and therefore every word of it will have to be discussed, considered and decided upon by the different High Courts

[Mr. K.M. Munshi]

and the Supreme Court in the end. Now, if Mrs. Banerji's amendment becomes law as a justiciable right, this will be the position. There is a School in which religious education is given. The first question raised by some friend or by some enterprising man will be 'Is it in the nature of elementary philosophy or comparative religions?' So the matter will have to be taken to the Supreme Court and eleven worthy judges will have to decide whether the kind of education given is of a particular religion or in the nature of elementary philosophy of comparative religion. Then, after having decided that, the second point which the learned judges will have to direct their attention to will be whether this elementary philosophy is calculated to broaden the minds of the pupils or to narrow their minds. Then they will have to decide upon the scope of every word, this being a justiciable right which has to be adjudicated upon by them. I have no doubt members of my profession will be very glad to throw considerable light on what is and is not a justiciable right of this nature. (A Member: *For a fee*). Yes, for very good fee too.

Then again they will have to consider whether a particular kind of teaching fosters sectarian exclusiveness. All this I think will require any amount of litigation before a quietus can be given to this right.

An Honourable Member: May I ask the Honourable Member whether comparative religion taught in all universities and educational centres is not narrow minded and likely to warp the minds of the pupils?

Mr. K. M. Munshi: It is not a point of order, but a question. There are no lawyers set up there to consider whether this comparative Philosophy or elementary comparative philosophy taught in the educational institutions broadens the pupils' minds or not. These decisions will have to be for the whole country including the Indian States. But all these words are of a nature not capable of being interpreted in judicial terminology except by dozens of decisions and an expenditure of lakhs of rupees. Therefore I am submitting that this is more in the nature of a dictum of what may be called broad rationalistic philosophy and is not to be approached legalistically and embodied into justiciable and non-justiciable rights. To attempt to do so would lead to considerable confusion. Even if the idea is to prescribe that religious education must not be of a nature which is exclusive, then a better phraseology would have to be found.

On the merits I would like to say only one word and it is this: Educational institutions of a denominational character often give religious education. They are doing so, not for the purpose that the students will have a general knowledge of comparative philosophy but for seeing that the students who are members of a particular denomination are given education in that kind of religion. And as a matter of practice, I may assure the House that, even if this 'justiciable rights' is there, it is not going to make any difference. Supposing there is a school of a particular denomination where a particular doctrine is taught, can any one compel that institution to impart instruction in comparative philosophy to its students? First of all, at that stage students cannot understand philosophy. But even if you compel them, the school, its teachers and even the authors can so manipulate things that at the end of the study of comparative religion, the student comes to the conclusion that that religion is the best. I know of a concrete instance. A certain denominational school taught the sacred book of that community to the classes, but at the same time lectures were being delivered in the nature

of comparative study of religion. At the end of it it was taught that theirs was by far the best. This amendment will not meet the situation. It will make it worse. I submit, it is impossible to bring this doctrine under the terms of a clause as a justiciable right. If this amendment is accepted it will work great hardship and will remain a dead letter.

Then I come to the next amendment of Mrs. Ray. As far as the first part of it is concerned, *viz.*, “No denominational religious instruction shall be provided in schools maintained by the State”, as far as the Federation is concerned, it is going to be a secular and democratic State. So far as the Units are concerned, I do not think the provinces are going to be religious States. But at the present moment this Fundamental Right would not only affect the Provinces, but also the States. If the Indian States are willing to accept that, it is a different matter, but it would not be right in my opinion to lay down this general principle in the present condition of India unless we are all unanimous on this point.

As regards the second sentence, I confess it is an improvement on the phraseology of Clause 16 as adopted by the Advisory Committee and for this reason: “No person attending any school maintained or receiving aid out of public funds...” Now, the word ‘maintained’ in the original clause may be construed as wholly maintained. Therefore Mrs. Ray’s amendment would recognise this fact. If it is wholly maintained, it is different. This clause only refers to what may be called State-aided institutions. Therefore her words ‘No person attending any school or educational institution recognised or aided by the State’ constitute a better phraseology. I submit it should be accepted. It runs thus: ‘No person attending any school—maintained’ instead of this the word ‘recognised’ may be inserted. The result will be: No person attending any school recognised or receiving aid out of public funds. So it automatically puts out of its purview State institutions which are wholly financed by the State.

Now, with regard to the words “educational institutions” I submit it enlarges the meaning of the word ‘school’ to a very large extent. It would create grave difficulties if it is allowed to be used. There may be *pathasalas* or *madrassahs* giving religious instruction. Their express object is to give religious instruction and everywhere today these are aided by the State. Any such rigid fundamental right would have the effect that all those thousands of educational institutions will have to go out of existence.

Shri K. Santhanam: May I know why those institutions should go out of existence?

Mr. K. M. Munshi: The point is that there are schools which are intended to teach religion and every student who goes there is taught religion. *Pathasalas* are not strictly educational institutions. Therefore the word ‘school’ has a clear meaning that meaning is that schools are institutions where primary and secondary education is given and not education of a specialized character. Therefore I submit, Sir, Clause 16 as moved will express the idea completely if two words are changed, “maintained” is altered into “recognised” and “public funds” into “State funds”. That is my submission.

Mr. Debi Prosad Khaitan (West Bengal: General): I believe that ‘out of’ will have to be changed into ‘by’. Then it will read: “No person attending a school recognised by the state”.

The Honourable Sardar Vallabhbhai J. Patel: Sir, I am prepared to accept the change suggested by Mr. Munshi that instead of the word “maintained” in the clause we put the words “recognised by the State” and instead of ‘public funds’ we put “out of State funds”.

The only thing that I have to say in considering the clause is that one has to keep in mind that this is one of the justiciable rights and we must in drafting or in adopting the clauses keep in mind that this is not a clause which belongs to British India only but to the whole of the Indian Union and in adopting these clauses we have to consider the fact that it should not be such as to open the flood gates of litigation and create many difficulties afterwards. Therefore, these should be mainly general propositions under which special cases would give so much to go to the court and therefore with these changes which I am accepting I move the proposition for the acceptance of the House.

Dr. S. Radhakrishnan (United Provinces: General): Mr. President, I should like to have an elucidation. Does this term “recognised by or receiving aid from” include or exclude institutions wholly maintained, administered and financed by the State?

The Honourable Sardar Vallabhbhai J. Patel: It includes.

Mr. H. V. Pataskar: May I know if it is the idea to exclude colleges and all other higher institutions, where religious instruction may be made compulsory or is it used in the larger sense of any educational institution?

Mr. President: Mr. Pataskar wants to know whether ‘school’ includes colleges or not.

The Honourable Sardar Vallabhbhai J. Patel: It excludes colleges.

Mr. President: May I put the amendments to vote? The first amendment is that of Shrimati Purnima Banerji:

That in clause 16, the following new paragraph be added as an Explanation:—

“All religious education given in educational institutions receiving State aid will be in the nature of the elementary philosophy of comparative religions calculated to broaden the pupil’s mind rather than such as will foster sectarian exclusiveness.”

The amendment was negatived.

Mr. President: The next amendment is by Shrimati Renuka Ray:

That for clause 16, the following be substituted:—

“No denominational religious instruction shall be provided in schools maintained by the State. No person attending any school or educational institution recognised or aided by the State shall be compelled to attend any such religious instruction.”

Mr. K. M. Munshi: I want to know whether the Honourable Mover has accepted the word “recognised” in the place of “maintained”.

Mr. President: That is in the original resolution—“maintained by the State”. He has accepted that I think.

Pandit Hirday Nath Kunzru (United Provinces: General): I do not understand the exact effect of the amendment. Does the acceptance of the amendment by the Honourable Sardar Vallabhbhai J. Patel mean that clause 16 will relate not to schools maintained by the State but only to schools recognised by the State and aided out of State funds ?

Mr. President: Mrs. Renuka Ray says she is withdrawing the amendment. I will put the original proposition.

Pandit Hirday Nath Kunzru: Sardar Vallabhbhai Patel said he would accept the amendments suggested by Mr. Munshi and I believe that if these amendments are accepted clause 16 would read as follows:—

“No person attending any school recognised by the State or receiving aid out of State funds shall be compelled etc. etc.”

Is this correct ?

Mr. President: I am going to put that very proposition to the House as you have just now read out.

Mr. K. M. Munshi: Instead of ‘State funds’ it would be better to have It “recognised by or receiving aid from the State” because it cannot be recognised by State funds. That is only a matter of drafting.

Mr. President: The sentence will be:

“No person attending any school recognised by the State receiving aid out of State funds etc.”

Pandit Hirday Nath Kunzru: That is, the schools maintained by the State are excluded from the scope of this clause. This is a curious phraseology and I should like the meaning of this clause to be clearly explained. If it is the intention of the Government that denominational religious instruction might be given by the State in the State schools then that should be stated clearly so that we may make up our minds and decide how we should vote on this clause.

Mr. President: We may get over the difficulty if we put the clause in the following way: “No person attending any school recognised or maintained by the State or receiving aid out of State funds etc.”. Will that do?

Pandit Hirday Nath Kunzru: I think that will remove the difficulty.

Dr. S. Radhakrishnan: If the institutions which are maintained by the State are to impart denominational religious instruction then what happens to our declaration that the State is a secular institution which will not impart any instruction of any denominational kind? That is the real question. We have adhered to the first principle that the State as such shall not be associated with any kind of religion and shall be a secular institution. In other words we are a multi-religious State and therefore we have to be impartial and give uniform treatment to the different religions, but if institutions maintained by the State, that is, administered, controlled and financed by the State, are permitted to impart religious instruction of a denominational kind, we are violating the first principle of our Constitution. On the other hand, if we say

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aided institutions may impart religious instruction, we protect the interests of the people against the violation of their religious conscience by saying that they shall not be compelled against their will to join classes on religion. So a distinction will have to be made between institutions maintained by the State and those institutions which are merely aided from State funds. So far as the former are concerned we cannot allow any religious instruction of a denominational character. So far as the latter are concerned, you may allow, provided you protect the rights of the minorities concerned. We have to make ourselves absolutely clear on this matter.

The Honourable Sardar Vallabhbhai J. Patel: Sir, there is some confusion. So far as any school that is entirely maintained by the State is concerned, we cannot do anything by way of introducing fundamental rights for which the remedy of taking it to the court is given. Because, this is not restricted to the British Indian portion alone; it covers the whole of India, that is the Indian Union. Therefore, if a Unit which is a State, take the case of Hyderabad, wants to maintain wholly its own school in which it wants to introduce religious education, it may compel; but we cannot give a remedy by which anybody can go to the court and say, "you will not impart religious education here". I do not think this is proper at this stage. Therefore, the wording 'recognised by or receiving aid from the State funds' is introduced.

Mr. M. S. Aney: I have one doubt, Sir. Does the word "State" mean only the Union or the Units also ?

Mr. President: He wants to know whether "State" includes Units.

The Honourable Sardar Vallabhbhai J. Patel: "State" includes Units.

Shri R. V. Dhulekar: On a point of information, Sir, I would like to know whether the wording is "recognised by and receiving aid" or "recognised by or receiving aid".

The Honourable Sardar Vallabhbhai J. Patel: The word 'Or' is there.

Mr. President: Recognised by the State or receiving aid out of State funds. One or the other.

Shri R. V. Dhulekar: If the word "or" is there, that means that even denominational institutions which are wholly maintained by private funds will not be recognised by the Government at all. So, the word "or" should not be there. It should be "and". They should be recognised by the Government and aided. If they are aided, then this rule will apply. If it is maintained only by private funds, then....

The Honourable Sardar Vallabhbhai J. Patel: Even if it is maintained by private funds, if it is recognised by the State, you cannot compel the students to have religious education.

Dr. B. Pattabhi Sitaramayya: (Madras: General): May I express a difficulty, Sir?

The Honourable Sardar Vallabhbhai J. Patel: There will be no end to the difficulties.

Dr. B. Pattabhi Sitaramayya: If you want to pass it in an ambiguous manner, there is no trouble. I see an obvious defeating of the purpose for which the amendment is made.

The Honourable Sardar Vallabhbhai J. Patel: I do not see any difficulty.

Mr. President: Mr. Munshi's amendment was introduced in the course of the discussion and there was no proper notice of it. Therefore, this question has arisen.

The Honourable Sardar Vallabhbhai J. Patel: What is the difficulty?

Dr. B. Pattabhi Sitaramayya: There are certain institutions in the provinces or States where certain benefactors have maintained whole institutions and they would like to impose certain religious instruction upon the students. We wanted to exempt them. That is all very well. Now, the object is to exclude a category of institutions maintained by a certain Province or State or private funds without any connection with the State. Very well, then, you have excluded them. Then you have included two categories of institutions: one, which is not recognised by but is receiving State aid; in that case, my argument does not apply. But, when you say recognised by or receiving aid from the State, then you have introduced two categories of institutions. One of them includes any institution recognised by the State. A State-maintained institution is a recognised one and thus becomes included, When it was meant to be excluded. Thus, the right of compulsion is taken away and the very exemption that we have given is undone; because even a State-maintained institution is a recognised one. The moment it is recognised by the State, that moment, the exemption that you have given to the State-maintained institution is taken away. Therefore, if you want to validate and affirm your exemption to, the State-maintained institutions, you must say, "recognised and receiving aid from the State". That creates only one category. Otherwise, the language with 'or' would include those institutions which you have excluded. Let us take a little time, each person for himself, to judge what it means.

Dr. Mohan Sinha Mehta (Udaipur State): Sir, I am very glad that the Honourable Pandit Kunzru raised that point. From the explanation that has been given, it is quite obvious that what we understand was not really intended. Now we are told that an institution maintained by a State may have religious instruction compulsory. Well, Sir, that is a position about which some of us in this House have very strong feeling, and since the matter is not clear, I would strongly submit for your consideration that it be referred back to the Committee. If you accept the first sentence in Mrs. Renuka Ray's amendment and keep the rest of the original proposition, it would be all right. It will meet the point raised by my friend, Professor Radhakrishnan.....

Mr. K. M. Munshi: Are we debating the same thing over again? I think we have adopted it.

Mr. President: The difficulty is, you put in certain words in the course of the discussion, of which there was no notice to the members. The mover has accepted them and therefore the difficulty has arisen.

Dr. Mohan Sinha Mehta: The matter is of fundamental importance. There is a very real difficulty and I wish that it should be cleared before you ask us to vote on the proposition. I would remind the House that this subject was discussed at two sessions of the Central Advisory Board of Education. It is not a matter which should be treated lightly.

Pandit Hirday Nath Kunzru: Sir, may I strongly support the suggestion by Dr. Mohan Sinha Mehta. It is very desirable, in view of the importance of the subject, that this clause should be referred back to the Advisory Committee. I do not want to labour the point, but in order to show that it deals with a question of vital importance, I wish to point out that if we allow the State to give religious instruction in any school, it means that we accept the principle of a State religion and that there shall be something like an Established Church. Now, so far as I remember, Sir, during all the years that the struggle for national freedom went on, we stood for a secular State. Indeed, the earlier generation of leaders of Indian public opinion welcomed the measures taken for the disestablishment of the Protestant Church in Ireland. How can we then, Sir, consistently with our previous principles now accept a position in which the State will be in a position to give religious instruction and thus have a State religion which it is bound to protect above all other religions? Therefore, Sir, I strongly support Dr. Mohan Sinha Mehta's suggestion and I hope Sardar Vallabhbhai Patel will have no objection to that.

There are many points which have not yet been decided by this House. Provision will be made in respect of them in the Bill that will come before us and we shall then have an opportunity of arriving at a decision with regard to them. No harm will be done if we leave one more point to be discussed and decided at a later stage. Indeed I think that it is absolutely necessary, in view of the cardinal character of the question that has arisen, that we should not decide it in a hurry today. We must refer it back to the Advisory Committee if we attach any value to fundamental principles.

Mr. K. M. Munshi: Sir, it is not correct to assume that the matter did not receive consideration at the hands of the Advisory Committee or the original Fundamental Rights Committee. There are two different propositions. One proposition is that no school which is recognized by the State, whether aided by the State or not, should be such where students are compelled to take religious instruction. It is one proposition, which is embodied in this. The reason why the word "maintained" was altered to "recognised" was this: there are several schools which do not receive aid from the State and yet they are recognised schools. I know in my part of the country there are several recognised schools which send up students for various examinations, but they do not receive any aid from the State, but they are schools all the same, and the object of substituting the word "maintained" by "recognised" was to cover all those schools, whether they receive State aid or not, but are recognised by the State. Now, so far as those schools are concerned,

proposition contained is very simple, that they shall not compel any student to receive religious instruction against his will. The second proposition, which is quite different, which has nothing to do with this clause, is the one contained in Mrs. Renuka Ray's sentence, that in schools which are controlled, owned and maintained by the State there shall be no religious education. Now these two are entirely different propositions.

Pandit Hirday Nath Kunzru: May I point out to my honourable friend that Sardar Vallabhbhai Patel said that this clause as it stood included both the categories of schools?

Mr. K. M. Munshi: But not for the purpose of excluding religious education. This only recognizes the right of the student or his parent to say "My son shall not be given any religious instruction". This is only one part of it. The other is a different proposition. We need not mix up the two. A State-maintained institution and owned by it may conceivably give religious instruction or may not. It is an entirely different subject.

The object of this clause is not to fetter the State from putting up religious schools but from insisting that every student shall be compelled to undergo religious instruction. This matter came up again and again and the Committee always held that it was not necessary to put down in fundamental rights the converse proposition. If the converse is brought before the House, it may be discussed at another time. But so far as this proposition is concerned, it stands as it is.

Mr. N. Gopaldaswami Ayyangar (Madras: General): A State does not recognise its own institutions. "Recognized" has got a particular meaning.

Mr. K. M. Munshi: If a school maintains an institution, then if you want to prohibit religious instruction in it, it is an entirely independent subject. It is not covered by this clause. This clause only covers institutions which are recognized and State-aided. I see no reason why this part must be held up till the other one is decided. That other one was discussed again and again and ruled out by the Committees. It is not correct to say that neither the Fundamental Rights Committee nor the Advisory Committee considered it.

Mr. Alladi Krishnaswami Ayyar (Madras: General): In view of the difficulties that have cropped up, and I submit that they are genuine, it is necessary that the clause should receive further consideration. The way in which I put the matter is this. You have got three class of institutions: first, an institution which is maintained by the States, second, an institution which is recognised by the State, third, an institution which receives aid from the State. Now, though the subject might have been considered in a general way by the Committee, and my friend Mr. Munshi is quite right in that, personally speaking I am impressed by the argument that a State being a secular institution, there are weightier reasons why religious instruction should not be forced in an institution which is wholly maintained by the State than in a merely recognized or partly aided school. Difficulties in regard to Indian States have been pointed out. If the State maintains

[Mr. Alladi Krishnaswami Ayyar]

an institution for a particular purpose, you may make an exception: for example, for imparting Sanskrit learning or training a particular class of pandits or some such thing. But generally speaking an institution maintained by the State must stand on a better footing than an institution which is recognized by the State or which is receiving aid from the State. Therefore I do think that the whole question may be reconsidered in the light of the suggestions made in the House, instead of one point being accepted, another, point being left open, and another being referred to the Advisory Committee.

I do not mean to say anything different from what Mr. Munshi has said: but certain points have cropped up here. Let us consider them; they are important points, and I do think they should be remitted for reconsideration by the Advisory Committee or even by the Committee which has been set up to revise the Draft to see whether it is possible to bring in line these different classes.

The Honourable Sardar Vallabhbhai J. Patel: These difficulties arise when at the last moment pressure is being put to accept some suggestions, and then even those who make the suggestions afterwards say 'Oh, this is not what we meant'. This question was discussed in the House and the clause was referred back to the Advisory Committee. The Advisory Committee considered it in all its aspect and brought it here. Then at the last moment these changes were pressed. We said 'All right if you think those better, we accept them'. Instead of referring back to the Advisory Committee, it would be better to refer it to a small committee of two or three people. My suggestion is that instead of referring this small matter to the whole Advisory Committee, it should be referred to a small committee, and if they make any suggestions, they can be brought forward at the next session. I do not think it is advisable to refer it back a third time to the Advisory Committee.

Shri K. Santhanam: We are not going to consider it fresh. It may be referred to the Drafting Committee.

The Honourable Sardar Vallabhbhai J. Patel: That is better.

Mr. President: Does the House wish to refer it to the Drafting Committee?

Honourable Member: Yes.

Mr. Tajamul Husain (Bihar: Muslim): The Drafting Committee will only draft. We settle the principle.

The Honourable Sardar Vallabhbhai J. Patel: The House cannot discuss what the Drafting Committee will do.

Pandit Hirday Nath Kunzru: Mr. Patel's suggestion was better. Let us refer this to a small committee that can send its recommendations to the Drafting Committee. I think that will meet the points of view of all Members of the House.

Mr. Hussain Imam (Bihar: General): A committee appointed by the President will do. They will send their recommendations to the Drafting Committee.

Mr. President: If that is the wish of the House I do not mind.

(Interruption by a member in Hindi.)

Mr. President: The Members of the Drafting Committee are here and they have also heard the discussion, and they will get a report of this debate. I am sure they will take all points into consideration and then put forward a draft eliminating all the difficulties mentioned here.

Pandit Hirday Nath Kunzru: Is there any real difficulty in the suggestion made by Mr. Patel?

Mr. President: The House has accepted it.

Pandit Hirday Nath Kunzru: I think if Mr. Patel puts it forward strongly, the House will accept it.

Mr. President: I do not think it is necessary for him to do that. If the House accepts it I will do it.

Pandit Hirday Nath Kunzru: Let Sardar Vallabhbhai Patel put it forward strongly.

The Honourable Sardar Vallabhbhai J. Patel: I have no objection if it is referred to a committee appointed by you and that committee may send it to the Drafting Committee.

Mr. President: I will nominate four or five gentlemen who are really interested in this subject and they can send up their recommendations to the Drafting Committee.

An Honourable Member: It must come to the House.

Mr. President: Only the final report will come to the House.

Dr. P. S. Deshmukh: There are one or two things which require elucidation. If it is not necessary to take up the next item, we may discuss these one or two matters.

Mr. President: I do not know what are these matters.

The Honourable Sardar Vallabhbhai J. Patel: That may be discussed before the next session meets.

Dr. P. S. Deshmukh: We have for instance to fix the time of the next Session and other things!

Mr. President: That will not take much time.

CLAUSE 17

Mr. President: Clause 17.

“Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law.”

The Honourable Sardar Vallabhbhai J. Patel: The Committee discussed this and there were several other suggestions made by the House and the clause was referred back to the Committee. After further consideration of this clause, which enunciates an obvious principle, the Committee came to the conclusion that it is not necessary to include this as a fundamental right. It is illegal under the present law and it can be illegal at any time.

Mr. President: Has anybody anything to say?

Shri M. Ananthasayanam Ayyangar (Madras: General): It is unfortunate that religion is being utilised not for the purpose of saving one's soul but for disintegrating society. Recently after the announcement by the Cabinet Mission and later on by the British Government, a number of conversions have taken place. It was said that power had been handed over to Provincial Governments who were in charge of these matters. This is dangerous. What has religion to do with a secular State? Our minorities are communal minorities for which we have made provision. Do you want an opportunity to be given for numbers to be increased for the purpose of getting more seats in the Legislatures? That is what is happening. All people have come to the same opinion that there should be a secular State here; so we should not allow conversion from one community to another. I therefore want that a positive fundamental right must be established that no conversion shall be allowed, and if any occasion does arise like this, let the person concerned appear before a Judge and swear before him that he wishes to be converted. This may be an out-of-the-way suggestion but I would appeal to this House to realize the dangerous consequences otherwise. Later on it may attain enormous proportions. I would like this matter to be considered and the question referred back for a final draft for consideration at a later sitting.

Shri R. V. Dhulekar: *[Mr. President, my opinion is that clause 17 should be retained as it stands. In the present environment, all sorts of efforts are being made to increase the population of a particular section in this country, so that once again efforts may be made to further divide this country. There is ample proof, both within this House and outside that many who live in this country are not prepared to be the citizens of this country. Those who have caused the division of our land desire that India may be further divided. Therefore in view of the present circumstances, I think that this clause should be retained. It is necessary that full attention should be paid to this. While on tour, I see every day refugees moving about with their children and I find them at railway stations, shops, hotels, bakeries and at numerous other places. The men of these bakeries abduct these women and children. There should be legislation to stop this. I would request you that an early move should be made to stop all this and millions of people would be saved.

I submit that we cannot now tolerate things of this nature. We are being attacked, and we do not want that India's population, the numerical strength of the Hindus and other communities should gradually diminish, and after ten years the other people may again say that "we constitute a separate nation". These separatist tendencies should be crushed.

Therefore I request that Section 17 may be retained in the same form as is recommended by the Advisory Committee.]*

The Honourable Sardar Vallabhbhai J. Patel: Much of this debate may be shortened if it be recognised that there is no difference of opinion on the merits of the case that forcible conversion should not be or cannot be recognised by law. On that principle there is no difference of opinion. The question is only whether this clause is necessary

*[]*English translation of Hindustani speech.

in the list of fundamental rights. Now, if it is an objective for the administration to act, it has a place in the Second Part which consists of non-justiciable rights. If you think it is necessary, let us transfer it to the Second Part of the Schedule because it is admitted that in the law of the land forcible conversion is illegal. We have even stopped forcible education and, we do not for a moment suggest that forcible conversion of one by another from one religion to another will be recognised. But suppose one thousand people are converted, that is not recognised. Will you go to a court of law and ask it not to recognise it ? It only creates complications, it gives no remedy. But if you want this principle to be enunciated as a seventh clause, coming after clause 6, in the Second Schedule, it is unnecessary to carry on any debate; you can do so. There is no difference of opinion on the merits of the case. But at this stage to talk of forcible conversion on merits is absurd, because there cannot be any question about it.

Shri R. V. Dhulekar: *[I agree that it may be transferred there.]*

The Honourable Sardar Vallabhbhai J. Patel: *[It will be transferred.]*

(At this stage Mr. Hussain Imam walked up to the rostrum to speak.)

The Honourable Sardar Vallabhbhai J. Patel: Do you advocate forcible conversion ?

Mr. Hussain Imam : No, Sir I very much regret the attitude of certain Members who are in the habit of bringing in controversial matters without any rhyme or reason. It was really a most uncalled for attack which the last speaker made on the Mussalmans, without mentioning names. But I regret that in the atmosphere which we are trying to create of amity such intrusions should be allowed to intervene and mar the fair atmosphere.

Sir, what I came to suggest was that this is such a fundamental thing, that there is no need to provide for it. According to the law everything which has been done under coercion is illegal. Anything done by reason of fraud can never stand. Forcible conversion is the highest degree of undesirable thing. But it is not proper, as the Sardar himself has admitted, to provide it in the justiciable fundamental rights. The only place which it can occupy is in the annals of High Court judgements. Any number of judgements exist which have declared that anything done by reason of fraud or coercion is illegal. Therefore it is not justiciable and cannot be justified by any sensible person in the world I strongly advocate that it is not necessary to put it in any of the lists of Fundamental Rights.

Shri R. V. Dhulekar: *[I want to ask you whether any Hindu has embraced Islam by speeches.]*

Mr. President: Then I shall put the motion.

“That this should not be put in the Fundamental Rights.”

The motion was adopted.

Mr. President: Then we come to Clause 18 (2).

*[]*English Translation of Hindustani speech.

The Honourable Sardar Vallabhbhai J. Patel: This is the last clause, that—

“No minority whether based on religion, community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on them.”

This clause was referred back to the Committee and it came to the conclusion that the last sentence is not necessary, *i.e.*, “nor shall any religious instruction be compulsorily imposed on them” because it is already covered by Clause 16 which we have passed. That being dropped, I move the proposition, without that particular sentence, for the acceptance of the House.

K.T.M. Ahmad Ibrahim Sahib Bahadur (Madras: Muslim): Sir, I move that the following be added after the word “institutions” in Clause 18(2)—

“Provided that this clause does not apply to state Educational institutions maintained mainly for the benefit of any particular community or section of the people.”

Sir, it is well known that there are in existence certain institutions maintained by the State, specially for the benefit of certain communities which are educationally backward, and if this clause is applied to such institutions also, the very object of establishing such institutions would be defeated. Therefore, it is necessary that, in order that the object of the establishment and maintenance of such educational institutions mainly for the benefit of that particular community may not be defeated,—this clause should not apply to them. This is a very simple proposition and I hope the House will accept it.

Shri Mohanlal Saksena (United Provinces: General) : Sir, I move that, the following proviso be added to clause 18 (2) :

‘Provided that no State aid shall be given to any institution imparting religious education unless the syllabus of such education is duly approved by the State.’

I do not want to make any long speech. It is obvious that if any institution wants to impart religious education and wants to take State aid as well, then it is necessary that the syllabus of religious education should be approved by the State; otherwise, it should forego the aid. We know that in the name of religion all sort of things are being taught and since the children are the trust of the State, it is necessary that before the State gives any aid, it should at least approve the syllabus of the religious instruction that is prescribed and imparted in any institution to which it gives such aid. With these words, Sir, I move.

Mrs. Purnima Banerji: Sir, my amendment, is to clause 18 (2) it reads as follows :—

“That after the word ‘State’, the words ‘and State-aided’ be inserted.”

The purpose of the amendment is that no minority, whether based on community or religion shall be discriminated against in regard to the admission into State-aided and State educational institutions. Many of the provinces, *e.g.*, U.P., have passed resolutions laying down that no educational institution will forbid the entry of any members of any community merely on the ground that they happened to belong to a particular community—even if that institution is maintained by a donor who has specified that that institution should only cater for members of his particular community. If that institution seeks State aid, it must

allow members of other communities to enter into it. In the olden days, in the Anglo-Indian schools (it was laid down that, though those schools were specifically intended for Anglo-Indians, 10 per cent. of the seats should be given to Indians. In the latest report adopted by this House, it is laid down at 40 per cent. I suggest Sir, that if this clause is included without the amendment in the Fundamental Rights, it will be a step backward and many Provinces who have taken a step forward will have to retrace their steps. We have many institutions conducted by very philanthropic people, who have left large sums of money at their disposal. While we welcome such donations, when a principle has been laid down that, if any institution receives State aid, it cannot discriminate or refuse admission to members of other communities, then it should be follow. We know, Sir, that many a Province has got provincial feelings. If this provision is included as a fundamental right, I suggest it will be highly detrimental. The Honourable Mover has not told us what was the reason why he specifically excluded State-aided institutions from this clause. If he had explained it, probably the House would have been convinced. I hope that all the educationists and other members of this House will support my amendment.

Mr. K. M. Munshi: Mr. President, Sir, the scope of this clause 18 (2) is only restricted to this, that where the State has got an educational institution of its own, no minority shall be discriminated against. Now, this does recognise to some extent the principle that the State cannot own an institution from which a minority is excluded. As a matter of fact, this to some extent embodies the converse proposition over which discussion took place on clause 16, namely no minority shall be excluded from any school maintained by the State. That being so, it secures the purpose which members discussed a few minutes ago. This is the farthest limit to which I think, a fundamental right can go.

Regarding Ibrahim Sahib's amendment, I consider that it practically destroys the whole meaning and content of this fundamental right. This minority right is intended to prevent majority control legislatures from favouring their own community to the exclusion of other communities. The question therefore is: Is it suggested that the State should be at liberty to endow school for minorities ? Then it will come to this that the minority will be a favoured section of the public. This destroys the very basis of fundamental right. I submit that it should be rejected.

The next amendment moved by my Honourable friend Mr. Mohanlal Saksena is really irrelevant to this clause. However good it might be, it does not relate to the fundamental right we are dealing with. It says: "Provided that no State aid shall be given.....unless the syllabus.....is duly approved by the State." This clause refers only to State institutions and not to those aided by the State. The amendment seeks to control the nature of the religious education that is given in State-aided schools. Therefore, it is outside the scope of the general proposition before the House. In regard to its content also, it says "duly approved by the State". Now, the State may approve one kind of religious education for one community and may not approve for the other. It introduces an element of discrimination which would be much more dangerous than others. I therefore, submit that it should not be accepted by the House.

Then comes Mrs. Banerji's amendment. It is wider than the clause itself. As I pointed out, clauses 16 and 18 are really two different propositions. This is with regard to communities. Through the medium

[Mr. K.M. Munshi]

of a fundamental right, not by legislation, not by administrative action this amendment seeks to close down thousands of institutions in this country.

I can mention one thing in so far as my province is concerned there are several hundreds of Hindu Schools and several dozens of Muslim Schools. Many of them are run by charities which are exclusively Hindu or Muslim. Still the educational policy of the State during the Congress regime has been that, as far as possible no discrimination should be permitted against any pupil by administrative action in these schools. Whenever a case of discrimination is found, the Educational Inspector goes into it; particularly with regard to Harijans, it has been drastically done in the Province of Bombay. Now if you have a fundamental right like this, a school which has got a thousand students and receives Rs. 500 by way of grant from Government, becomes a State-aided School. A trust intended for one community maintains the School and out of Rs. 50,000 spent for the School Rs. 500 only comes from Government as grant. But immediately the Supreme Court must hold that this right comes into operation as regards this School. Now this, as I said, can best be done by legislation in the provinces, through the administrative action of the Government which takes into consideration susceptibilities and sometimes makes allowances for certain conditions. How can you have a Fundamental law about this? How can you divert crores of rupees of trust for some other purpose by a stroke of the pen? The idea seems to be that by placing these two lines in the constitution everything in this country has to be changed without even consulting the people or without even allowing the legislatures to consider it. I submit that looking into the present conditions it is much better that these things should be done by the normal process of educating the people rather than by putting in a Fundamental Right. This clause is intended to be restrictive that neither the Federation nor a unit shall maintain an institution from which Minorities are excluded. If we achieve this, this will be a very great advance that we would have made and the House should be content with this much advanced.

Mr. Hussain Imam: I will not take more than two minutes of the time of the House. I think there is nothing wrong with the amendment which has been moved by Mrs. Banerji. She neither wants those endowed institutions to be closed, nor their funds to be diverted to purposes for which they were not intended. What she does ask is that the State being a secular State, must not be a party to exclusion. It is open to the institutions which want to restrict admission to particular communities or particular classes, to refuse State-aid and thereby, after they have refused the State-aid, they are free to restrict their admission of the students to any class they like. The State will have no say in the matter. Here the word 'recognize' has not been put in. In clause 16 we put the all embracing word 'recognise'. Therefore all this trouble arose that we had to refer that to a small Committee. In this clause the position is very clear. And Mr. Munshi as a clever lawyer, has tried to cloud this. It is open to the institution which has spent Rs. 40,000 from its funds not to receive Rs. 500 as grant from the State but it will be open to the State to declare that as a matter of State policy exclusiveness must not be accepted and this would apply equally to the majority institutions as well as, minority institutions. No institution receiving State-aid should close its door to any other class of persons in India merely because its donor has originally so desired to restrict. They are open to refuse the State-aid and they can have any restriction they like.

Mr. M. S. Aney : Sir, I am only putting this for the sake of clarification. In the Advisory Committee Report we have recommended that the last portion of this Clause, *viz.*, 'nor shall any religious instructions be *compulsorily* imposed upon them' be deleted and only the rest of the thing should be put to the vote of the House but the condition under which we made that recommendation was that clause 16 should be accepted by this House. That was the condition. Now what have we done? Clause 16 we have referred to a certain Committee for consideration. Under those circumstances the whole clause including the last portion that is to be deleted will have to be put to the vote of the House. Is the entire clause going to be put to the vote or only the first part?

Mr. President: I think the proposal is to have the last portion excluded.

Pandit Hirday Nath Kunzru: Mr. President, I support the amendment moved by Mrs. Banerji. I followed with great interest Mr. Munshi's exposition. His view was that if we accepted the principle that educational institutions maintained by the State shall be bound to admit boys of all communities, it would be a great gain and that we should not mix up this matter with other matters howsoever important they may be. I appreciate his view point. Nevertheless I think that it is desirable in view of the importance that we have attached to various provisions accepted by us regarding the development of a feeling of unity in the country that we should today accept the principle that a boy shall be at liberty to join any school whether maintained by the State or by any private agency which receives aid from State funds. No school should be allowed to refuse to admit a boy on the score of his religion. This does not mean, Sir, as Mr. Munshi seems to think, that the Headmaster of any School would be under a compulsion to admit any specified number of boys belonging to any particular community. Take for instance an Islamia School. If 200 Hindu boys offer themselves for admission to that school, the Headmaster will be under no obligation to admit all of them. But the boys will not be debarred, from seeking admission to it simply because they happen to be Hindus. The Headmaster will lay down certain principles in order to determine which boys should be admitted. It is the common experience of every school that the number of boys seeking admission into it is much larger than can be accommodated.

Now, in order to weed out a certain number of students, the Headmaster lays down certain principles which are purely secular and educational. The Headmaster of a Hindu High School or the Headmaster of a Muslim High School will be completely free if Mrs. Banerji's amendment is accepted, to reject Muslim or Hindu boys as the case may be because they do not satisfy the standards laid down by the respective Headmasters. I think this is a sufficient guarantee that a Headmaster will be in a position to act in accordance with the principle that all schools whether maintained or aided by the State should be open to boys of all communities and that it will not impose on him a burden which he cannot bear.

Sir, we have decided not to allow separate representation in order to create a feeling of oneness throughout the country. We have even disallowed cumulative voting because, as Sardar Vallabhbhai Patel truly stated the other day, its acceptance would mean introduction by the backdoor of the dangerous principle of communal electorates which we

[Pandit Hirday Nath Kunzru]

threw out of the front door. So great being the importance that we attach to the development of a feeling of nationalism, is it not desirable, is it not necessary that our educational institutions which are maintained or aided by the State should not cater exclusively for boys belonging to any particular religion or community? If it is desirable in the case of adults that a feeling of unity should be created, is it not much more desirable where immature children and boys are concerned that no principle should be accepted which would allow the dissemination, directly or indirectly, of anti-national ideas or feelings?

Sir, since the future welfare of every State depends on education, it is I think very important that we should today firmly lay down the principle that a school, even though it may be a private school, should be open to the children of all communities if it receives aid from Government. This principle will be in accordance with the decisions that we have arrived at on other matters so far. Its non-acceptance will be in conflict with the general view regarding the necessity of unity which we have repeatedly and emphatically expressed in this House.

The Honourable Sardar Vallabhbhai J. Patel: I do not propose to take any time, to the impatience of the House, in replying. I only wish to say that this is a simple non-discriminatory clause against the minorities in the matter of admission to schools which are maintained by the State. It is only a question whether that principle should be extended to such an extent as to include all schools which receive small or large aids. That question the committee considered at length and came to the conclusion that if we accepted this principle at present it would be enough and that the rest could be left to the legislature to be adopted wherever conditions were suitable. But in the Fundamental Rights to do away with this will be a big step forward. That was the view. Therefore I cannot accept this amendment at present.

Shri Mohanlal Saksena: Before you put the amendments to vote, I wish to say a few words about my amendment. Mr. Munshi has said that my amendment is not relevant. I would suggest that it should be referred to the committee appointed to consider clause 16.

The Honourable Sardar Vallabhbhai J. Patel: That is also not relevant.

Mr. President: I will first put the amendment of Mr. Ahmed Ibrahim Sahib to vote.

The question is:

“That the following be added after the word ‘institution’ in clause 18 (2):—

‘Provided that this clause does not apply to state Educational institutions maintained mainly for the benefit of any particular community or section of the people.’”

The motion was negatived.

Mr. President: I will now put the amendment of Shrimati Purnima Banerji to vote.

The question is:

“That in Clause 18 (2) after the words ‘State’ the words ‘and State-aided’ be inserted.”

The motion was negatived.

Mr. President: Next I will put the amendment moved by Shri Mohanlal Saksena to vote.

The question is:

“That the following proviso be added to clause 18 (2):—

‘Provided that no State aid shall be given to any institution imparting religious education unless the syllabus of such education is duly approved by the State.’”

The motion was negatived.

Mr. President: I will now put the original clause to vote.

The question is:

“18(2). No minority whether based on religion, community or language shall be discriminated against in regard to the admission into state educational institutions.”

The motion was adopted.

Mr. President: This part of the Report is now finished. The Schedule will be taken up later.

I have to make a certain announcement before we part. Members will recollect that it was suggested that clause 16 be referred to a Sub-Committee and that Sub-Committee will report, not to this House, but to the Drafting Committee which will consider that Report; I am suggesting the names of gentlemen who seem to be interested in that particular clause.

- (1) Dr. Mohan Sinha Mehta.
- (2) Pandit Hirday Nath Kunzru.
- (3) Mr. Hussain Imam.
- (4) Dr. Radhakrishnan.
- (5) Shrimati Renuka Ray.
- (6) Mr. K. M. Munshi.

The Honourable Sardar Vallabhbhai J. Patel: Shall we take the second part ?

Mr. President: Not now. The House will recollect that yesterday we had elections to fill up vacancies in the House Committee. Only two nominations were received and there were only two vacancies and therefore these two nominations are now accepted. Those gentlemen are declared elected. They are:

Shriyut Omeo Kumar Das, and
Shri V. C. Kesava Rao.

Then, the House has now to adjourn. Under one of the rules, the President has power to adjourn the House for only three days. This adjournment is going to be of much longer duration and this House has to authorise the President to call it whenever he considers suitable, because we expect that the Drafting Committee will prepare the report

[Mr. President]

and I propose to circulate that to the Members well in advance before calling a meeting of the Assembly, so that they may study and consider the Report and then come to the meeting of the Assembly. It is not possible today to anticipate by what time the Drafting Committee's report will be available and therefore it is not possible today to indicate even the approximate date for the meeting. I would therefore ask the House to give me leave to fix a suitable date when the Report is ready.

The Assembly agreed.

Mr. R. K. Sidhwa: Can you give us any faint idea as to when it is likely to be?

Mr. President: I won't like to commit myself to anything at this stage.

Mr. Tajamul Husain: May I know whether there will be a meeting of the Legislature in the meantime?

Mr. President: It is not for me, but for the Government.

Shri Mohanlal Saksena: Sir, I beg to move that the Assembly do stand adjourned till a date to be fixed by the President.

Mr. Tajamul Husain : I second it.

Mr. President: Mr. Mohanlal Saksena says that the House be adjourned to a date to be fixed by the President. I take it that is the wish of the House.

Honourable Members: Yes, yes.

Mr. President: The House, in accordance with this resolution, stands adjourned to a date to be fixed by me.

The Assembly then adjourned to a date to be fixed by the President.

No./CA./24/Com/47

CONSTITUENT ASSEMBLY OF INDIA

Council House,
New Delhi, the 25th August 1947.

FROM

THE HONOURABLE SARDAR VALLABHBHAI J. PATEL,
CHAIRMAN, ADVISORY COMMITTEE ON MINORITIES,
FUNDAMENTAL RIGHTS, ETC.

TO

THE PRESIDENT,
CONSTITUENT ASSEMBLY OF INDIA.

DEAR SIR,

In continuation of my letter No. CA/24/Com/47, dated the 23rd April 1947, I have the honour, on behalf of the committee, to submit this supplementary report on Fundamental Rights.

2. We have come to the conclusion that, in addition to justiciable fundamental rights, the constitution should include certain directives of State policy which, though not cognisable in any court of law, should be regarded as fundamental in the governance of the country. The provisions that we recommend are contained in Appendix A.

3. In para 8 of our previous report, we had referred to the recommendation of the Fundamental Rights Sub-Committee that the right of the citizen to have redress against the State in a Court of law should not be fettered by undue restrictions. After careful consideration, we have come to the conclusion that it is not necessary to provide in the constitution for any further right in this connection than those already contained in clause 22 as accepted by the Assembly in the April-May session.

4. The Constituent Assembly had referred back to us clauses 16, 17 and 18(2) of our previous report. We have re-examined the clauses and our recommendations are as follows:—

Clause 16: “No person attending any school maintained or receiving aid out of public funds shall be compelled to take part in the religious instruction that may be given in the school or to attend religious, worship held in the school or in premises attached thereto”.

We recommend that this clause be accepted by the Assembly in its present form.

Clause 17: “Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law.”

It seems to us on further consideration that this clause enunciates a rather obvious doctrine which it is unnecessary to include in the constitution and we recommend that it be dropped altogether.

Clause 18 (2) : “No minority whether based on religion, community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instructions be compulsorily imposed on them.”

We recommend that the latter portion of the clause, namely “nor shall any religious instruction be compulsorily imposed on them” be deleted in view of clause 16 above which we have recommended for retention. We recommend that the rest of the clause, be adopted by the Assembly.

We have examined the question as to whether the scope of the clause should be extended so as to include State-aided educational institutions also and have come to the conclusion that in present circumstances we would not be justified in making any such recommendation.

5. The Fundamental Rights Sub-Committee in their report to us had recommended the adoption of Hindustani, written either in Devanagari or the Persian script, as the national language of the Union of India, but we had thought it to postpone consideration of the matter in April 1947. In view of the fact that the Constituent Assembly is already seized of the matter by certain recommendations of the Union Constitution Committee’s report, we think it unnecessary to incorporate any provision on the subject in the list of fundamental rights.

6. We have also examined numerous amendments in the nature of new provisions, notice of which had been given by several members during the April-May session of the Assembly, and have not been able to accept any of them. Some of them relate to matters which have already been provided for either in the clauses already accepted by the Assembly or in new clauses which we have recommended in this report; and the other seem to us unnecessary or inappropriate.

Yours sincerely,
VALLABHBHAI PATEL,
Chairman.

APPENDIX A

FUNDAMENTAL PRINCIPLES OF GOVERNANCE

PREAMBLE

1. The principles of policy set forth in this part are intended for the guidance of the State. While these principles are not cognizable by any court, they are nevertheless fundamental in the governance of the country and their application in the making of laws shall be the duty of the State.

PRINCIPLES

2. The State shall strive to promote the welfare of the whole people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

3. The State shall, in particular, direct its policy towards securing—

- (i) that the citizens, men and women equally, have the right to an adequate means of livelihood;
- (ii) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- (iii) that the operation of the competition shall not be allowed to result in the concentration of the ownership and control of essential commodities in a few individuals to the common detriment;
- (iv) that there shall be equal pay for equal work for both men and women;
- (v) that the strength and health of workers, men and women, and the tender age of children shall not be abused and that citizens shall not be forced by economic necessity to enter avocations unsuited to their age and strength;
- (vi) that childhood and youth are protected against exploitation and against moral and material abandonment.

4. The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness, disablement and other cases of undeserved want.

5. The State shall make provision for securing just and humane conditions of work and for maternity relief for workers.

6. The State shall endeavour to secure, by suitable legislation, economic Organisation and in other ways, to all workers, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

7. The State shall endeavour to secure for the citizens a uniform civil code.

8. Every citizen is entitled to free primary education, and it shall be the duty of the State to provide within a period of 10 years from the commencement of this Constitution for free and compulsory primary education for all children until they complete the age of 14 years.

9. The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the aboriginal tribes, and shall protect them from social injustice and all forms of exploitation.

10. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of Public health as among its primary duties.

11. It shall be the obligation of the State to protect every monument or Place or object of artistic or historic interest, declared by the law of the Union to be of national importance, from spoliation, destruction, removal, disposal or export, as the case may be, and to preserve and maintain according to the law of the Union all such monuments or places or objects.

12. The State shall promote international peace and security by the prescription of open, just and honourable relations between nations by the firm establishment of the understandings of international law as the actual rule of conduct among governments and by the maintenance of justice and the scrupulous respect for 'treaty obligations in the dealings of organised people with one another.

Volume VI



27-1-1948

CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF INDIA

President:

The Honourable DR. RAJENDRA PRASAD.

Vice-Presidents:

Dr. H.C. MOOKHERJEE.
Sir T.T. KRISHNAMACHARI.

Constitutional Adviser:

Sir B.N. RAU.

Secretary:

Shri H.V.R. IENGAR, I.C.S.

Joint Secretary:

Shri S.N. MUKHERJEE.

Deputy Secretary:

Shri JUGAL KISHORE KHANNA.

Under Secretary:

Shri K.V. PADMANABHAN.

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CONSTITUENT ASSEMBLY OF INDIA

Tuesday, 27th January, 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eleven of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The following Members presented their Credentials and signed the Register :

- (1) Shri K. Hanumanthiah (Mysore State);
- (2) Shri T. Siddalingaiah (Mysore State);
- (3) Shri V. S. Sarvate (Indore State).

Shri H. V. Kamath (C.P. & Berar: General): Mr. President, I rise to a point of order.

Mr. President : We have not yet started the proceedings. No point of order can arise before that. We will now take up the first item on the Agenda.

ARREST OF SHRI V. D. TRIPATHI

Shri H. V. Kamath: Mr. President, before you proceed with the Business of the Day, permit me to bring to your notice the arrest of an Honourable Member of this House, I mean Shri V. D. Tripathi of the United Provinces during Netaji Jayanti celebrations on Friday last. In this connection may I ask if the United Provinces Government have addressed you any communication giving the circumstances leading to his arrest and the reasons for his detention which has prevented him from attending this Session ? In my humble judgment, Sir, this constitutes a breach of privileges of the Members of this House.

Pandit Balkrishna Sharma (United Provinces: General): On this point I would like to say one thing. I do not know how far the Honourable Member is in order in raising this point in this House. Full details have not been placed before the House. The House must be in full possession of all the facts before it is expected to pass any judgement in the matter. The arrest of Mr. V. D. Tripathi was due to the fact that he constituted himself as a member of an unlawful organization. Moreover, Mr. Tripathi violated an order under section 144 of the Criminal Procedure Code in force in the

[Pandit Balkrishna Sharma]

city of Cawnpore for various reasons. I do not see how any Honourable Member of this House is entitled to violate the law of the land and if he does so, he must be prepared to suffer the consequence.

Mr. President : I do not think the question of arrest arises here. We are sitting as the Constituent Assembly for the purpose of dealing with the amendments to rules which are going to be moved. If a Member has been arrested, the matter has to be dealt with in the proper place. We cannot go into that.

(Shri H. V. Kamath *rose.*)

Mr. President: Order, order. We cannot go into that matter here in the Constituent Assembly.

Shri H. V. Kamath: I want to know whether the Government of the United Provinces have informed you about this.

Mr. President: I have received no information.

Shri H. V. Kamath: The other point is that he should be released on parole to enable him to attend the session.

Mr. President: That again involves going into the merits of the case which I am not prepared to do in this case. We shall now go on with the Agenda.

POINT OF ORDER

Shri Yudhisthir Misra (Eastern States) : On a point of order, Mr. President. The point is whether the Honourable Members of this House from Orissa and Chhatisgarh States who were nominated by the Rulers can sit in this House after the 15th December 1947.

According to the terms of the negotiation between the Rulers and the Constituent Assembly, the Rulers of Orissa had nominated two members and those of Chhatisgarh one member to this House to represent them and safeguard their interests in the future constitution of the country. Now on the 14th and 15th of December 1947, these Rulers had agreed to transfer and have actually transferred on the 1st January 1948 all their rights, authority and jurisdiction exercisable by them in their States to the Government of the Indian Dominion. After the 15th December, therefore, the nominees of the Rulers in this House neither represent the interests of the Rulers nor of the people of Orissa and Chhatisgarh States. One of the Honourable Members has already accepted service in Central Provinces. When the Rulers' power and authority do not exist in the States, their nominees, I submit, are not entitled to sit in this House. I would respectfully submit before you, Sir, to give a ruling on this point.

Seth Govinddas (C.P. & Berar: General): *[Mr. President, as regards Chhatisgarh States I request that, though they have been merged into the province of Central Provinces and Berar, yet until fresh elections are held the present members representing those States should be allowed to participate in the proceedings of the Assembly. After the election they will cease to participate.

*[English Translation of Hindustani speech begins.

I think that their removal at present would serve as a blow to the rights of those States. I, therefore, request you that, until fresh elections are held, the present members should be allowed to sit here and have the right of participating in the proceedings.]*

Shri Raj Krushna Bose (Orissa : General) : *[Mr. President, the point of order that has been raised just now in regard to Orissa and Chhatisgarh should not be accepted. The reason for it is that after August 15, though the rulers of a number of States relinquished the powers that they enjoyed before that date and all such States merged into the Indian Union, yet the election held for returning members to the Constituent Assembly has not been declared null and void. If we do that, we will either have to abandon the members from these States or we will have to say that they have no right of joining this Assembly. In my opinion if we take this step, they will cease to be members and till fresh elections are held, there will be no representation of those States in this Assembly. No rule of the Constituent Assembly permits us to tell them at present that they cannot come here. Therefore I think that the election that has been held should be valid. I want this, so that the representatives of 40 lakhs of people of Orissa States may participate in the proceedings of this House. The representatives chosen by the rulers have after the merger become people's representatives because the rulers have ceded their powers. It is said that there should be a fresh election and that it is necessary because the rulers as such have ceased to be, as also the representatives chosen by them. I am not of this opinion.]*

Mr. Tajamul Husain (Bihar: Muslim): In my humble opinion, the only point before you is whether those Honourable Members were properly nominated at that time or not and also whether the territories they represent are still under the Indian Union. If these two facts are established, I think there is no power to remove those Members from the membership of this House.

Mr. President: I do not think that this matter can be disposed of as a matter of order. Those Members are validly Members of this House and until they resign or are otherwise removed, they continue to be members of this House. If certain circumstances have arisen which may necessitate their removal, well, action will have to be taken for that purpose, but until and unless that action is taken, they will continue to be Members of this House.

ADDITIONAL REPRESENTATION TO WEST BENGAL

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, I beg to move the following resolution:

“Whereas West Bengal is at present represented in the Constituent Assembly by 19 members (15 General and 4 Muslims);

and whereas this arrangement was made in pursuance of paragraph 14 of His Majesty's Government's Statement of June 3, 1947, and confirmed by the Constituent Assembly by its resolution of July 25, 1947, on the basis of the then boundaries of West Bengal;

and whereas since the aforesaid dates the boundaries of West Bengal have been revised in accordance with the Award of the Boundary Commission;

] * English Translation of Hindustani Speech ends.

*[] * English Translation of Hindustani speech.

[Shri M. Ananthasayanam Ayyangar]

and whereas on the basis of the revised boundaries West Bengal is now entitled to return 21 members (16 General and 5 Muslim) to the Constituent Assembly;

it is hereby resolved that steps be forthwith taken to secure the return from West Bengal as now constituted of 2 additional members (1 General and 1 Muslim) in accordance with the procedure prescribed for the filling of casual vacancies.”

Sir, the Resolution is sufficiently long and explains itself. Originally, when there was a national division it was expected that the population of West Bengal would be nineteen millions and fifteen seats were allotted to General and four to Muslims. Later on by the time the Radcliffe Award was given, it was found that the population on account of the addition of territories to West Bengal increased to twenty one millions and therefore it has now necessitated the addition of two more members, the population having increased from 19 to 21 millions; and the population has increased in both the communities, Muslims and non-Muslims. This Resolution contemplates the addition of one more General seat and one more Muslim seat. I crave the indulgence of this House to move this Resolution and I request that it may be accepted.

Mr. President: Mr. Naziruddin Ahmad has given notice of an amendment.

Pandit Balkrishna Sharma: Has it been declared by you, Sir, that the motion has been moved?

Mr. President: Yes; the motion has been moved.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I ask your permission to move two amendments. They are of the same nature and allied to each other. They should be moved and considered together.

Sir, I beg to move:

1. That in para. 2 of the motion, for the words, “basis of the then boundaries” the words “basis of the population within the then boundaries” be substituted.

2. That in para. 4 of the motion, for the words “and whereas on the basis of the revised boundaries West Bengal is now entitled” the words “and whereas on the basis of population in West Bengal as now constituted, is entitled” be substituted.

Sir, though the amendments are only of a drafting nature, I consider them to be important. The text of the Resolution says that additional members should be elected on the basis of the change of boundaries. My amendments seek to clarify the position that it is not the boundaries, but rather the population which is the basis of the proposed increase. On account of the change in the boundaries, the population as it now stands has increased. Therefore, population should be the starting-point and I have tried to make this plan. As I have already stated, the amendments are of a drafting nature, but they go to the root of the principle upon which the increased number is claimed. With these words, I move the amendments.

Mr. President: The motion and the two amendments have been moved. If any member wishes to take part in the proceedings, he may do so.

Shri M. Ananthasayanam Ayyangar: Sir, I have great pleasure in accepting the amendments. My friend wants to make the language more elegant. He wants to make the population within the boundaries of West Bengal

the basis. That is what was meant though the expression is "basis of the then boundaries". To make it more elegant, I accept the amendments.

Mr. President : I shall now put to vote the amendments which have been accepted by the Mover.

The amendments were adopted.

Mr. President : I now put to vote the motion as amended.

The motion, as amended, was adopted.

ADDITIONAL REPRESENTATION TO EAST PUNJAB

Mr. President: I have received notice of another resolution dealing with East Punjab. Notice of that was given only last night and therefore there has not been sufficient notice in regard to that. If the House has no objection I should like to take it up and have that also passed because the West Bengal resolution and the East Punjab resolution stand more or less on the same footing.

May I take it that the House has no objection ?

Many Honourable Members: No objections.

Mr. President: Giani Gurmukh Singh Musafir will move the motion.

Giani Gurmukh Singh Musafir (East Punjab: Sikh): *[Mr. President, with your permission, I wish to move the following motion:—

Whereas East Punjab is at present represented in the Constituent Assembly by 6 General, 4 Muslim and 2 Sikh members;

and whereas this arrangement was made in pursuance of paragraph 14 of His Majesty's Government's Statement of June 3, 1947, and confirmed by the Constituent Assembly by its resolution of July 25, 1947, on the basis of the then boundaries of East Punjab;

and whereas since the aforesaid dates not only have the boundaries of East Punjab been revised in accordance with the Award of the Boundary Commission but also the entire structure of the population has changed by reason of the mass migration of Muslims from East Punjab to West Punjab and of non-Muslims from West Punjab to East Punjab;

and whereas in consequence of these changes, on the best estimates available, East Punjab is now entitled to return to the Constituent Assembly 8 General and 4 Sikh members;

it is hereby resolved that steps be forthwith taken to secure the return from East Punjab as now constituted of 2 additional General members and 2 additional Sikh members in accordance with the procedure prescribed for the filling of casual vacancies.

My object in moving this motion is to secure the same representation for the non-Muslims of West Punjab here, which they had in the Pakistan Constituent Assembly, that is to say, the number of members from East Punjab should be increased. I do not think anybody would object to this. This motion clearly lays down that those who have migrated from West

*[English Translation of Hindustani speech begins.

[Giani Gurmukh Singh Musafir]

Punjab to East Punjab should be given full representation. The Hindu and Sikh members of the West Punjab Assembly have been allowed to sit in the East Punjab Assembly, that is to say, this principle has been accepted. Only the question was left out, which we have considered. That was regarding the question of numbers, whether it should be four or five. West Punjab is at present represented in the Constituent Assembly of Pakistan by five members, three General (Hindus) and two Sikh members. The motion which I have just moved demands four seats, two General and two Sikhs. I am still of opinion that five seats should be allotted, the same number of seats which have been allotted to the Punjab in the Constituent Assembly of Pakistan, that is to say, three General and two Sikh. For this purpose the Honourable President had appointed a sub-committee, with the Honourable Minister for Law as its Chairman. It was comprised of four members, besides the President. Yesterday morning a meeting of this sub-committee was held to consider this problem. We arrived at the conclusion that five members should be returned. But afterwards on calculation we felt a doubt that perhaps it may not be possible to return five members on population basis. Obviously all the Hindus and Sikhs have migrated to this side from West Punjab, and the rest are about to come. In West Punjab their number was more than 45,00,000 that is to say, 45,07,231. If this figure is taken into account, then, five members can be returned. Besides, a number of Hindus and Sikhs have migrated to East Punjab, also from N. W. F. Province, Sind and Baluchistan. But as at present it is not possible to have a correct estimate of the population, we have agreed that only four seats may be added. If, afterwards, on calculation it is found that the population has increased, then the matter might be reconsidered. I hope that this minimum demand which is before the House will be accepted.]*

Mr. President: The motion has been moved. If anyone has got any amendment or if anyone wishes to speak, he may do so.

Shri B. Das (Orissa: General): Sir, I sent in a substitute motion this morning when I read the motion which my friend Giani Gurmukh Singh Musafir has moved just now. I could have understood it had he tackled the whole problem of representation of the population who have migrated from Pakistan to Hindustan. I have given notice of an amendment to his motion, but on reconsideration, I do not propose to move it; I wish, however, to submit a few things for the consideration of the Honourable the President and the House.

A large population has left Pakistan and entered the Indian dominion. From East Bengal, from Sind and from the North West Frontier Province, a large population have migrated. My honourable Friend wants representation only for those from West Punjab. People have migrated to the United Provinces, Central Provinces, and even to Bombay, also Rajputana and Delhi side. It will not be fair if we ignore these people. The proper thing would be for this House to consider whether it should not resolve that those Hindu and Sikh members who were elected to the Constituent Assembly from the North West Frontier Province, Sind, East Bengal and West Punjab should be made eligible to sit in this House. If they are permitted to represent the Hindu and Sikh emigrants, then there need be no election as is suggested by my Honourable friend.

] * English Translation of Hindustani speech ends.

Above all, if we accept his suggestion, the idea of electing eight General and four Sikh members is abnormally high to the number of Sikh and Hindu emigrants who have come to East Punjab. Further, that does not solve the problem at all. We have heard that ten to fifteen lakhs of people have migrated from East Bengal to West-Bengal. We know that at present there are very few Hindus and Sikhs left in the North-West Frontier Province. Our esteemed friend, Mr. Mehr Chand Khanna, is now a refugee in this city. Why should he not be permitted by this House to represent the Hindu residents of the Frontier Province? Similarly, we now find our friend Mr. Jairamdas Daulatram, who was elected by the Sind Province, a refugee, or rather a Minister, in Delhi. Why should not he represent properly the Sind emigrants in India ?

The problem of East Bengal is even more difficult. People have started migrating in large numbers. Last night a friend told me that fifteen lakhs of refugees have come from East Bengal to West Bengal. It may happen if the Pakistan policy goes on, that the whole of the Hindu population will migrate to West Bengal. It is this population we have to think about. It is to know what is in the mind of the people who represent the emigrants from East Bengal or West Punjab regarding the constitution that we shall pass, that we are trying to give them representation. The proposed solution means going into the franchise and the qualification of new members. I would suggest that my Honourable friend's motion may be adjourned until the President devises a way by which all those elected members from these Pakistan areas are permitted to become members of this House and participate in the discussions as they used to do before.

Shri Jaipal Singh (Bihar: General) : Mr. President, I strongly oppose the motion that has been placed before this House. I find it is dangerous, mischievous and sectarian, it is strange logic and lacking in simple arithmetic. The argument has been advanced that, according to the best estimates available, there should be added two additional General Members and two additional Sikh Members, and, in a clause of the motion, we are told that the present representation is 6 General, 4 Muslim and 2 Sikh members. I would like to ask my Honourable friend, why he, has not suggested that the Muslim representation should be reduced. That is my first point. If Muslims have left the East Punjab and gone elsewhere, then according to his logic—the logic that he has advanced on behalf of the Sikhs and the General population, surely the same argument should apply on this side. I, say, it is dangerous, Sir. My friend, Mr. Das, has already pointed out that this should be considered on an all-India basis and we should not be working upon flimsy estimates. There should be a census throughout the country. Take my own Province, Bihar. How do we know that we do not need further representation ? How many people have come to Bihar from East Bengal or West Punjab or from anywhere else ? I do not think we can work on the so-called estimates. They are only estimates. The figures that this Assembly can accept are only the census figures and unless an all-India census is taken and unless we know the actual number of Muslims and the variation there has been in their number from Province to Province or the variation of other people,—the general population—I do not think it would be wise for this House to accept his motion. I consider it to be a mischievous and sectarian motion.

Diwan Chaman Lall (East Punjab: General): Sir, I would not have spoken on this motion but for the speech made by my Honourable friend who has

[Diwan Chaman Lall]

just spoken. He talked about the figures being flimsy and statistics that do not exist, but I am afraid that he has not even read the report of the Steering Committee which is before him. According to that Report,.....

Shri Jaipal Singh: I have not got that Report.

Diwan Chaman Lall: If my Honourable friend has not got it, I can quite well understand why he got up to speak without knowing the real reason which prompted this particular motion before the House.

The position, Sir, is this. We have got the statistics. According to the notional division, the number of Mussalmans on this side was 3.8 million, Sikhs 2.1 million and General 5.6 million. After the Radcliffe Award, the figures were slightly altered. Instead of 3.8 million Muslims, it was 4.4 million Muslims, instead of 2.1 million Sikhs it was 2.3 million Sikhs and instead of 5.6 million General, it was 5.9 million General; the total is 12.6 million inhabitants. Now since then the disaster came upon us and practically every Hindu and Sikh excepting those who remain in a few isolated pockets has moved out from West Punjab to East Punjab. The total figures of those who moved out come to: General 2.25 million and Sikhs 1.67 millions. This is from Lahore Division, Rawalpindi Division and Multan Division and these are the exact Census figures although I would personally add 7 per cent. to the Census figures as a result of the recent increase since the Census was taken. The position therefore is that of the 12.6 million inhabitants, excluding 4.4 Muslims, 8.2 inhabitants, Hindus and Sikhs, have remained in Eastern Punjab, and in addition we have now 4.92 million Sikhs and General. The population that migrated from Lahore, Rawalpindi and Multan Divisions came to Eastern Punjab generally. Some portion of that population has come to Delhi and a little portion has gone to various other centres. But the vast majority is still there in East Punjab and they were the voters of those who were elected to the Punjab Assembly. The voters still exist and therefore they are entitled to further representation. This is the principle which is at the back of this Resolution. Therefore, although logically we should demand 4 or 5 seats according to population, nevertheless, in order not to create an unnecessary weightage, we were quite content to demand 2 for Sikhs and 2 for General for the purpose of election. Why is it that we are coming before you in regard to this motion to ask you to give us the right of appointing 4 more representatives to the Constituent Assembly? You will notice that an Ordinance was passed making it possible for members who were West Punjab Legislative Assembly members and who vacated their seats in West Punjab to take their seats in East Punjab. On the same principle we ask you now to allow us to elect 4 additional representatives reflecting an increase in population both of Sikh and General constituencies. I do not think the figures are very wrong as they are Census figures. The figures we have taken are the Radcliffe Boundary Commission figures. Comparing the existing figures of the Province with those of the Radcliffe Commission's we have come to the conclusion that there is a case for the increase.

Shri Jaipal Singh : On a point of order. Why have they not reduced the Muslim figures on their own argument ?

Diwan Chaman Lall: You, will find the following in the penultimate paragraph of the Report:—

“We were therefore immediately faced with a difficulty as to how to deal with the four Muslim members who still continue to be members of the Constituent Assembly even though we were given to understand that they did not attend during the last session of the Constituent Assembly functioning as the Dominion Legislature and that they did not intend to attend the forthcoming session either.”

Personally my view is that we must leave this matter as it is now. Possibly you may be constrained to make a change at a later stage, namely, that where a member does not attend the Sessions of the Constituent Assembly for a certain stated time, then he automatically vacates his seat. As there is no rule at the present moment we cannot take advantage of such a provision. The practical solution which we have considered in connection with this problem seems to be this—to let the 4 seats remain and to add other seats reflecting the increase in the population in East Punjab, and I do hope that the House will accept this proposal and give due consideration not only to those who have lost everything on the other side but to those who have come to this side so that they may be able to put their own point of view before you.

Mr. President: Just to avoid longer discussion may I make a statement with regard to the procedure that has been followed in connection with this particular resolution ? The matter came up before the Steering Committee and the Steering Committee felt that it was necessary to refer it to a very small committee to go into these figures. This committee consisted of—

Dr. B. R. Ambedkar,
 Diwan Chaman Lall,
 Giani Gurmukh Singh Musafir,
 Mr. Rafi. Ahmed Kidwai, and
 Mr. Ananthasayanam. Ayyangar,

and after taking into consideration all these figures and such information as was available with regard to the migration of population from one side to the other the Committee made certain recommendations on the basis of which the Resolution has come before the House. The matter has been considered by a Sub-Committee which I had appointed on the recommendation of the Steering Committee. Of course it is open to the House to accept it or not. I thought I had better explain that position. I am sorry that the report of that Sub-Committee has not been circulated and only the Resolution has been circulated. If that report had been before the members probably much of the discussion might have been avoided but that has not been done. I am sorry.

Shri Rohini Kumar Chaudhury (Assam: General): Mr. President, Sir, I consider that this resolution is rather premature at this stage. Once you concede this principle, you cannot help granting the same privilege to the people of either Western Bengal or any other place. For instance a very large number of refugees has come to Delhi. Are you going to increase the representation of Delhi? Similarly a fairly large number of refugees has gone to Bombay. Are you going to consider the question of increasing their representation in this House ? Although, Sir, this may not be known to all, it is a fact that large numbers of people have migrated from East Bengal to West Bengal and also into Assam. Should they not be given representation if you concede in this case? Sir, an Honourable Member, Mr. Khaliqzaman, has left his constituency in United Provinces for Pakistan. Should not there be some adjustment in that also? So I say, Sir, if you wish to give additional representation on the ground that people have migrated from

[Shri Rohini Kumar Chaudhury]

other provinces, there should be deduction of representation with regard to certain others who have left the province. So the whole thing requires adjustment and unless those adjustments are made in all the representations, no action on the lines indicated by the Honourable Member can be taken.

Begum Aizaz Rasul (United Provinces: Muslims) : Sir, I am afraid, I have not been able to study this Report of the Committee to which you referred to just now, because I do not find it in the papers. I would, therefore, request you, Sir, kindly to postpone discussion of this very important matter until Members have had the time to study the implications of these amendments to the rules.

Sir, it is true that a very large proportion of the population in East Punjab have gone to West Punjab. In the same way a very large number of non-Muslims in West Punjab have gone over to East Punjab. They must have representation in this House, and as far as that matter goes, it is quite a justifiable demand and I do not think anyone here can possibly refuse it. But at the same time, it has to be seen and carefully studied as to the number of people who have gone and settled down from one part of the Punjab to the other Part. And as everyone knows, non-Muslims have gone not only to East Punjab, but they have also migrated to the U.P. and to the province of Delhi and other places. The situation at the present moment is very fluid. All these matters have to be taken together with reference to the context before any amendment can be passed in this House. I would, therefore, most respectfully request you, Sir, to postpone the consideration of these matters to a later date when we are in a position to know definitely what are the numbers of the people who are settling down in East Punjab and those who go back to their homes in West Punjab and also when Members have had the time to study the Report of the Committee. I hope this suggestion of mine will be acceptable and that the consideration of this subject will be postponed to a later date.

(Pandit Thakur Das Bhargava came to the rostrum.)

Mr. President: I would request the Honourable Member to be as short as possible.

Pandit Thakur Das Bhargava (East Punjab: General) : *[Mr. President, just now Begum, Sahiba has suggested the postponement of this motion and the reason she gave is that some part of the population yet remains in West Punjab and some of it has come to Delhi and some have gone to United Provinces and therefore the question should not be considered at present. Other friends have given different reasons and have said that, as some people have also come from Baluchistan and Sind, they should also be given representation. It is correct that all new comers need representation. No such differentiation can be made amongst the people. But this should be remembered that this question has to be looked at from a practical point of view. No doubt, about 40 lakhs of people have moved from West Punjab into East Punjab and other areas. The Government has already decided that the whole Muslim population of East Punjab is to be transferred to West Punjab and all Hindus and Sikhs of West Punjab are to be brought to East Punjab. Now, the question is only that of Hindus and Sikhs and as to what is their exact number. About five lakhs have come to Delhi and five lakhs have gone to United Provinces. But as representation is given to numbers over 5 lakhs and

*[English Translation of Hindustani speech begins.

not below it, so representation should be given at least, to those who have come to East Punjab. And those who are at present in Delhi or U.P. may also move to East Punjab. Thus to give them no representation or postponing it would be a great injustice. You know that those who have come to Delhi have not come here of their free will. Government has already agreed to the exchange of population both by their work and deed. Therefore, I would beg the House to look at this question from a practical point of view and not to deprive these men of their right. Those who are known as refugees today have as much claim on the Union and the Constitution as anyone else. As you have allowed representation for every 10 lakhs of population to other parts of Indian Union, you must do the same to those who have been uprooted from West Punjab so that they may also share in the shaping of the Indian Constitution. With these words I support the amendment.]*

Mr. President: Is it necessary to carry on the discussion any further? I suppose we have had enough of discussion.

Shri Mihir Lal Chattopadhyaya (West Bengal: General) : Sir, I only request that the principle being followed in East Punjab should also be followed in the case of West Bengal. Everyone knows that about ten lakhs of people have migrated from East Bengal to West Bengal. Here in this Resolution on the basis of migration of population from West Punjab to East Punjab additional seats are being allotted. I submit that the same principle be followed in the case of West Bengal and additional seat—one seat—be given in consideration of increase of population due to migration from East Bengal to West Bengal. A few minutes back we have passed a Resolution allotting two more seats for West Bengal. But that was done on the basis of the Radcliffe Award boundary. But if the question of migrated population is to be taken into consideration in the case of West Punjab, I request the same consideration should be shown to Bengal also and one additional seat on the same principle given to West Bengal.

Nawab Mohd. Ismail Khan (United Provinces : Muslim) : *[Mr. President, the authentic figures of those who have already migrated and may hereafter migrate from West Punjab have not been ascertained up till now. Neither have we any knowledge as to what would be the population of East Punjab. Unless correct figures are available, actual representation cannot be given. Therefore, I would like to submit that this should be postponed for some time.]*

Mr. President: I would now ask the Mover to reply to the debate.

Giani Gurmukh Singh Musafir *[Mr. President, I thought it to be a simple matter, and therefore the speech I made, while moving the motion, was also simple. Even now I regard it as simple. One of our Honourable members has objected to it as being sectarian. If you regard it as sectarian simply because of my beard then it is a different thing; otherwise there is nothing as such in it. If a demand for two additional seats for Sikhs and two for the Hindus is enough to make a motion communal then why not apply the same criterion to Mr. Ayyangar's resolution regarding giving of one additional seat to Muslims and one to Hindus in West Bengal? You have, not taken it to be, sectarian. I have no objection to what has been said with regard to

] *English Translation of Hindustani speech ends.

*[] *English Translation of Hindustani speech.

*[English Translation of Hindustani Speech begins.

[Giani Gurmukh Singh Musafir]

reducing of Muslim representation in East Punjab. At present, Punjab's case is a special one. I am obliged to say that only those, who have suffered can realise and not the others. Punjab has gone through agony. Punjabis, who have suffered terribly and whose problems are before the Government will prove of much assistance in solving them, because all this has happened before their very eyes. The proposal which Begum Sahiba and Nawab Sahib have just put for the postponement of this question for the present is likely to injure the feelings of Punjabis. Therefore, I appeal to the House to accept my motion. Giving of additional representation would greatly assuage the feelings of those who have gone through terrible happenings. Not only that; it will also lessen to some extent the difficulties which our Government has to face daily in this connection. Our Ministers, who are very busy with work, get respite neither in the day nor in the night. It is because that the tales of the people coming are so full of woe and are so heart-rending. Sir Zafarullah has said in the United Nations Organisation that his house was burnt. I do not know whether that is true or not. But here are thousands, or rather lakhs, of people from West Punjab, and any one of them could have told the U.N.O. how his near and dear ones were killed, his house looted and burnt, his daughters and sisters abducted. There are so many things which are beyond description. Nawab Sahib has just said that this question should be postponed, as no correct estimate of the population is available. I believe it is not a question of postponing but of grappling with the problem of Punjab. Among the Punjabis, who were the victims of this terrible disaster, are many old and responsible congress men of the Province. Their houses were burnt, they were killed. To name a few, Sardar Jaswant Singh of Compbellpur, Hukumat Singh President of Gujarat District Congress Committee, Lala Niranjani Dass Bagga, Advocate, President of Gujranwala Congress Committee were killed.]*

Mr. President: I did not want to interrupt the Honourable Member

Nawab Mohd. Ismail Khan: *[I never meant that. I do not know what Sardarji has taken to mean. What misunderstanding has crept in? What I meant. For instance, Sir, it cannot bind its successor. It cannot pass a law population is not yet complete.]*

Mr. President: The Honourable Member must confine himself to the motion before the House.

Giani Gurmukh Singh Musafir: *[I have not at all misunderstood Nawab Sahib, I will only say that some of our Punjabi brethren have come to Delhi and have gone also to other places, but their eyes are set towards their homes. Wherever Punjabis have gone their miseries have followed them. They have not ended. They are now returning from Alwar and Bharatpur. They are thinking of going back from Delhi after getting kicks. They will also go back from Patiala and other States. Many places have refused to admit Punjabis. Honourable Pandit Pant is present here. You can ask him how many Punjabis he is willing to accommodate permanently in his Province. Therefore it should be admitted that this demand of East Punjab is quite just. Mr. President, I have presented this resolution through you. I hope that the House will accept this.]*

] *English Translation of Hindustani speech ends.

*[] *English Translation of Hindustani speech.

Mr. President: I will now put the Resolution to vote. There is no amendment. The question is :

Whereas East Punjab is at present represented in the Constituent Assembly by 6 General, 4 Muslim and 2 Sikh members:

and whereas this arrangement was made in pursuance of paragraph 14 of His Majesty's Government's Statement of June 3, 1947, and confirmed by the Constituent Assembly by its resolution of July 25, 1947, on the basis of the then boundaries of East Punjab; and whereas since the aforesaid dates not only have the boundaries of East Punjab been revised in accordance with the Award of the Boundary Commission but also the entire structure of the population has changed by reason of the mass migration of Muslims from East Punjab to West Punjab and of non-Muslims from West Punjab to East Punjab;

and whereas in consequence of these changes, on the best estimates available, East Punjab is now entitled to return to the Constituent Assembly 8 General and 4 Sikh members;

it is hereby resolved that steps be forthwith taken to secure the return from East Punjab as now constituted of 2 additional General members and 2 additional Sikh members in accordance with the procedure prescribed for the filling of casual vacancies.

The motion was adopted.

AMENDMENTS TO RULES 2 AND 3

Shri Balwant Rai Gopalji Mehta (Residuary States) : I move:

"That the following amendments to the Constituent Assembly Rules be taken into consideration:—

Rule 2.—In Rule 2, insert the following new clause (cc) after clause (c):—

"(cc) 'Minister' means a Member of the Council of Ministers of the Governor-General of India."

Rule 3.—Add the following proviso to rule 3—

"Provided that every Minister who is not a Member of the Assembly shall have the right to speak in, and otherwise to take part in the proceedings of, the Assembly and any Committee thereof of which he may be named a member, but shall not by virtue of this rule be entitled to vote."

[This is moved for the simple reason that the experience of the Ministers of the Government of India, who are not elected to the Constituent Assembly, should be made available to the body. The Constituent Assembly (Legislative) has already adapted rules which allow Ministers to attend and participate in the debates of the House, without a right to vote. The Constituent Assembly also, when it works on the Constitution, should have the benefit of the experience accumulated by all the Ministers of the Central Cabinet. I recommend that the amendment be adopted.]

Mr. President: I take it that the motion "the following amendments to Constituent Assembly Rules be taken into consideration" really means that the following amendments be made.

*[]*English Translation of Hindustani speech.

[Mr. President]

The motion has been moved. There is notice of an amendment. I would ask Mr. Naziruddin Ahmad to move his amendment.

Mr. Naziruddin Ahmad: Sir, I beg to move:

“That in the proposed proviso to rule 3, the commas after the words “the right to speak in” and “in the proceedings of” be omitted, and the words “by virtue of this rule” be omitted.”

With regard to these commas they appear to be absolutely unnecessary. With regard to the last amendment the deletion of the words “by virtue of this rule” seems to be necessary because the proviso ‘begins with the case of a Minister who is not a Member. If he is not a Member at all, then he is not entitled to vote. The question that his vote will depend upon this rule does not arise because we have begun with the assumption of a Minister who is not a Member and therefore he is not entitled to vote. So these words appear to be unnecessary. But both these amendments are of a drafting nature.

Mr. President: The amendment has been moved. Now the Motion and the amendment are open to discussion.

Mr. Tajamul Hussain: Mr. President, Sir, I beg to oppose this Motion. It is said that the British Parliament is a sovereign body and it can make and unmake anything. It is also said that the British Parliament, although a sovereign body and it can do or undo anything, works under certain limitations, namely, that it cannot bind its successor, because it is not the wish of the people that the British Parliament should choose who should succeed them. Secondly, the British Parliament cannot make a law which will not be obeyed by the majority of the people; and thirdly, it cannot nominate or elect a person to become a member of the House of Commons. That right is given exclusively to the people at large. Similarly, Sir, this House is no doubt a sovereign body; it can do or undo anything but it has certain limitations like the British Parliament. For instance, Sir, it cannot bind its successor. It cannot pass a law which will not be obeyed by the majority of the people and it cannot and should not nominate a person to become a Member of the Constituent Assembly.

The Motion does not say that the Honourable Ministers who are not members should become members but it clearly says that those Muslims who are not members of this Honourable House may attend the meetings of the House, that they may take part, address the House, but shall not vote.

My submission is that there must be some limit. You must draw the line somewhere. Once you concede the principle that this House can and will have outsiders—no doubt I have great respect for the Ministers—there will be no end to it. Further, they are all the same outsiders to this House. The moment you concede this principle that we can have outsiders to sit with us and give us the benefit of their advice, the next moment you will say that you might have experts who are not Ministers because their advice will be valuable. No doubt you want Ministers so that if anything is being discussed concerning their Departments their advice will be very necessary. I feel that you must draw the line somewhere. In the House of Commons every Member is elected and there is not a single nominated one. Now it is a rule of law even in India that a Provincial Prime Minister may choose a Minister who is not a Member of the Legislature. He therefore remains as

Minister for six months, but he must get elected to that House. If you want to have Honourable Ministers in this House, why not some members resign and vacate their seats? Now, Sir, after all we are here, we have been elected; I think, I am not sure, but each Member represents about 10 lakhs of people. The whole world knows that this Constituent Assembly was elected by the people. What will they say? Are we not going to be the laughingstock before the world if we are having outsiders here ?

Now, Sir, I remember during the last session of this Constituent Assembly that there was a talk that Mahatma Gandhi should be persuaded to come and address this House and one Honourable Member said that this was not right. Well, Sir, after all Mahatma Gandhi is the biggest person in the world, and we must admit that everything is due to him; our membership is due to him; the whole constitution is due to him; our independence is due to him. If such a big personality like him could not be requested to come, should persons who are much lower be allowed to address this House? The rule of democracy also prevents us from asking any outsider to come here.

We are not working here on Party lines, but the Congress Party are ruling the country. They are in the majority; I am not in the Congress Party and they can by their votes pass anything. So if this is done on Party lines, I do not think it is right. As I have said we must draw the line somewhere and I submit that the House should accept my proposition and reject this motion.

Mr. President: May I just point out that at our last session of the Constituent Assembly a resolution was passed which accepted this very thing and it is only to formalize the thing that the motion has been moved? The Resolution was passed on the basis of the report of the Mavalankar Committee that Ministers of the Dominion particularly who are not Members of the Constituent Assembly should have the right to attend and participate in the work of Constitution-making though until they become Members of the Constituent Assembly they should not have any right to vote. This was passed by the Constituent Assembly during the last session and this amendment in the rules is now being brought forward so as to bring it within the rules. As a matter of fact the question has already been discussed and accepted during the last session.

Mr. Tajamul Hussain: Mr. President, if you had told me this in the beginning, the time of the House would not have been wasted.

Mr. President: I thought the member was aware of what took place in the last session. Anyhow, that is the position.

Mr. Tajamul Hussain: I suggest that in the future, you should inform the House which is a formal Resolution and whether we have a right to discuss the matter. If you had told us that a Resolution had been passed, no member would come up to speak.

Mr. President: Is there any other member who wishes to speak? I shall put to vote the amendment and the motion.

Shri Balwant Rai Gopalji Mehta: *[I accept the amendments of Mr. Naziruddin Ahmad.]*

*[]*English Translation of Hindustani speech.

Mr. President: The amendments moved by Mr. Naziruddin Ahmad have been acceptable to the mover. I take it that the House accepts the amendments.

The amendments were adopted.

Mr. President: The motion, as amended, is put to vote.

The motion, as amended, was adopted.

ADDITION OF RULES 5-A AND 5-B

Shri P. Govinda Menon (Cochin State): Mr. President, the motion which I propose to move is intended to lay down a procedure regarding the filling up of casual vacancies in the office of members of this Assembly representing Indian States. In Rule 5, the present rules contemplate to lay down a procedure regarding the filling up of casual vacancies in the case of members who come from the provinces and from Ajmer-Merwara and Coorg. There is a lacuna in the rules in that nothing is said about vacancies arising in the case of members coming from Indian States. The motion standing in my name seeks to insert two rules, Rules 5-A and 5-B after Rule 5, to fill up this lacuna.

I move, Sir.

that Constituent Assembly Standing Orders 13 and 14 be made part of the Constituent Assembly Rules as shown in the amendments below:—

Rule 5: Insert the following as Rules 5-A and 5-B after rule 5:—

“5-A. When a vacancy occurs by reason of death, resignation or otherwise in the office of a member of the Assembly representing an Indian State, the President shall notify the vacancy and make a request in writing to the Ruler of the Indian State concerned to proceed to fill the vacancy, as soon as may reasonably be practicable, by election or nomination, as the case may be.

“5-B. In the case of a vacancy in the office of a member of the Assembly representing more than one Indian State, the President shall notify the vacancy and make a request in writing to the Rulers of the Indian States concerned to, proceed to fill the vacancy, as soon as may reasonably be practicable, by the same method as was applicable to the case of the outgoing member when he was chosen as a member of the Assembly.”

Sir, although these rules do not find a place in the Rules of procedure, they have been incorporated in the Standing Orders by virtue of the powers granted to the President under certain of the rules. The attempt now is to give a place to these Standing Orders in the Rules themselves.

There is an amendment standing in the name of Shri Santhanam seeking to add a proviso to rule 5-A : “Provided that, where the seat was filled previously by nomination, the Ruler may fill the vacancy by election”. I can even now state that I will be accepting that amendment when it is moved; because that will give an option to the Ruler concerned to fill up a vacancy by election where previously it was filled up by nomination.

Mr. President: The motion has been moved. I have received notice of amendments. Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: Mr. President, Sir, I beg to move:

That in para. 1 for the words "be made part" the words "be omitted and be inserted as Rules 5-A and 5-B respectively", and for the word "amendments" the word "amendment" be substituted.

May I move the next one too?

Mr. President: I think the first amendment of yours is unnecessary because they are going straightway to insert the Rules according to the next part of the Resolution. If you leave that out, you can move the next one.

Mr. Naziruddin Ahmad: Sir, I move:

That in the proposed Rule 5-A, for the words "Ruler of the Indian State"; the words "Ruler of the State"; be substituted.

I do not move the other part of the amendment.

Sir, with regard to the first amendment, it does not affect the Rules, but it merely affects the heading. With regard to the second, if we mention the word "State" that means "Indian State". The word Indian is unnecessary. With these words, I beg to move the amendments.

Mr. President : You do not move the other part?

Mr. Naziruddin Ahmad: No. I do not move.

Shri K. Santhanam (Madras: General): Sir, I move—

That at the end of the proposed Rule 5-A, the following proviso be inserted:—
"Provided that where the seat was filled previously by nomination, the Ruler may fill the vacancy by election."

As the mover has already promised to accept this. I need not take up much of the time of the House. I do not want any Ruler to say. "I am willing that the seat may be filled up by election, but the Constituent Assembly has prevented it by Rule and laid down that I should not fill it by election". I hope the House will accept this amendment.

Mr. President: Does anyone want to say anything about this?

Shri P. Govinda Menon: Sir, as I said, I accept the amendment moved by Shri Santhanam. In the case of the amendments moved by Mr. Naziruddin Ahmad, I wish to point out, Sir, that his first amendment is that in para-1 the words "be made part" be omitted. If it is accepted, it would mean that certain words in the Standing Orders will have to be omitted. We are not here to amend the Standing Orders. We are amending the Rules. Standing Orders are made by the Honourable the President of this, Assembly and I do not think it is necessary to amend them. If this finds a place in the Rules, then, probably, the Standing Orders will either become superfluous or the Standing Orders will be changed by the President.

Regarding the use of the word "State" instead of the word "Indian State", I wish to point out that everywhere in these Rules and Standing Orders, the word used for States is Indian States and I do not find any reason why in this particular Rule the word Indian State should be changed into the word State. I would therefore put it to the Honourable the mover of the amendments that the amendments are really unnecessary.

[Shri P. Govinda Menon]

Coming again to para. 1 of the motion standing in my name, I wish to point out that if the motion moved by me is accepted by this House, that para. in the motion will not find a place in the Rules. In the Rules, we will find only Rules 5-A and 5-B and any attempt to beautify the words of para 1 will be of no avail, because that will not find a place in the Rules. Really, the motion before the House is that Rules 5-A and 5-B be inserted after Rule 5. No amendment is sought with respect to Rules 5-A and 5-B. I would request Mr. Naziruddin Ahmad not to press his amendments. I am not accepting them.

Mr. President: I shall now put the amendments to vote. I do not think it necessary to put the first part of amendment to vote at all. We will go straight to the second part, namely.....

Mr. Naziruddin Ahmad: I beg leave to withdraw the amendments.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President: Then there is only one amendment of Shri Santhanam which has been accepted by the mover. The amendment of Shri Santhanam is put to vote.

The amendment was adopted.

Mr. President: The motion, as amended, is put to vote.

The motion, as amended, was adopted.

ADDITION OF NEW RULES 38-A TO 38-V

Shrimati G. Durgabai (Madras : General) : Mr. President, Sir, I beg to move the motion that stands in my name, namely:—

That the following amendments to the Constituent Assembly Rules be taken into consideration:—

After Rule 38, insert the following:—

The proposed Rules lay down in a Chapter, Chapter VI-A, the procedure for legislation for making provision as to the constitution of India. They spread over above 22 Sections, from 38-A to 38-B, and are divided into two categories.

Before going into the body of these proposed Rules, I feel it necessary to explain the scope and object of these Rules. Sections 38-A to 38-K seek to lay down an appropriate procedure for the consideration and the passing of Bills proposing amendments to the existing constitution as embodied in the Indian Independence Act, the Government of India Act, 1935, as adapted, and any Order, Rule, Regulation or any other instrument made thereunder. Sections 38-L to 38-V seek to lay down a procedure for the introduction, consideration and the final passing of the new constitution of India. The power of making legislation for a provision as to the constitution of the Dominion is vested, as we all know, in this sovereign body, the Constituent Assembly of India. The Constituent Assembly sitting as a legislative body cannot do this. By virtue of Section 8 (1) of the Indian Independence Act, this sovereign body alone is competent to make this legislation for providing for the amendment of the constitution and also for the final passing of it.

Sir, the procedure laid down in Sections 38-A to 38-K enables us to amend the existing constitution even during the interim period without waiting for the final emergence of the new constitution. We have all noticed that it is necessary for us to make some progressive provisions for amending the new constitution, because the members are aware that some contingencies arose and are likely to arise, such as for instance the emigrations that have recently taken place. Therefore, it may be highly necessary for us to amend the constitution of India so as to enable ourselves to make any proposed changes to the constitution. The necessity, therefore, for the adoption of some procedure being laid down for amending the constitution without waiting for the final constitution is amply clear. I need not say much about the details of the procedure laid down because it is almost the same as we are familiar with and which we follow in the case of ordinary legislation.

Now, I turn to the second set of rules, namely, Rules 38-L to 38-V. They propose to lay down a procedure for the introduction, consideration and the final passing of the new constitution of India. As I have already stated, the power of making this provision is solely vested in this sovereign body and by this procedure the Constituent Assembly of India will put its seal of approval for the final acceptance of the new constitution. Members have already noticed that 38-L dispenses with the motion for leave for introduction of the new constitution. The whole object of the procedure is to simplify the matter and also to enable ourselves to expedite the matter of passing the constitution. Therefore, though I would like to be brief, I shall refer to the salient features of these provisions which lay down the procedure for considering and passing the new constitution.

Briefly, the procedure adopted is this. It, of course, differs in some essentials from the procedure we lay down for the consideration of the Bills which will amend the existing constitution. In three essentials it differs. One of them is this, that it dispenses with the motion for leave for introduction of the new constitution. Any member can introduce the constitution after giving five days' notice of his intention to move it. Thus delay is avoided. In yet another essential it differs, *i.e.*, Rule 38-R lays down that there shall be no intermediary stage between the stages of introducing the constitution, its consideration and final passing. There is no Select Committee stage, but all the same, 38-R enables us still to have it referred to the Drafting Committee, if the President so desires. The President can send the constitution as amended to the Drafting Committee for carrying out any verbal or consequential or formal amendments or for inserting some marginal notes or for renumbering of the clauses. Even here delay is avoided because it is only just a formal thing *i.e.*, refer it to the Drafting Committee which sits from day to day and which simultaneously goes on with the work of renumbering or making any consequential or formal amendments. For the final act of completing the constitution and the making of the constitution the procedure is laid down in 38-U which reads thus:—

“When the constitution is passed by the Assembly it shall be submitted to the President who shall authenticate the same by affixing his signature thereto.”

Honourable Members are already aware that this meets as a Sovereign body and for finalizing and passing the Constitution it does not require the approval of any outside body but the President authenticates it by putting his signature. That is what we note here.

[Shrimati G. Durgabai]

There is another clause to which I would like to refer. That is provided in 38-V. The procedure there slightly differs. That is, in, the case of a bill passed by the Assembly and before it becomes a Final Act it will have to go to the Governor-General for his assent. There we see the marked difference between the bills for amending the existing constitution and also for the final new constitution where the Governor-General also assents.

Sir, this is all that I wanted to explain before I commend my motion for the acceptance of this House. I have got some amendments before me. The amendments given notice of by Mr. Naziruddin Ahmad seek only formal or verbal changes. Therefore I do not think that I need say much about those amendments; but the amendments given notice of by Mr. Santhanam are there. I understand that his object in proposing his amendment is to simplify the whole matter and to pass the constitution without any delay or by a simpler process. While I appreciate his object. I feel that the procedure, which he wants to adopt is by making a reference to rule 24 of the Constituent Assembly Rules which lays down that the business of the Assembly shall be brought before it or its Committee by means of a Motion, etc. I wish the Mover of the amendment to understand the business of the House and the motion which he proposes should be distinguished from the task that is before us. What we are seeking to do is to make provision for amending the constitution, which is quite different. Even for the ordinary bills we are adopting an elaborate procedure that several stages are to be gone through before a bill finally becomes law. If that is true in the case of an ordinary law much more so it must be in the case of the very important legislation that we have got before us, viz., the amending of the existing constitution and also passing the new constitution. We have got to give adequate publication before we do these two matters which are of very great importance. Therefore I feel that an elaborate procedure under these circumstances has to be laid down and incorporated in the Rules that we have. The existing rules and Standing orders did not provide for a procedure like that. I feel very happy to be able to say that here is the procedure that we want to lay down for amending the existing constitution which we feel necessary at this stage to do and also for passing the new constitution of India. The time has come when the whole world is focussing its attention on the final emergence of this new constitution. Therefore here is the procedure which we have got ready for receiving when the draft comes before us for our consideration and passing. With these observations, Sir, I commend my motion for the acceptance of the House.

Shri Phulan Prasad Varma : (Bihar : General): On a point of order. Paragraph 38-V says—

“When a Bill referred to in rule 38-A is passed by the Assembly, a copy thereof signed by the President shall be submitted to the Governor-General for his assent. When the Bill is assented to by the Governor-General it shall become an Act and shall be published in the *Gazette of India*”.

I submit that bill Passed by the Constituent Assembly cannot be the subject of assent by the Governor-General and the Governor-General does not come in so far as the Constituent Assembly is concerned. I submit that it will affect the sovereignty of this House.

Mr. President: That is really a question on the merits of the proposition. Is it a question of Order ? If the Honourable Member wishes to raise the question of merits he is entitled to do it. It does not arise as a point of order. The Motion has been moved. Mr. Santhanam's amendment is one for the substitution of the whole motion by another motion. So I would ask him to move that.

Shri K. Santhanam: I do not intend to move it but I want just to say a few words on this motion.

Mr. President: Then we shall take up the other amendments. The other amendments relate to each of the clauses and with regard to the wording of the clauses but in the first instance we have to take the motion as a whole as to whether these rules are necessary. Any member who wishes to speak on that may do so now.

Shri K. Santhanam: Sir, my own view is that the whole motion is wholly unnecessary and purposeless. It consists of two parts. One part is intended to amend the Indian Independence Act or the Government of India Act as adapted by the Indian Independence Act. I do not think this Constituent Assembly is going to exist till you can follow the procedure laid down. I think we are going to finish the business in the next two or three months and shut up our shop and I do not see why we should adopt a complicated procedure for amending the Indian Independence Act or the Government of India Act which will also cease to exist. If you want to make a provision for any stray wording, etc., it could be done by an ordinary motion. Regarding the other part intended to pass the Constitution, when the rules were made they were made to pass the Constitution. I am unable to understand Mrs. Durgabai's idea that these rules did not provide for passing the Constitution. When we made the Rules of the Constituent Assembly we made them solely for the purpose of considering and passing the Constitution. How is it that suddenly on this blooming day we have realized that our Rules did not provide for the passing of the Constitution? I do not think there is any basis for any such fear. On the other hand the introduction of these rules may mean that whatever principles we have adopted in the House according to the other Rules cease to be of any value, and that the new bill takes the place of everything else that the Constituent Assembly has done and that will reopen the discussions that we have already gone through.

If what you have done is to be effective, then the same procedure should be followed for the remaining parts of the Constitution also. We should have the same procedure of making a motion, then taking it up and considering it, clause by clause, then discuss the amendments moved. The Drafting Committee will present a report. And the Report comes up for discussion and so on. That was the procedure laid down after a great deal of discussion. The Rules Committee sat for many weeks and drafted these rules. And now the Steering Committee sits for a few hours and passes a complicated structure, and I may say many of the provisions in it are wholly defective. Take for instance the point referred to just now by one of the Members, the point about referring to the Governor-General in Council. I thought we had this Constituent Assembly so as to exclude him from this business of constitution-framing. And then another clause says that the Constitution should be submitted to the President. But if the Constitution is passed by this Assembly, then who will submit it to the President ? There is no authority whatsoever for doing that. Therefore the whole thing is very defective, and I am sorry the Steering

[Shri K. Santhanam]

Committee passed it. I have, however, no desire to move my amendment. I only submit that this may be adjourned for consideration at a later date.

Pandit Thakur Das Bhargava: *[Mr. President, as regards this Motion, which in a way consists of two distinct propositions, I would like to point out that I cannot understand the reason of this distinction. One part of this Motion which extends up to clause K is connected with a Bill which concerns the Government of India Act or Independence Act, while the second part concerns the constitution. As regards the first part which extends up to Clause K, I would like to say that I could not follow as to why the Dominion Legislature has no power regarding the Bills which are connected with the Government of India Act and Independence Act respectively. The Constituent Assembly of India came into being for framing the Constitution of India. Therefore, it is permissible to hold that the Constituent Assembly is a sovereign body and the only body which can consider the Government of India or Independence Act. So far sovereignty is concerned, to my mind, the Dominion Legislature is the only sovereign body and the fact that in legislative matters it has to take the consent of the Governor-General does not alter its position. It is a sovereign body in this sense that it has right to frame any law in all matters which concern India. On the last occasion when the question of appeals to the Privy Council was discussed in the Dominion Legislature, our learned Law member had expressed an opinion that the Dominion Legislature cannot make any changes in the Government of India Act. At that time it was pointed out that in fact this view is not correct. In this connection, I would like to draw the attention of the House to section 6 (2), which runs thus :

“No law and no provision of any law made by the Legislature of either of the new dominions shall be void or inopportune on the ground that it is repugnant to the law of England or to the provision of this or any existing or future Act of Parliament of United Kingdom or to any order, rule or any regulation made under any such act, and the powers of the Legislature of each dominion include the power to repeal or, annul any such Act, order, rule or regulation in so far as it is part of the Law of the dominion.”

So far the question of Constitutional Law is concerned, on many occasions, the rules for changing any constitution are regarded as different from the ordinary rules. But I would like to submit that no flexible constitution has any such rule. If today any body in England wishes to make changes in the Law, he can do so; for the Legislature has the power to make such changes by a bare majority vote in the House of Commons. Dominion Legislature also is a parallel body of the Constituent Assembly; and in this connection I have to say only this much that the Legislature has every right to make any changes in the Independence Act. Just now, a member has expressed the opinion that the Constituent Assembly does not require Governor-General's consent for framing any law. If under clause 38(5), Governor-General's consent is considered to be unavoidable, then there is no difference between the rules which have been framed for amending the Acts and those ordinary laws which the Dominion Legislature has a right to frame. If Governor-General's, consent is unavoidable for such amendments, as also for the other Bills, then I would like to ask, how do you distinguish between the Dominion Legislature and the Constituent Assembly? It may be pointed out that as the powers of

*[English Translation of Hindustani speech begins.

the Constituent Assembly are to be amended, therefore, it has such a right. In reply, I would humbly submit that there is no such law. There are many countries in the world, where Legislatures amend all kinds of Acts with the help of ordinary rules. Therefore, I would like to submit that so far the question of the privileges of Dominion Legislature is concerned, there is no reason why this Legislature should not have the power to amend those Bills which are connected with the Government of India Act and Independence Act respectively and make any changes it likes. Therefore, I beg to submit that the House should not accept Clause 38-K. Moreover we should determine that the Dominion Legislature is the only body where such Bills can be introduced and amended. The question of Constitution does not arise here. It is altogether a different question. Obviously our constitution is being framed under circumstances totally different from other places. In other places it was framed after a revolution. But our government was not established after revolution. It is a continuous body and we have inherited many laws from the past and we cannot escape its influences. It is known to us that the Governor-General's consent is not necessary for framing the constitution. For making amendments in the law, we have already accepted the principle that to make changes in the Government of India and Independence Acts respectively, Governor-General's consent is necessary. But it is apparent from Article 6 that the Dominion Legislature has full power and on no account any such distinction should be made which should render the Legislature incapable of making any amendments in the Government of India Act and that the Constituent Assembly should be able to do it. In fact, both are sovereign bodies and so far the question of any amendments in a Bill or in Government of India Act and Independence Act are concerned, both have full power to do so. Also I would like to say that this Constituent Assembly is not a sovereign body in every way; for, save and except framing the constitution, it has no power to pass any Bill. On one occasion our Prime Minister had said that our Constituent Assembly cannot pass ordinary Bills. Therefore, I beg to submit that so far the amendment of Independence and Government of India Acts is concerned, the Dominion Legislature must have the power to do so and there is no law which can deprive the Dominion Legislature of this privilege. With these words, I would submit that clause 38-K should not be accepted; because this amendment reduces the powers of the Dominion Legislature and is derogatory to the prestige of the Constituent Assembly.]*

Mr. President: The House will rise now to meet again at 2-30.

The Assembly then adjourned to 2-30 in the afternoon.

] *English Translation of Hindustani speech ends.

The Assembly re-assembled after lunch at half past two of the clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the chair.

Mr. R. K. Sidhwa (C.P. and Berar: General) : Mr. President, on a point of information...

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER.

Mr. President: There is one Member who has to present the Credentials and sign the Register.

The following Member presented his Credentials and signed the Register:—
Shri Krishna Chandra Sharma (United Provinces : General) :

—————
ADDITION OF NEW RULES 38-A TO 38-V—*contd.*

Mr. R. K. Sidhwa: For the purpose of expediting the debate I want to know whether this House is competent to discuss this motion or is it the other House that is competent to do so? The Governor-General is part and parcel of the Independence Act and this subject cannot be dealt with by this Assembly.

Mr. President: On the point of order raised, I may say that it is perfectly clear that this House can deal with this question.

Maulana Hasrat Mohani: (United Provinces : Muslim) : *[Mr. President, when the Union Constitution was presented, then it was decided that the consideration of its three clauses be postponed. But in this connection, I find that whatever was said during the discussion, has been omitted in the printed proceedings. I would like to know, whether this omission is deliberate or by mistake?]*

Mr. President: *[I could not follow. What has been omitted?]*

Maulana Hasrat Mohani: *[This contains amendments to several clauses. Then it was decided after a good deal of discussion that the point raised would be taken up. Pandit Nehru had also said, "I will produce a modified constitution afterwards at the next meeting of the Constituent Assembly".

The report, which you have published contains thirty clauses, and that includes everything. But in the Report no mention has been made of the discussion that had followed on the first three clauses. It contains nothing pertaining to that. I want to enquire the reason for that.]

Mr. President: *[Whatever you wish to say please give in writing for I shall have to enquire about it. I will see what it is. Does anyone else wish to speak?]*

Mr. Naziruddin Ahmad: Sir, I submit that Clauses 38-A to 38-K will not be necessary to be passed by this House. I do not consider that this House has no jurisdiction in the matter. It has full jurisdiction to deal with the matter. But so far as this House is concerned, it is concerned directly with the business of Constitution-making. I submit that the other House, with reference to the

*[]*English Translation of Hindustani speech.

legislative aspect of the Assembly, is fully competent to deal with this. This was referred to in an earlier debate in the legislative Assembly. But it requires further clarification. I submit, while I agree with Pandit Bhargava, that, so far as changing the Government of India Act is concerned, it can be done up to the 31st March next by the Governor-General under section 9 (1) (c) of the Independence Act. In these circumstances there is no hurry about creating a machinery for amending the Government of India Act. Then the Governor-General has the power up to 31st March under section 5(9) of the Independence Act. So far as the competence of the legislative side of the House is concerned, I submit that power is given under section 6(1) of the Independence Act. It is laid down there that the legislature has 'full power to make laws' and so on and so forth. In sub-section (2) of section 6 it is specifically mentioned that the legislature can pass laws and amend, alter or absolutely repeal any Act of the British Parliament which has been passed or may be passed hereafter including orders, rules, regulations etc. So, under section 6(1)(2), the legislature is competent to effect the necessary changes in this direction. This has been made clearer by sub-section (2), Proviso, which says : 'All powers of the legislature for the time being shall be discharged by the Constituent Assembly'. So, the Constituent Assembly exercises all the functions of the Legislature and the Legislature, under section 6, is competent to pass any law or make any changes or alterations in any Statute, passed by the British Parliament or rules and regulations made thereunder. So, I submit that this clause which deals with the setting up of a particular machinery to deal with British Acts, Regulations or orders made thereunder, should be left to the other House, or rather the other aspect of the House, which is particularly meant for it. There is no need to trouble this House about these routine matters. This House as constituted should have its attention solely directed towards the framing of the Constitution which is its most essential function. After the framing of the Constitution this House will, I believe, cease to function. In these circumstances if the machinery is really set up for the Constitution section to make the amendments, it should be remembered that this House will cease to function very soon and the Legislative section will act in its place. So the life of the rules made here would be transitory, would be unnecessary, and would be burdening this House with the duty which is not its primary duty, though I fully admit that this House has jurisdiction, but it is not the proper function of this House and probably these rules are attempted to be amended as it seems that there is an unfounded fear that the other House has no jurisdiction. I submit that the Rules 38-A to 38-K should be omitted from consideration or their consideration be postponed.

With regard to the remaining clauses, they are perfectly necessary. In order to facilitate the passing of the Constitution Act and other matters connected therewith these rules are necessary and I therefore support the suggestion of Pandit Bhargava in this respect.

The Honourable Dr. B. R. Ambedkar (Bombay : General): Mr. President, Sir, I rise to explain some of the criticisms which have been levelled by Mr. Santhanam against the Motion moved by Shrimati Durgabai proposing the adoption of certain Rules by this Constituent Assembly. One of the criticisms levelled against her proposal is by Mr. Santhanam. Mr. Santhanam's main criticism is that the existing Rule 24 is quite sufficient for the purpose we have in view and that no new Rules are necessary. I am sure that Mr. Santhanam has not given enough attention to the question when he rose to oppose the

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motion. Rule No. 24 speaks of a motion and says that anything can be done in this House by a Motion. That is quite true. But I am sure that Mr. Santhanam has failed to realize that this omnibus Rule will not suffice and that further detailed Rules are necessary. For motions fall into two categories. There is a motion which has no further stage; it is exhausted by the decision taken by the House on that particular motion. But there is also another category of motions which involve further stages. A particular illustration of a motion of this sort is a motion introducing a Bill. A Bill which is introduced by a motion is not exhausted by that particular motion if the House decided in favour of that motion. There are further stages which have to be gone through and it is therefore very necessary that the further stages of a motion of this sort should be regulated by specific rule. I think if my friend Mr. Santhanam had referred to the Constituent Assembly (Legislative) Rules he could have seen that the provision which has been made in the new rules which was moved by Shrimati Durgabai was modelled on the provisions contained in the rules and the standing orders of the Constituent Assembly. For instance, he will find that analogous to Rule No. 24 in the rules of the Constituent Assembly there is Standing Order No. 30 worded exactly in the same terms as Rule No. 24. Notwithstanding that, there is a further Standing Order *i.e.* No. 37, which provides for bills and which lays down what further motions can be moved in the House with regard to them and therefore, on that footing the proposal made for adopting the new rules is in line with the procedure adopted by the Constituent Assembly in its legislative capacity. I should think that if the Constituent Assembly rested purely on rule No. 24 for carrying out its business in so far as it related to legislation, there is not the slightest doubt in my mind that there would be utter chaos. If there was only Rule 24 there could be no limit as to the number of motions or the nature of motions that one could move. In the Legislative Assembly rules Honourable Members will find that after a Bill has been introduced there are only three motions which are permitted. One is motion to circulate, motion to refer the Bill to a Select Committee or motion to pass the bill. If we had nothing but Rule 24 to govern our proceedings it would be open for any member to move any sort of motion which he may fancy. Indeed it would be necessary in certain cases not to allow freedom to move anyone of these three motions, In our procedure for the purpose of passing the bill embodying our new constitution we have curtailed the list of motions that could be moved by a member. In the new rules proposed we have not permitted a motion for the circulation of the constitution because we think that would be dilatory. In short what is important to bear in mind is that unless these rules were adopted, it would be quite impossible to control the further stages of the Bill and therefore the point raised by Mr. Santhanam is, I think a point without Substance.

The other point of criticism levelled by Mr. Santhanam relates to one of the new Rules which requires the assent of the Governor-General to the passing of a Bill adopted by the Constituent Assembly. As the Members of this House will remember, the Committee, which reported on the bifurcation of the functions of the Constituent Assembly into (1) Constituent Assembly for making laws relating to the Constitution and (2) Dominion Legislature for making ordinary law, divided the work of the Constituent Assembly into two parts one part related to the making of the *future* constitution and the other relating to the amending of the existing Constitution as contained in the Government of India Act, 1935, and the Indian Independence Act of 1947. With regard to its power to make and pass the future Constitution the Governor-General has

no place. His assent is not necessary. The Constituent Assembly is supreme. Not merely is the assent of the Governor-General not necessary, but even the assent of the President is not required by the Rules now prepared. The only power which the President has been given after the Constitution has been passed by this Assembly is to sign it merely as a token that that is the final Act of Constitution.- It is not assent in the ordinary sense of the word. The assent of the Governor-General has been retained with regard to the amendment of the existing constitution. I know there are certain members who feel hurt that such a provision should have been retained. But, I will tell the House that this matter was considered by the best lawyers that were available and they all came to the conclusion that the retention of the assent of the Governor-General was not only desirable but necessary. I should like to explain the reasons. In the first place, as everybody knows, the Governor-General possesses the power of adapting the Constitution. Adaptation is merely another name for amending the Constitution. There is not much difference between adapting the Constitution and amending the Constitution. They are just one and the same thing. The question that arises is that if it is necessary that the Governor-General should have the power to amend the Constitution in the form of adapting it, what harm can there be if the power was retained with regard to a Bill as distinguished from adaptation which has the same purpose, namely, the amendment of the Constitution.

Shri K. Santhanam: May I know why then you want the bill at all?

The Honourable Dr. B. R. Ambedkar: The answer is simple, After all, the power of adaptation will be exhausted by the 31st of March, What is to happen thereafter if the necessity for amending the existing constitution arose? Of course if the power of adaptation comes to an end, on the 1st of April and if our future Constitution also became operative on the 1st of April, the problem would not arise at all. There would be the new Constitution taking complete possession of the territory occupied by the existing Constitution. But, we are not quite sure that such would not be the case. It may be there might be a time lag between the commencement of the new Constitution and the first of April 1948. It may be a month or two may elapse between the 31st of March and the commencement of the Constitution. It is also equally clear that the whole of the Constitution as framed and passed by this House may not come into operation all at once. It may come into operation in part. There may be transitional provisions, supplementary provisions for the purpose of defining constituencies for the purpose of giving effect to what are called incidental matters. All that requires undoubtedly some time. Consequently, time process of adapting the Constitution which will come to an end by the 31st March will have to be continued and it can be continued only by the known process of a Bill passed by this House.

In the light of this it will be clear that a provision for changing the existing Constitution by a Bill is necessary. Those who realize this fact and also realize that the purpose of adaptation is the same as that of the Bill amending the Constitution cannot question the validity of the provision for requiring the Governor-General's assent to the Bill. If the purpose of both is the same and if adaptation requires assent of the Governor-General, the question that arises is, why should a Bill of amendment not require the assent of the Governor-General ? Certainly, there is no logical inconsistency at all. I may further point out that the committee was to a large extent guided by the provision

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contained in sub-clause (3) of section 6 of the Independence Act which says that all laws passed by the Dominion Legislature will be assented to by the Governor-General. What that clause means is a matter of uncertainty today. The Governor-General has the power to assent. The question is, does it mean that the Assembly is bound to submit a Bill amending the existing Constitution to the Governor-General by virtue of the fact that he is endowed with the power by the Independence Act to give his assent? We were not able to give any categorical opinion. We thought that notwithstanding feasibility of the argument that merely because of the existence of sub-clause (3) in section 6 there is no obligation to submit the Amending Bill to the Governor-General for his assent, a court of law may hold otherwise and declare an Act passed by this Assembly, not submitted to the Governor-General for assent, as being *ultra vires* and we did not want that legislation passed by this Assembly should be put in that sort of jeopardy. It is therefore out of abundant caution and also out of the feeling that there was nothing illogical in it that we inserted the new Rule. I hope the House will understand that whatever has been done by the Drafting Committee, to which this matter was referred, is perfectly in order and that the points raised by Mr. Santhanam and the friends who followed him have really no substance in them.

Shri H. V. Kamath: Sir, with due deference to my honourable friend Dr. Ambedkar and the host of the best lawyers whom he mentioned in his speech, I am constrained to say that I remain unconvinced as regards the need for this rule 38-V, that is to say, the need for submitting a Bill passed by this Assembly to the Governor-General for his assent.

Dr. Ambedkar said that if it were open to this Assembly to do anything it likes, then one fine morning any member could move that the consideration of the Constitution be suspended. It is perfectly valid, for I believe any member who gets such a motion passed by this Assembly will see that the consideration of the Constitution is suspended. I think that one of our Rules is even to the effect that this Assembly can dissolve itself provided the motion secures a two-thirds or a three-fourths majority. Either this Assembly is sovereign or it is not. I submit that at this time of the day nobody, especially no lawyer or constitutionalist, will contend that this Constituent Assembly of India is not a sovereign body. If it is a sovereign body, it follows as a natural consequence that there cannot be any outside authority whether it be the Governor-General or the British Parliament, or anyone else who can be called upon to give his assent to or ratify any Bill passed by this Assembly. Therefore, if we are all agreed,—I am sure we agree on this point, that this Assembly is a sovereign body,—then, the need for this, rule 38-V clearly does not arise. This rule says that the Bill referred to in Rule 38-A on being passed by the Assembly shall be submitted to the Governor-General for his assent.

If the Governor-General is brought into the picture for ratification of or assent to any Bill, then it clearly means that this Assembly is not sovereign, so that if we want to bring in the Governor-General then certainly we cannot get this Bill passed here and the only place for getting such a Bill passed would be the other Assembly, namely, this very Assembly functioning as Legislature where at present the Governor-General is a part of that body. I therefore feel that this Section 38-V which has been incorporated in the motion brought forward by my Honourable friend, Shrimati Durgabai, is somewhat ill-conceived and would, if adopted by this Assembly, detract from its sovereignty and as such

I would submit to the House that this particular clause be deleted from the motion.

Maulana Hasrat Mohani: *[Sir, I am also of the opinion that Governor-General's consent is not necessary for any motion brought before this Assembly and the basic reason for that is that as yet ours is a dominion status and the Governor-General is the representative of Britain and not of the Indian public and hence, for anything, his consent should not be taken.]*

Mr. President: Before I put the motion to vote, I would like to ask the Mover whether she would like to say anything in reply.

Shri M. Ananthasayanam Ayyangar: Before that, Sir, I beg your permission to interrupt for a little while. I would like to ascertain from the Honourable Dr. Ambedkar whether he has considered the consequences that would follow if this motion is adopted, because, under Section 32 of the Government of India Act as adapted, the Governor-General has the right either to give or withhold his assent when a Bill is referred to him. Are we contemplating that so far as a Bill seeking to amend the existing constitution is concerned, the Governor-General shall have the power either to give or withhold his consent?

The Honourable Dr. B. R. Ambedkar: He is a constitutional Governor. He acts on advice.

Shri M. Ananthasayanam Ayyangar: Another point which requires elucidation is this. It is laid down that when the Dominion Legislature passes a Bill, that Bill will require the assent of the Governor-General. But does this apply in so far as amendment of the present constitution is concerned, because we are not sitting here as Dominion Legislature, but as the Constituent Assembly of India which is a sovereign body? That is why I say you have the power, as President. We do not even say Speaker here. Does the Honourable Dr. Ambedkar realise that just as the new constitution is not going to be referred to the Governor-General, the amendment of the existing constitution also need not be referred to him?

Mr. President: That is a point which Dr. Ambedkar has answered in his own way. Whether the member is satisfied or not is a different question. I shall now call upon the Mover if she wishes to say anything in reply.

Shrimati G. Durgabai: Mr. President, Sir, I do not think there is much left for me to say in reply, because Dr. Ambedkar has very kindly taken upon himself to explain the whole position as well as answer the points raised by my Honourable friends. I think he has sufficiently met them and clarified the whole position, but I appreciate that much has been said by some of the members about the provision retained here about the assent of the Governor-General with regard to Bills referred to in 38-A. Dr. Ambedkar dealt with that point also, so I need not say much about it. But I would like to remind Honourable Members of this fact that we are governed today by the 1935 Act as adapted which still retains that provision.....

[] English Translation of Hindustani speech.

An Honourable Member: Not as far as this Constituent Assembly is concerned.

Shrimati G. Durgabai: Sir, the fact that the Bill is passed by this Constituent Assembly. I think, does not dispense with such assent unless the Constituent Assembly makes a provision contrary to that. So if you like to eliminate this provision, by all means do it, but make a provision contrary to that; otherwise, you cannot eliminate it altogether and arbitrarily. What I would like to impress upon Honourable Members is firstly this, that if the Governor-General is to continue to hold the existing position unchanged in the existing constitution, he must be consulted and his assent cannot be dispensed with, and secondly, that it is not necessary to eliminate this, since he acts on the advice of our own Ministers. For both these reasons, there is practically no fear that the assent will be unduly withheld. Another consideration is also this, that in the absence of a second Chamber to revise or rectify any defects, it also further provides an opportunity for the Ministers to go through the whole thing if necessary and if occasion demands it. Therefore, bearing in mind all these points, I would request Honourable Members to accept my motion without any fear by the retention of this provision regarding assent of the Governor-General.

Mr. President: The motion is that the amendments to the Constituent Assembly Rules be taken into consideration. I shall put clause-by-clause later; now the general motion is before the House.

The motion was adopted.

Mr. President: I would take up the clauses one by one. Members may kindly go through each of these as quickly as possible, because we have got three more resolutions and we have not much time.

Shrimati G. Durgabai: I move Rule 38-A (1):

38-A.(1) Any member desiring to propose any amendment to the Indian Independence Act, 1947, or any order, rule, regulation or other instrument made thereunder, or to the Government of India Act, 1935, as adapted under the said Act may move, for leave to introduce a Bill for the purpose, shall give notice of his intention and shall, together with the notice, submit a copy of the Bill and a full Statement of Objects and Reasons.

Shri M. Ananthasayanam Ayyangar: May I make a suggestion? Barring some amendments which seek to rectify minor errors, there is no substantial amendment. Of course, Mr. Naziruddin Ahmad's amendments are there which add a word here and a word there. I suggest these may be left to the office to take care of. We may proceed with clauses.

Mr. President: I would suggest that such of the amendments as are acceptable to the mover may be accepted now and the motion may be moved in the amended form so that there may be no discussion and the whole thing can be gone through quickly instead of leaving it to the Office to make the changes. The first clause if amended by Mr. Naziruddin's amendments would read as follows:—

“Any member desiring to move any amendment to the Indian Independence Act, 1947 or an order, rule or regulation made thereunder, or to the Government of India Act, 1935, as adapted by the Indian Provisional Constitution shall give notice of his intention, and shall together with the notice submit a copy of the bill for the purpose and may move for leave to introduce the Bill.”

If you accept these amendments it would read like that.

Shrimati G. Durgabai: I cannot accept the amendments.

Mr. President: Then let Mr. Naziruddin Ahmad read his amendments one by one.

Mr. Naziruddin Ahmad: Sir, I beg to move:

“That in sub-rule (1) of the proposed rule 38-A, for the words ‘desiring to propose’ the words ‘desiring to move’; for the words ‘rule, regulation or other instrument’ the words ‘rule or regulation’ and for the words ‘adapted under the said Act’ the words ‘adapted by the Indian (Provisional Constitution) Order, 1947’ be substituted.”

The other amendment I wish to submit is that I beg to propose—

“That in sub-rule (1) of the proposed rule 38-A, the words ‘may move for leave to introduce a Bill for the purpose’ be omitted; after the words ‘submit a copy of the Bill’ the words ‘for the purpose’ be inserted; and the words ‘and may move for leave to introduce the Bill’ be added at the end”.

The object of these amendments is quite clear. I have merely transposed the motion condition after notice to keep the sequence. The others are mere verbal amendments.

Shrimati G. Durgabai: Sir, I do not accept the amendment. The language proposed in 38-A (1) is quite alright. I do not think it requires any amendment.

Mr. President: The mover of the motion is not prepared to accept any of the amendments. I put the amendments to vote.

The amendments were negatived.

Mr. President: We go to 38-A (2).

Shrimati G. Durgabai: Sir, I move—

“(2) The period of notice of a motion for leave to introduce a Bill under this rule shall be fifteen days, unless the President allows the motion to be made at shorter notice.”

Mr. Naziruddin Ahmad: Sir, I beg to move—

“That in sub-rule (2) of the proposed rule 38-A, for the words ‘President allows’ the words ‘President in his discretion allows’ be substituted.”

This condition of the President allowing it in his discretion appears in the other clauses in pages 4 and 7 of the list of amendments.

There are two places in which the same phrase appears and in order to bring the whole thing to a uniformity, I submit my amendment may be accepted.

Shrimati G. Durgabai: I do not think, Sir, that it is necessary to accept this amendment.

Mr. President: The Mover is not prepared to accept this amendment. The amendment seeks to add the words “in his discretion” after the word ‘President’. I shall put it to the House.

The question is:

“That in sub-rule (2) of the proposed rule 38-A, for the words ‘President allows’ the words ‘President in his discretion allows’ be substituted.”

The motion was negatived.

Mr. President: Then I put the whole clause, 38-A (1) and 38-A (2).

38-A. (1) Any member desiring to propose any amendment to the Indian Independence Act, 1947, or any order, rule, regulation or other instrument made thereunder, or to the Government of India Act, 1935, as adapted under the said Act, may move for leave to introduce a Bill for the purpose, shall give notice of his intention, and shall, together with the notice, submit a copy of the Bill and a full Statement of Objects and Reasons.

(2) The period of notice of a motion for leave to introduce a Bill under this rule shall be fifteen days, unless the President allows the motion to be made at shorter notice.

The motion was adopted.

Mr. President: Now we pass on to 38-B.

Shrimati G. Durgabai: Sir, I move:

38-B. If a motion for leave to introduce a bill is opposed, the President. after.....

Haji Abdul Sattar Haji Ishaq Sait (Madras: Muslim): May I suggest, Sir, that the whole clause need not be read? It has already been circulated and it need only be moved.

Shrimati G. Durgabai: Sir, I move clause 38-B.

38-B. If a motion for leave to introduce a Bill is opposed, the President, after permitting, if he thinks fit, a brief explanatory statement from the member who moves and from the member who opposes the motion, may without further debate put the question.

Mr. President: Mr. Naziruddin Ahmad can move his amendment.

Mr. Naziruddin Ahmad: Sir, I would suggest that instead of my moving my amendments to each clause, it would be better and more satisfactory if they are all dealt with by the Government draftsmen. Otherwise, I find it is useless for me to move them, because I find the sponsors of the motion are not in a mood to listen to them or to consider them. But I consider them necessary and that is why I have brought them forward. They are not of a frivolous or dilatory nature. In these circumstances I respectfully seek your advice as to what I should do. If I decline to move my amendment that will be hardly respectful to the House.

I beg to move—

That in the proposed rule 38-B, for the words “introduce a Bill” the words “introduce such a Bill” be substituted.

Sir, this amendment is necessary because the Bill is qualified in the earlier part of the clause and the addition of the word “such” will make it very clear.

The Honourable Dr. B. R. Ambedkar: Sir, if I may reply to this point. If the Honourable Mover will only refer to the heading of the chapter he will see that the chapter is called “Legislation for making provision as to the Constitution of India.” These rules relate to no other Bill except the Bill amending the Constitution. Therefore the word “such” is absolutely unnecessary.

Mr. Naziruddin Ahmad: After this clarification, Sir, I beg leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

The Honourable Dr. B. R. Ambedkar: Sir, if I may make a suggestion with a view to economise time. These are all drafting amendments. If this House were to pass a resolution that all these amendments should be taken into consideration by the official draftsmen and incorporated wherever he thinks necessary, that will be better. If we were to take up the amendments one by one, it will take more than a whole day. After all different people use different language for the purpose of conveying the same thought. It is better to leave it to the draftsmen who are particularly qualified in this matter than laymen who merely want to exercise their time in this matter.

Mr. President: Before I come to that, I will put Rule 38-B to the House.
Rule 38-B was adopted.

Mr. President: As regards the suggestion made by the Honourable Dr. Ambedkar, I would make a request that if Mr. Naziruddin and Shrimati Durgabai and any other Member interested would sit together separately and decide about these amendments, we could, in the meantime go on with the other resolutions. We can take up these clauses, after, say three-quarters of an hour.

Mr. Naziruddin Ahmad: But then, I have other amendments to other resolutions also. Sir, no Member had the time to go through these clauses and amendments and that is why we feel this difficulty now. Especially after the lunch our everybody seems to be in a happy mood and is not able to apply his mind to technicalities.

Mr. President: I think the Mover of the Motion, Shrimati Durgabai, may consider these amendments and see which of them she could accept and we might take up this item a little later. In the meantime we could go on with other items.

Diwan Chaman Lall may now move his resolution.

ADDITION OF RULE 59-A

Diwan Chaman Lall: Sir, the resolution that I beg leave to move is as follows—

That the following amendment to the Constituent Assembly Rules be taken into consideration:—

New Rule 59-A. After rule 59 insert the following new rule:—

59-A. (1) The Credentials Committee or the Election Tribunal shall, for the purposes of an inquiry into an election petition, have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and, so far as may be, in the same manner as is provided in the case of a civil court under the Code of Civil Procedure, 1908.

(2) The provisions of the Indian Evidence Act, 1872, shall, subject to the provisions of these rules and the standing orders made by the President, be deemed to apply to every such inquiry.

Sir, the subject of election petitions is to be found in Chapter 10 of the Rules of Procedure adopted by this Assembly. The general basis is as follows. An election can be called into question only by means of an election petition. Any candidate or elector can file this election petition. If the petition is in order, then the President, if he is satisfied that there is sufficient ground

[Diwan Chaman Lall]

shall refer the petition to the Credentials Committee. The Credentials Committee thereupon shall enquire into the election petition and go into the charges contained therein and as quickly as possible submit a report. The Credentials Committee, if they think fit, may recommend to the President that an Election Tribunal should be appointed to enquire into the Election Petition. Therefore, we have a dual procedure. The Credentials Committee can either recommend to the President to appoint an Election Tribunal or report to the President. If it comes to the appointment of the Tribunal, the President shall appoint an Election Tribunal consisting of one or more members to go into the merits of the petition. Now, there is a lacuna, some doubt as to the procedure after handing over the election petition to the Election Tribunal.

According to rule 43(5), the President may make Standing Orders for the conduct of the business of the Credentials Committee. It is doubtful whether he can also make rules for the purpose of compelling witnesses to appear before the Election Tribunal or compel their attendance, summon them, enforce their attendance or compel the production of documents. Therefore the necessity has arisen for this particular Rule 59-A to be inserted granting power to ask for the attendance of witnesses and for the production of documents.

There are two aspects of this power. The procedure will be, as far as possible, the same as is adopted in Civil suits under the Civil Procedure Code. Secondly, subject to the standing orders and rules of the Assembly the Evidence Act shall apply to the evidence that is produced before the Election Tribunal.

I do not think that long speeches are necessary to persuade Honourable Members to see the need for this amendment. I may mention that, so far, five or six election petitions are still pending and for the due despatch of these petitions it is necessary that this doubt should be resolved and this rule accepted.

Mr. President: Mr. Naziruddin Ahmad may move the amendment he has given notice of.

Shri K. Santhanam: On a point of order, Sir, I do not think any rule of this Assembly can have the force of law. If you want this compulsion, it should be done by a Bill in the Legislature duly introduced and passed. Then only will the civil authorities recognise it. The civil courts will not take legal cognisance of the rules of this Assembly. So I think it is *ultra vires*.

Shri M. Ananthasayanam Ayyangar: Under the Indian Independence Act, this Assembly has been recognised as the Dominion Legislature with all powers. Therefore, whether you call it a rule or a law, it has the force of law.

Mr. President: I think I will take the view put forward by Mr. M. Ananthasayanam Ayyangar.

Mr. Naziruddin Ahmad: Sir, I beg to move—

(1) that in sub-rule (1) of the proposed rule 59-A, after the figures '1908' at the end, the following be inserted:—"V of 1908".

(2) that in sub-rule (2) of the proposed Rule 59-A, for the words "standing orders", the words "Standing Orders" be substituted.

The two are self-explanatory. The first one merely gives the Statute No. and the second one puts in capitals the first letters of the words 'standing orders'. The amendments are of a very formal character and may be accepted.

Diwan Chaman Lall: I accept the amendments.

The amendments were adopted.

The motion, as amended, was adopted.

AMENDMENT OF RULES 51, 53, 60, 61 AND NEW RULE 67

Shri P. Govinda Menon: Mr. President, the motion which I propose is of a formal character. Chapter X of the rules adopted by this Assembly lays down the procedure to be adopted for the decision of doubts and disputes with regard to election of Members of this Assembly. But a perusal of the definition of the words 'Candidate' and 'Returned candidate' in rule 51 in that Chapter will show that these rules do not apply to members returned from Indian States. With respect to Members returned from Indian States, Standing Orders have been framed by the Honourable the President and it is under these Standing Orders that the matter is being dealt with at present. The attempt made by this motion is to incorporate these Standing Orders in the rules themselves. Sir, I move that in Rule 51—

(1) After clause (a), insert the following new clauses—

“(aa) ‘representative’ of any Indian State or States means the person who is chosen as a representative of such State or States in the Assembly in accordance with the provisions contained in the Schedule to these Rules”.

(ii) Add the following at the end of clause (b):—

“and includes a candidate whose name has been reported by or on behalf of the Ruler or Rulers of any Indian State or States to the President in the manner provided in the Schedule to these rules as a duly chosen representative of such State or States.”

Mr. President: There is no amendment to this motion.

The motion was adopted.

Shri P. Govinda Menon: Sir, I move—

In clause(1) of sub-rule (1) of Rule 53, for the words 'in the case of the first election to the Assembly' substitute the words 'in the case of election to the Assembly held before the publication of these Rules.'

In clause (ii) of sub-rule (1) of Rule 53, for the words “in the appropriate official Gazette”, substitute the words “in the Gazette of India or in the Official Gazette of the Province concerned.”

Mr. President: There is no amendment to this motion.

The motion was adopted.

Shri P. Govinda Menon: Sir, I move—

In sub-rule (1) of Rule 60, after the words 'Indian Legislative Assembly Electoral Rules' insert the words and figures “as in force on the 1st day of August, 1947”

Mr. President: There is no amendment to this motion.

The motion was adopted.

Shri P. Govinda Menon: Sir, I move—

Add the following at the end of rule 61 :—

“and the orders so issued shall be final and shall not be questioned in any court.”

Mr. President: There is no amendment to this motion.

The motion was adopted.

Shri P. Govinda Menon: Sir, I move—

After rule 66 insert the following new rule:—

“67. If any question arises as to the interpretation of these rules otherwise than in connection with an election held thereunder, the question shall be referred for the decision of the President and his decision shall be final.”

Mr. President: There is no amendment to this.

The motion was adopted.

Shri P. Govinda Menon: I beg to move—

Schedule.—Insert the following Schedule at the end of the rules.—

THE SCHEDULE

(See Rule 51)

1. The seats allotted to Indian States in the Statement shall be allocated among the various States and groups of States as in Annexure A, generally on the basis of one seat for one million of the population, fractions of three-fourths or more being counted as one and lesser fraction being ignored in the case of individual States, and fractions of more than half being counted as one and lesser fractions being ignored in the case of groups of States.

*2. The President may, on the application of any State or States concerned, by order amend Annexure A to this Schedule so as to—

- (a) alter the representation allotted to the States, individual or grouped;
- (b) alter the grouping of the States by the division of a group into more than one group or the transfer of any State, or States from one group to another or otherwise;

Provided that—

- (i) no such alteration shall affect the total representation of all States or of the group or groups of States concerned; and
- (ii) in making any such alteration the population basis shall not be departed from and the geographical proximity, economic considerations, and ethnic, cultural and linguistic affinity shall be duly kept in view.

*These provisions (2 & 2-A) are new, having been substituted for the original paragraph 2.

*2-A. When the representation allotted to the States, individual or grouped, or the grouping of the States is altered by an order made under paragraph 2, the President may, on application made in that behalf by the States affected by such order, declare the seats of the members of the Assembly representing the States so affected to be vacant.

3. Not less than 50 per cent of the total representatives of the States in the Assembly shall be elected by the elected members of the States' legislatures, or where, such legislatures do not exist, by the members of electoral colleges constituted in accordance with the provisions made in this behalf by the Rulers of the States concerned. The States shall endeavour to increase the quota of elected representatives as much above 50 per cent of the total number as possible. Accordingly at least one half of the number of seats allotted to any State or group of States shall be filled by election in accordance with the provision made in that behalf by the Ruler of the State or States concerned.

4. The Conveners, in respect of the various groups of States specified in column 1 of the Annexure A, shall be the rulers specified in the corresponding entries in column 4 of that Annexure. The Secretary may in consultation with the States in the group make any such changes in the said column 4 as he may deem necessary or desirable.

5. On the completion of the election or nomination, as the case may be, the Ruler of the State concerned shall make a notification as far as may be in the following form +stating the name or names of the person or persons elected or nominated as representative or representatives in the Constituent Assembly and cause it to be communicated to the President of the Constituent Assembly. Where the selection has been made by a group of States, this notification shall be made by the convener for that group.

+FORM

BE IT HEREBY KNOWN THAT [here enter the name of the representative(s)] has/have been duly chosen as (a) representative(s) of [here, enter the name(s) of the State(s)]..... in the Constituent Assembly of India. In testimony whereof this notification is issued under my signature and the Seal of my State.

State(s).....

Date.....

Ruler of.....

*These provisions (2 & 2-A) are new, having been substituted for the original paragraph 2.

ANNEXURE A

Single State

Division as shown in the Table of Seats appended to Part II of the First Schedule to the Govt. of India Act, 1935.	Name of State	Number of seats in the Constituent Assembly	Convener
1	2	3	4
I	Hyderabad	16	..
II	Mysore	7	..
III	Kashmir	4	..
IV	Gwalior	4	..
V	Baroda	3	..
IX	Travancore	6	..
IX	Cochin	1	..
X	Udaipur	2	..
X	Jaipur	3	..
X	Jodhpur	2	..
X	Bikaner	1	..
X	Alwar	1	..
X	Kotah	1	..
XI	Indore	1	..
XI	Bhopal	1	..
XI	Rewa	2	..
XII	Kolhapur	1	..
XIV	Patiala	2	..
XIV	Bahawalpur	1	..
XVI	Mayurbhanj	1	..
	20	60	

Frontier Groups

			Ruler of:—
VII	Sikkim	} 1	Cooch Behar State.
XV	Cooch Behar		
XV	Tripura	} 1	Tripura State.
XV	Manipur		
XVII	Khasi States		

Interior Groups

VIII	Rampur	1	Rampur State
	Benares		
X	Bharatpur	} 3	Bundi State
	Tonk		
	Dholpur		
	Karauli		
	Bundi		
	Sirohi		
(13 States)	Dungarpur		
	Banswara		
	Partabgarh		
	Jhalawar		
	Jaisalmer		
	Kishengarh		
XI	Shahpura		

Division as shown in the Table of Seats appended to Part II of the First Schedule to the Govt. of India Act, 1935.	Name of State	Number of seats in the Constituent Assembly	Convener
1	2	3	4
(26 States)	Datia	} 3	Panna State.
	Orcha		
	Dhar		
	Dewas (Senior)		
	Dewas (Junior)		
	Jaora		
	Ratlam		
	Panna		
	Samthar		
	Ajaigarh		
	Bijawar		
	Charkhari		
	Chhatarpur		
	Baoni		
	Nagod		
	Maihar		
	Baraundha		
	Barwani		
	Ali Rajpur		
	Jhabua		
	Sailana		
	Sitamau		
	Raigarh		
	Narsingarh		
	Khilchipur		
	Kurwai		
XVII	Cutch	} 4	Nawanagar State.
XII	Idar		
	Nawanagar		
	Bhavnagar		
	Junagadh		
	Dhrangadhra		
	Gondal		
	Porbandar		
(17 States)	Morvi		
	Radhanpur		
	Wankaner		
	Palitana		
	Dhrol		
	Limbdi		
	Wadhwan		
	Rajkot		
	Jafrabad		
	XII-A	Rajpipla	} 2
	Palanpur		
	Cambay		
	Dharampur		
	Balasinor		
(14 States)	Baria		
	Chhota Udepur		
	Sant		
	Lunawada		
	Bansda		
	Sachin		
	Jawhar		
	Danta		
XIII	Janjira		

Division as shown in the Table of Seats appended to Part II of the First Schedule to the Govt. of India Act, 1935.	Name of State	Number of seats in the Constituent Assembly	Convener		
1	2	3	4		
XIII	Sangh	}	}		
	Savantvadi				
	Mudhol				
	Bhor				
	Jamkhadi				
	Miraj (Senior)				
	Miraj (Junior)				
	Kurundwad (Senior)				
	Kurundwad (Junior)				
(17 States)	Akalkot			2	Miraj (Junior) State.
	Phaltan				
	Jath				
	Aundh				
	Ramdurg				
IX	Pudukkottai				
	Banganapallee				
	Sandur				
XIV	Kapurthala	}	}		
	Jind				
	Nabha				
	Mandi				
	Bilaspur				
(14 States)	Suket			3	Bilaspur State.
	Tehri-Garhwal				
	Sirmur				
	Chamba				
	Faridkot				
	Malerkotla				
	*Loharu				
XVII	Kalsia				
	Bashahr				
XV	Sonepur	}	}		
	Patna				
	Kalahandi				
	Keonjhar				
	Dhenkanal				
	Nayagarh				
	Talcher				
	Nilgiri				
	Gangpur				
	Bamra				
(25 States)	Seraikela			4	Bundi State.
	Baud				
	Bonai				
XVII	Athgarh				
	Pal Lahara				
	Athmalik				
	Hindol				
	Narsingpur				
	Baramba				
	Tigiria				
	Khandpara				
	Ranpur				
	Daspalla				
	Rairakhol				
	Kharsawan				

*By special arrangement Loharu is represented by the representative of Bikaner State.

Division as shown in the Table of Seats appended to Part II of the First Schedule to the Govt. of India Act, 1935.	Name of State	Number of seats in the Constituent Assembly	Convener
1	2	3	4
XVI-A	Bastar	}	Baud State.
	Surguja		
	Raigarh		
	Nandgaon		
	Khairagarh		
	Jaipur		
(14 States)	Kanker		
	Korea		
	Sarangarh		
XVII	Changbhakar		
	Chhuikadan		
	Kawardha		
	Sakti		
	Udaipur		
XVII	All other States	4	Baghat State.

Mr. President: There is no amendment to this motion.

The motion was adopted.

Mr. President: We have come to the end of the Agenda. We will now go back to the remaining item, *viz.*, the resolution to be moved by Shrimati Durgabai.

ADDITION OF RULES 38-C TO 38-V

Shrimati G. Durgabai: I beg to move Rule 38-C.

38-C. As soon as may be after a Bill has been introduced, the Bill shall, unless the President otherwise directs, be published in the Gazette of India.

Mr. President: There are two verbal amendments given notice of by Mr. Naziruddin Ahmed, that in the proposed Rule 38-C, for the words "after a Bill" the words "after the Bill", and for the words "has been introduced, the Bill" the words "has been introduced, it" be substituted.

Shrimati G. Durgabai: I accept that amendment.

Mr. President: Mr. Naziruddin Ahmed, She has accepted the amendment.

Mr. Naziruddin Ahmad: Sir, I beg to move:

That in the proposed rule 38-C, for the words "after a Bill" the words "after the Bill," and for the words "has been introduced, the Bill" the words "has been introduced, it" be substituted.

Shrimati G. Durgabai: I have accepted the amendments.

The amendments were adopted.

Mr. President: I put Rule 38-C, as amended, to vote.

Rule 38-C, as amended, was adopted.

Shrimati G. Durgabai: I beg to move Rule 38-D:

38-D. When a Bill is introduced, or on some subsequent occasion, the member who has introduced the Bill may make one of the following motions in regard to the Bill, namely:—

- (a) that it be taken into consideration by the Assembly either at once or on some future day to be then specified; or
- (b) that it be referred to a Select Committee;

Provided that no such motion shall be made until after copies of the Bill have been made available for the use of members and that any member may object to any such motion being made, unless copies of the Bill have been so made available for three days before the day on which the motion is made, and such objection shall prevail unless the President in his discretion allows the motion to be made.

I accept the amendment that in the proposed Rule 38-D, for the words "When a Bill" the words "At the time when the Bill" be substituted.

Mr. Naziruddin Ahmad: Sir, I beg to move:

That in the proposed Rule 38-D for the words "When a Bill" the words "At the time when the Bill" be substituted.

Mr. President: She has accepted that amendment. I put the Rule, as amended, to vote.

Rule 38-D as amended, was adopted.

Shrimati G. Durgabai: I beg to move Rule 38-E (1).

38-E (1) On the day on which any such motion is made; or on any subsequent day to which the discussion thereof is postponed, the principles of the Bill and its general provisions may be discussed, but the details of the Bill must not be discussed further than is necessary to explain its principles.

Mr. Naziruddin Ahmad: I beg to move amendment No. 9—

That in sub-rule (1) of the proposed Rule 38-E, for the words "postponed, the principle" the words "adjourned, only the principles" be substituted.

With regard to this, the technical language which is used is not "postponed". "Postponed" means postponed for ever. Adjourned means adjourned for further consideration. The word "adjourned" is more suitable.

I also move amendment No. 10—

That in sub-rule (1) of the proposed Rule 38-E, for the words "the Bill must not" the following words be substituted:—

"The Bill shall not."

Shrimati G. Durgabai: Sir, I do not accept amendment No. 9. I accept amendment No. 10.

Mr. Naziruddin Ahmad: Sir, I beg the leave of the House to withdraw amendment No. 9.

Mr. President: May I take it that the House gives leave to withdraw amendment No. 9 ?

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Amendment No. 10 has been accepted by the mover. I shall put Rule 38-E (1), as amended, to vote.

Rule 38-E (1), as amended, was adopted.

Shrimati G. Durgabai: I beg to move Rule 38-E (2).

38-E (2) At this stage, no amendments to the Bill may be moved, but if the member who has introduced the Bill moves that his Bill be taken into consideration, any member may move as an amendment that the Bill be referred to a Select Committee.

Mr. Naziruddin Ahmad: Sir, I beg to move:

That in sub-rule (2) of the proposed Rule 38-E, for the words "any member may" the words "any other member may" be substituted.

The point is that the member who moves cannot move an amendment. So the question of amendment must be left to any other member than the person who moves. That is why I think this amendment is necessary.

I also move—

That in sub-rule (2) of the proposed Rule 38-E, the words "or be circulated for eliciting public opinion thereon" be added at the end.

Shrimati G. Durgabai: I do not accept the amendment No. 11. I oppose amendment No. 12 also.

Mr. Naziruddin Ahmad: Sir, I beg the leave of the House to withdraw both these amendments.

Mr. President: I take it that the House gives leave to the withdrawal.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President: I now put Rule 38-E, as amended, to vote.

Rule 38-E, as amended, was adopted.

Shrimati G. Durgabai: I beg to move Rule 38-F.

38-F. (1) The member who has introduced the Bill shall be a member of every Select Committee, and it shall not be necessary to include his name in any motion for appointment of such a Committee.

(2) The other members of the Committee shall be appointed by the Assembly when a motion that the Bill be referred to a Select Committee is made.

(3) The committee shall choose a member of the Committee to be their Chairman, and in his absence may choose another member of the Committee to preside and exercise the power of the Chairman.

(4) The Chairman shall not vote in the first instance but, in the case of an equality of votes, shall have a casting vote.

(5) The Select Committee may bear expert evidence and representatives of special interests affected by the measure before them.

Mr. Naziruddin Ahmad: Sir, I beg to move:

That in sub-rule (1) of the proposed rule 38-F, after the words "of every Select Committee" the words "to which the Bill may be referred" be inserted.

These words are necessary to complete the sense.

Shrimati G. Durgabai: He will please move all the amendments to Rule 38-F.

Mr. Naziruddin Ahmad: Sir, I beg to move:

That in sub-rule (2) of the proposed rule 38-F, for the words "shall be appointed", the words "shall be elected" be substituted.

[Mr. Naziruddin Ahmad]

The word "election" is more proper in the case of selection by the legislature.

I beg to move also—

That in sub-rule (3) of the proposed rule 38-F, for the words "The Committee shall choose a member of the Committee" the words "The members of the Committee shall choose one of them" be substituted.

Sir, this is only a verbal amendment. The proposed Rule says that the 'members of a Committee' should choose a 'member of the Committee' as Chairman. Instead of repeating the same expression, I have said, choose 'one of them'.

My next amendment is:—

That in sub-rule (3) of the proposed rule 38-F, the words "of the Committee" after the words "may choose another member" be omitted.

The next amendment is:—

That in sub-rule (3) of the proposed rule 38-F, for The word "the powers of the Chairman" the words "the powers of the Chairman during his absence" be substituted.

The object of this amendment is this. The power of the person chosen to preside in the absence of the chairman can only be exercised during the absence of the Chairman. The Rule as it stands would mean that the man who is chosen to preside can continue to do so even when the Chairman returns and joins the meeting.

Shrimati G. Durgabai: Sir, I oppose all these amendments. All members of the Select Committee are "appointed" not "elected". That is the language used and it has been rightly adopted here also.

Sir, I would like to move a small amendment myself, namely:

that in sub-clause (1) of clause 38-F, for the word "every" before the words "Select Committee" the word "the" be substituted.

Mr. Naziruddin Ahmad: Sir, I beg leave to withdraw all my amendments, Nos. 13 to 17.

Amendments Nos. 13 to 17 were, by leave of the Assembly, withdrawn.

Mr. President: Now I put Rule 38-F as amended by the Mover to the vote.

Rule 38-F, as amended, was adopted.

Shrimati G. Durgabai: Sir, I beg to move Rule 38-G.

38-G. (1) At the time of the appointments by the Assembly of the members of a Select Committee the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be fixed by the Assembly.

(2) If at the time fixed for any meeting of the Select Committee, or if at any time during any such meeting, the quorum of members fixed by the Assembly is not present the Chairman of the Committee shall either suspend the meeting until a quorum is present or adjourn the Committee to some future day.

(3) Where the Select Committee has been adjourned in pursuance of sub-rule (2) on two successive days fixed for the meeting of the Committee, the Chairman shall report the fact to the Assembly.

Mr. Naziruddin Ahmad: I do not move amendment No. 18 to this Rule, standing in my name.

Mr. President: So there are no amendments to this rule. I put it to vote.

Rule 38-G was adopted.

Shrimati G. Durgabai: Sir, I beg to move Rule 38-H.

38-H. (1) When a Bill has been referred to a Select Committee, the Committee shall make a report thereon.

(2) Reports may be either preliminary or final.

(3) If any member of a Select Committee desires to record a minute of dissent on any point, he must sign the report stating that he does so subject to his minute of dissent, and must at the same time hand in his minute.

Mr. President: There are no amendments to this Rule. So I put it to vote.

Rule 38-H was adopted.

Shrimati G. Durgabai: Sir, I beg to move Rule 38-I.

38-I (1) The report of the Select Committee on a Bill shall be presented to the Assembly by the Chairman of the Committee.

(2) In presenting a report, the Chairman shall, if he makes any remarks confine himself to a brief statement of facts, but there shall be no debate at this stage.

Mr. President: To this Rule also there are no amendments. So I put it to Vote.

Rule 38-I was adopted.

Shrimati G. Durgabai: Sir, I beg to move Rule 38-J.

38-J. The Secretary shall cause every report of a Select Committee to be printed, and a copy thereof shall be made available for the use of every member of the Assembly. The report, with amended Bill shall, unless the President otherwise directs, be published in the Gazette of India.

Mr. Naziruddin Ahmad: Sir, I beg to move:

That in the proposed rule 38-J, for the words "with amended Bill" the words "with the amended Bill" be substituted.

I think, Sir, this amendment should be accepted for obvious reasons.

Shrimati G. Durgabai: Sir, I accept this amendment.

Mr. President: I hope the House gives leave to accept this amendment.

The amendment was adopted.

Mr. President: I shall now put the Rule as amended.

Rule 38-J, as amended, was adopted.

Shrimati G. Durgabai: I move Rule 38-K.

38-K. (1) After the presentation of the final report of a Select Committee on a Bill, the member who has introduced the Bill may move—

(a) that the Bill as reported by the Select Committee be taken into consideration:

Provided that any member of the Assembly may object to its being so taken into consideration if a copy of the report has not been made available for the use of members for three days, and such objection shall prevail unless the President in his discretion allows the report to be taken into consideration; or

[Shrimati G. Durgabai]

(b) that the Bill as reported by the Select Committee be re-committed either:—

- (i) without limitation; or
- (ii) with respect to particular clauses or amendments only; or
- (iii) with instructions to the Select Committee to make some particular or an additional provision in the Bill.

(2) If the member who has introduced the Bill moves that the Bill be taken into consideration any member may move as an amendment that the Bill be recommitted.

Mr. President : There are no amendments to Rule 38-K. So I put it to vote.

Rule 38-K was adopted.

Shrimati G. Durgabai: Sir, I beg to move Rule 38-L.

38-L. (1) The provisions of rules 38-A to 38K shall not apply to the Draft Constitution of India settled by the Drafting Committee appointed in pursuance of the resolution of the Assembly dated the 29th day of August, 1947 (hereinafter referred as “the Constitution”), and any member may introduce the Constitution after giving notice of his intention and it shall not be necessary to move for leave to introduce the Constitution.

(2) The period of notice for introducing the Constitution under this rule shall be five days unless the President allows the Constitution to be Introduced at shorter notice.

Mr. Naziruddin Ahmad: Sir, I have several amendments to this Rule. First, I beg to move,—

That in sub-rule (1) of the proposed rule 38-L, for the words “the Draft Constitution” the words “consideration of the Draft Constitution” be substituted.

Secondly I beg to move—

That in sub-rule (1) of the proposed rule 38-L, the words and brackets thereafter referred to as “the Constitution” be deleted; and for the words “referred as” the words “referred to as” be substituted.

On this amendment, Sir, I wish to say this. There is a distinction between the ‘Constitution’ and the ‘Draft Constitution’. Here the Draft Constitution is subsequently termed as the “Constitution”. The word ‘Constitution’ has been used to mean the ‘Draft Constitution’ and the terms are not interchangeable. This is certainly a shortened expression but it gives a different sense. That is why I have tabled this amendment. The latter part of the amendment removes a clerical error.

Next, Sir, I beg to move—

“That the following be omitted from sub-rule (1) of the proposed rule 38-L:—and any member may introduce the Constitution after giving notice of his intention and it shall not be necessary to move for leave to introduce the Constitution.”

Then, next I beg to move—

“That after sub-rule (1) of the proposed rule 38-L, the following new sub-clause be inserted:—

“(1A) The Draft Constitution shall, as soon as practicable, be published in the Gazette of India.

(1B) Any member may introduce the Draft Constitution after giving notice of his intention but it shall not be necessary to move for leave to introduce the same”.

Sir, I have attempted here to interpose a sub-rule (1-A) for the publication of the constitution of India in the Gazette of India. This is to ensure that the people at large should get notice of what was happening.

I think this is an obvious necessity. Publicity is the essence of democracy and the constitution should be published. As regards 1(B) it is nothing but the last part of sub-rule (1) made into an independent sub-clause just to interpose the publication clause in the Gazette.

I further beg to move—

“That in sub-rule (2) of the proposed rule 38-L and in the proposed rules 38-N, 38-O, 38-P, 38-Q, 38-R, 38-S and 38-T, for the word Constitution, Wherever it occurs, the words ‘Draft Constitution’ be substituted.”

This amendment is only consequential upon what I have submitted.

Shrimati G. Durgabai: Sir, I oppose all the amendments to Rule 38-L, except the latter part of the amendment No. 21 *i.e.*, for the words ‘referred as’ the words ‘referred to as’ be substituted. The publication is deliberately omitted as after the Constitution is drafted the President will take such steps as he likes to publish the same.

Mr. Naziruddin Ahmad: In that case I would ask for leave to withdraw all the other amendments.

Mr. President: The mover has accepted only one amendment *i.e.*, for the words ‘referred as’ the words ‘referred to as’ be substituted. That is accepted by the House. All other amendments are withdrawn.

Rule 38-L, as amended, was adopted.

Shrimati G. Durgabai: Sir, I beg to move Rule 38-M.

38-M. When the Constitution is introduced the member introducing the Constitution may move that it be taken into consideration by the Assembly.

Provided that no such motion shall be made until after copies of the Constitution have been made available for the use of members, and that any member may object to any such motion being made unless copies of the Constitution have been made available for three days before the date on which the motion is made, and such objection shall prevail, unless the President in his discretion allows the motion to be made.

Mr. President: There is no amendment to 38-M.

Rule 38-M was adopted.

Mr. Naziruddin Ahmad : Sir, I beg to move.

“That after the proposed rule 38-M, the following new rule be inserted, namely:—

“38-MM. When a motion is made that the Draft Constitution be taken into consideration, any other member may, on giving two days notice, move that it be circulated to elicit public opinion thereon or that it be referred to a Select Committee constituted by the President.”

In this matter as in the other motion it is desired that the greatest amount of publicity should be given to what is being done in connection with the Constitution but if it is your desire to take such action as you, Sir, in your wisdom think fit in this direction, then in that case I shall be prepared to withdraw the amendment but, as I have said, I think publicity is the very essence of democracy.

Mr. President: My own idea is that as soon as the Drafting Committee gives me the final draft I shall have it published in the Gazette and I shall also have cheap printed copies made available so that everyone who is interested may get copies and study and offer such suggestions as he may wish and I shall also see that a printed copy is made available to the members of the Constituent Assembly well in advance of the meeting when it will be considered.

Mr. Naziruddin Ahmad: That, I beg to submit, will more than satisfy the object of these amendments and I beg leave of the House to withdraw my motion.

The amendment was, by leave of the Assembly, withdrawn.

Shrimati G. Durgabai: Sir, I move clause 38-N.

38-N. When a motion that the Constitution or a Bill be taken into consideration has been carried, any member may propose an amendment of the Constitution or the Bill, as the case may be.

Mr. Naziruddin Ahmad: Sir, I move—

“That in the proposed rule 38-N, for the words ‘has been carried’ the words ‘has been agreed to’ be inserted; for the word ‘any member’ the words ‘any other member’ and for the words ‘amendment of’ the words ‘amendments to’ be substituted”.

With regard to the first part of the amendment the word ‘agreed to’ is the recognized word in the Legislature rather than ‘Carried’. With regard to the second part of the amendment for ‘any member’ the words ‘any other member’ has been suggested to distinguish between the member who moves the motion and the rest. The last part is only a drafting amendment.

Shrimati G. Durgabai: I oppose this amendment, because ‘carried’ is the recognized word in the Assembly Rules. ‘Any member’ means ‘and other member’ and so I do not accept his amendment.

Mr. Naziruddin Ahmad: I beg leave to withdraw my amendments.

The amendments were, by leave of the Assembly, withdrawn.

Rule 38-N was adopted.

Shrimati G. Durgabai: I beg to move clause 38-O.

38-O. (1) If notice of a proposed amendment has not been given two clear days before the day on which the Constitution or the Bill, as the case may be, is to be considered, any member may object to the moving of the amendment, and such objection shall, prevail, unless the President in his discretion allows the amendment to be moved.

(2) The Secretary shall, if time permits, cause every notice of a proposed amendment to be printed, and a copy thereof to be made available for the use of every member.

Shri H. V. Kamath : Mr. President, my knowledge of the English language is very meagre and it is therefore with considerable trepidation that I submit that the mandatory ‘shall’ and the conditional ‘if’ go ill together and their juxtaposition, one in the main and the other in the subordinate clauses of this sub-rule, might do violence to the rules of syntax. But if our wise linguistic experts here hold otherwise, then I do not desire to press this amendment. I move the amendment:—

“That in sub-rule (2) of the proposed rule 38-O, for the words ‘The Secretary shall, if time permits, cause’ the following be substituted:—

“The Secretary may, if time permits, cause”.

or alternatively,

“The Secretary shall cause.”

Shrimati G. Durgabai: I oppose this amendment.

Mr. President: Then I put Mr. Kamath’s amendment to the House.

The amendment was negatived.

Mr. President: Then I put Rule 38-O.

Rule 38-O was adopted.

Shrimati G. Durgabai: Sir, I beg to move Rule 38-P.

38-P. Amendments shall ordinarily be considered in the order of the clauses of the constitution or the Bill to which they respectively relate; and in respect of any such clause a motion shall be deemed to have been made “that this clause stand part of the Constitution” or “that this clause stand part of the Bill”, as the case may be.

Mr. President: There is no amendment to this Rule. So I put it to the House.

Rule 38-P was adopted.

Shrimati G. Durgabai: Sir, I beg to move Rule 38-Q.

38-Q Notwithstanding anything in these rules, it shall be in the discretion of the President, when a motion that the Constitution or a Bill be taken into consideration has been carried, to submit the Constitution or any part of the Constitution, or as the case may be, the bill or any part of the Bill, to the Assembly clause by clause. When this procedure is adopted, the President shall call, each clause separately, and, when the amendments relating to it have been dealt with, shall put the question. “That this clause (or, as the case may be, that this clause as amended) stand part of the Constitution (or, as the case may be, the Bill)”.

Mr. Naziruddin Ahmad: Sir, I beg to move that for the proposed Rule 38. for the words “has been carried” the words “has been agreed to” and for the words “or as the case may be, the Bill or any part of the Bill” the words and brackets “(or, as the case may be, the Bill or any part of the Bill)” be substituted.

Sir, with reference to the first part, I think it has already been disposed of. So I do not press for changing the words “has been carried” by the words “has been agreed to”. But with regard to the second part of my amendment, the words “as the case may be” occur in line 5, and also at the end. But at the end they are inside the brackets and not at the place which is the subject of the amendment. Therefore, to ensure uniformity, I have brought in this amendment.

Shrimati G. Durgabai : I consider the first part of the amendment unnecessary. The second part, of putting the words in brackets, I accept.

Mr. President: The Mover has accepted the second part and I now put the Rule; as amended, to the House.

Rule 38-Q, as amended, was adopted.

Shrimati G. Durgabai : Sir, I beg to move Rule 38-R.

38-R. (1) When a motion that the Constitution be taken into consideration has been carried and all amendments to the Constitution moved have been considered, any member may move that the Constitution be passed;

[Shrimati G. Durgabai]

Provided that the President may, before allowing the motion to be made, refer the Constitution as amended to the Drafting Committee referred to in sub-rule (1) of rule 38-L with instructions to carry out such renumbering of the clauses and such revision and completion of the marginal notes thereof as may be necessary and to recommend such formal or consequential amendments to the Constitution as may be required.

(2) When the Constitution has been so referred to the Drafting Committee and the Committee has presented its report, any member may move that the Constitution has revised by the Committee be passed.

(3) To a motion made under sub-rule (1) or sub-rule (2) no amendment may be moved which is not either formal or consequential upon an amendment made after the Constitution was taken into consideration.

Mr. Naziruddin Ahmad: Sir, I do not move the first part of my amendment about substituting the words "agreed to" for the words "has been carried". But I move :—

That in the proviso to sub-rule (1) of the proposed rule 38-R, commas be inserted after the words "to the Drafting Committee" and the words, "in sub-rule (1) of rule 38-L".

I also move—

That in the proviso to sub-rule (1) of the proposed rule 38-R, after the words "such re-numbering of the clauses" the words "and such revision of punctuation" be inserted.

With regard to these amendments, the rule proposes that, after the Constitution is adopted by this House, to refer the Draft Constitution to the Drafting Committee for certain corrections and changes. But the revision of the punctuations is not provided for, though in the Legislative Rules of Business this power is given to the Secretary. But that rule is not being followed so far as the Constitution is concerned. Therefore the question of the revision of punctuations should also be given to the Committee.

I also move my amendment No. 32—

That in sub-rule (2) of the proposed Rule 38-R, after the words "referred to the Drafting Committee" the words "under the proviso to sub-rule (1)" be inserted.

Shrimati G. Durgabai: I accept amendments Nos. 30 and 31. But I oppose amendment No. 32.

Mr. Naziruddin Ahmad: Sir, then I would beg leave to withdraw my amendment No. 32.

Mr. President: I hope he has the leave of the House to withdraw his amendment No. 32.

Amendment No. 32 was, by leave of the Assembly, withdrawn.

Amendments Nos. 30 and 31 were adopted.

Shrimati G. Durgabai: Sir, I have two verbal amendments to propose. One is that in line 2, the word 'all' in 'and all amendments' may be changed to 'the'. The second is, to insert the words 'if any' between the words 'Constitution' and 'moved' in line 3.

Mr. President : Then I put the rule 38-R (1), (2) and (3) as amended, to the House.

Rule 38-R as amended was adopted.

Shrimati G. Durgabai: Sir, I move rule 38-S.

38-S. (1) Where a motion that a Bill be taken into consideration has been carried and no amendment to the Bill is made, the member who has introduced the Bill may at once move that the Bill be passed.

(2) If any amendment of the Bill is made, any member may object to any motion being made on the same day that the Bill be passed, and such objection shall prevail, unless the President in his discretion allows the motion to be made:

Provided that the President may, before allowing the motion to be made refer the Bill as amended either to the Drafting Committee referred to in sub-rule (1) of rule 38-L, or to another *ad hoc* Committee consisting of members of the Assembly appointed by him with instructions to carry out such renumbering of the clauses and such revision and completion of the marginal notes thereof as may be necessary and to recommend such formal or consequential amendments to the Bill as may be required.

(3) Where the objection prevails, a motion that the Bill be passed may be brought forward on any future day.

(4) When the Bill has been so referred to the Drafting Committee or the Committee appointed under the proviso to sub-rule (2) and the Committee has presented its report, any member may move that the Constitution as revised by the Committee be passed.

(5) To a motion made under sub-rule (2), sub-rule (3) or sub-rule (4), no amendment may be moved which is not either formal or consequential upon an amendment made after the Bill was taken into consideration.

Mr. Naziruddin Ahmad: My amendment No. 33 seeks to substitute "has been agreed to" for the words "has been carried". But that has already been disposed of and so I do not move it. I move amendments Nos. 34 and 35.

That in the proviso to sub-rule (2) of the proposed rule 38-R, 38-S, after the words "renumbering of the clauses" the words "and such revision of punctuation" be inserted.

That in sub-rule (4) of the proposed rule 38-S, for the words "that the Constitution" the words "that the Bill" be, substituted.

Sir, so far as rule 38-S is concerned, it deals with a Bill alone as distinct from the 'Constitution'. In some of the rules, the words 'Constitution' and 'Bill' are used. But so far as this particular rule is concerned, I carefully looked into it and find that it deals with only Bill. Therefore, the word 'Constitution' is, I take it, clerical error, and the word 'Bill' should be used.

Shrimati G. Durgabai: Sir, I accept No. 34, but No. 35 is not necessary as the clerical error has been corrected since.

Mr. Naziruddin Ahmad: But the difficulty is the original motion was as it was then printed and not with the correction. So it will have to be moved again along with the correction.

Shrimati G. Durgabai: Sir, I move that the word 'Bill' may be substituted for the word 'Constitution'.

Mr. Naziruddin Ahmad: That is exactly my amendment.

Mr. President: That means both the amendments are accepted by the mover.

Shri M. Ananthasayanam Ayyangar : Sir, in sub-rule (1) it is stated "that a Bill be taken into..... etc." In sub-rule (4) we have "When the Bill has been etc." In the last but one line, the word "Constitution" is used. Is that the one to be changed to "Bill"?

Mr. President : The word "Bill" has to be used for "Constitution" all through.

Rule 38-S, as amended, was adopted.

Shrimati G. Durgabai: I beg to move Rule 38-T.

"The member who has introduced a Bill may at any stage of the Bill move for leave to withdraw the Bill, and after such leave is granted, no further motion may be made with reference to the Bill."

Mr. Naziruddin Ahmad: I move—

“That in the proposed rule 38-T, for the words ‘and after such’, the words ‘and if such’ be substituted.”

This is only a verbal amendment.

Shrimati G. Durgabai: I accept the amendment.

The amendment was adopted.

Rule 38-T, as amended, was adopted.

Shrimati G. Durgabai: I beg to move Rule 38-U—

“When the Constitution is passed by the Assembly, it shall be submitted to the President who shall authenticate the same by affixing his signature thereto.”

Shri M. Ananthasayanam Ayyangar: A small error has crept in here. The clause says: “When the Constitution is passed by the Assembly, it shall be submitted to the President.....” There is no agency for that submission. Instead of this, we may amend the clause as follows:

“When the Constitution is passed by the Assembly, the President shall authenticate same by affixing his signature thereto.”

Shrimati G. Durgabai: I accept the amendment, Sir.

Mr. President: The question is:

“When the Constitution is passed by the Assembly, the President shall authenticate same by affixing his signature thereto.”

Rule 38-U, as amended, was adopted.

Mr. Naziruddin Ahmad: I move New-Rule 38-UU I have given notice of. It runs :

After the proposed rule 38-U, the following new rule be inserted :

“38-UU. The Draft Constitution as so authenticated by the President shall be published in the Gazette of India and shall thereupon constitute the Constitution of Free India.”

Shrimati G. Durgabai: I do not accept this new rule. This matter has already been dealt with.

Mr. Naziruddin Ahmad: In view of the fact that this is only a routine matter I beg leave to withdraw this motion.

The motion was, by leave of the Assembly, withdrawn.

Mr. Naziruddin Ahmad: I have to apologise to the House for speaking so often. But it was due to the desire to improve the rules in my own humble way that I have done so. I am afraid I have tired out the patience of the House I am sorry for it. But since these defects came to my notice I thought it my duty to raise them before the House.

Mr. President: The Honourable Member need not apologise to the House for that. I am sure we are thankful to him.

Shrimati G. Durgabai: I move clause 38-V—

“When a Bill referred to in rule 38-A is passed by the Assembly, a copy thereof signed by the President shall be submitted to the Governor-General for

his assent. When the Bill is assented to by the Governor-General, it shall become an Act and shall be Published in the *Gazette of India*."

Shri H. V. Kamath: Sir, I would suggest in this connection that, as this Rule 38-V has come in for a good deal of adverse criticism, it may be referred back to an expert committee for re-examination in the light of the objections raised here.

Shri M. Ananthasayanam Ayyangar: Regarding this rule, at the time of the consideration stage, I myself raised two points for clarification by the Honourable Dr. Ambedkar. I do still think that his reference to the Governor-General and his assent is not necessary. Though I may not agree to the rule being referred back to the Committee, here and now it is possible to change it if the Mover, with the advice of Dr. Ambedkar, changes her opinion. I will be very glad if she does so. I consider that these rules provide for the passing of the new Constitution for India and also the same set of rules, with the exception of one, apply to the modification of the existing Constitution. Other Acts will be brought forward to empower the executive to make rules and regulations to the Indian Union in the Constituent Assembly (Legislative Section). Therefore, so far as these other bills are concerned, they are regulated by the Government of India Act as adapted. Clause 32 lays down that these rules must receive the assent of the Governor-General and it is open to him to withhold his assent and remit for re-consideration either wholly or with reference to particular sections and so on. But so far as this section is concerned, do we want the Governor-General to exercise this power? I do think that because of some errors that might have crept in we are clothing him with this power.

Therefore the errors are no argument for clothing the Governor-General with this power. There was another point raised. Under the existing law, under the Independence Act passed by Parliament of Britain, the Governor-General has been given the power to adapt the 1935 Act to suit the changed conditions. But that power continues only till 31st March 1948. If because he is given that power, he modifies the Act, he will become a super-legislature so far as the Act is concerned. If any further change has to receive his assent that power will lapse after 31st March 1948. There is no likelihood of the Government of India Act hereafter being changed. So, hereafter, when the Government of India Act as adapted will be no more there, why should we re-clothe the Governor-General with this power? Further, it is not in the Legislative side of the Dominion legislature that we are trying to modify the Constitution Act. It is only on this side, which deals with the new Constitution for India that we have taken power to modify the existing Acts. Therefore these two, the modifications of the existing Act and the preparation of a new Constitution differ fundamentally and for the latter there is no need to get the assent of the Governor-General. When we are making a law, let us not fall into that error. In some advice that was given by Dr. Ambedkar he said that it is open to this Assembly to modify the provision for reference to the Governor-General. Therefore he is not wedded to that opinion. It is open to Dr. Ambedkar to change his mind. I would appeal to him to reconsider this matter. We are trying to lift ourselves from the old curse under which we have been living for 150 years. We have struggled against it for a long time. Why should we again submit our neck to the Governor-General, whether he is our nominee or any other? Therefore, instead of re-committing this to the Committee we may make the modification straightaway.

Shri H. V. Kamath: Sir, I submit that so far as this Assembly is concerned, you are the supreme authority and no bill or resolution adopted by this Assembly should be submitted for ratification by or assent to any outside authority, and as such this clause is not necessary.

Mr. President: Does any other Member wish to speak about this clause? There is no amendment unless I take Mr. Kamath's suggestion as an amendment that it be referred back to the Committee.

Shri H. V. Kamath: I would request you to treat it as an amendment.

Mr. President: The question is:

That the proposed Rule 36-V be referred to the Drafting Committee.

The amendment was adopted.

ANNOUNCEMENT BY PRESIDENT *re* NEXT SESSION

Mr. President: We have come to the end of the agenda and there is one thing which has to be done before we adjourn, and that is to give me power to convene the next session of the Assembly at a suitable time. Under the rules, I cannot call it after a limited time, but in this case I suppose it would be a pretty long time before the next session is called for considering the draft Constitution. So I wish you to give me the power to call it at a suitable time.

Seth Govind Das (C.P. & Berar: General) : *[Mr. President, I propose that the authority for the calling of the next session of the Assembly should be given to the President.]*

Mr. President: Is there any amendment to this ?

The motion was adopted.

Mr. President: I will give the House an idea of the time-table that I have in my mind. I expect the drafting Committees to give me the final draft about the middle of February and as soon as the final draft is received, it will be printed and it will be sent to the Press and it will also be published in the Gazette and otherwise publicised and when the Legislative Session is over, which will be. I expect some time towards the end of March or beginning of April, I shall fix a suitable date, sometime in April, for the next session of the Constituent Assembly for considering the Draft Constitution and we shall sit as long as it is necessary to complete the consideration and final adoption of the Constitution.

An Honourable Member: Will there be any interval between the Legislative session and the Constituent Assembly session ?

Mr. President : I think I shall give a few days' interval but not a long interval.

Mr. R. K. Sidhwa: We will require a fortnight at least.

Mr. President: I shall give a short interval, but I do not know how much it will be.

An Honourable Member: Not less than two weeks.

Mr. President: I shall consider that it all depends upon when the Legislative session ends.

An Honourable Member: It is due to end on the 4th April.

*[]*English Translation of Hindustani speech.

Mr. President : Every year it is stated that the session will end on such and such a date, but then it is extended beyond that date. It is not possible to fix a date today, but I shall give some time after it.

The Assembly then adjourned to a date to be fixed by the President.

SIGNATURES OF THE MEMBERS OF THE
CONSTITUENT ASSEMBLY

(after the Eighth Schedule)

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the Constitution of India

STATE-WISE MEMBERSHIP OF THE CONSTITUENT ASSEMBLY OF INDIA

(As on 23 August, 1949)

PROVINCES—235

	<i>No. of Members</i>
1. MADRAS	49
2. BOMBAY	21
3. WEST BENGAL	21
4. UNITED PROVINCES	55
5. EAST PUNJAB	16
6. BIHAR	36
7. C.P. AND BERAR	17
8. ASSAM	8
9. ORISSA	9
10. DELHI	1
11. AJMER-MERWARA	1
12. COORG	1

INDIAN STATES—72

1. MYSORE	7
2. KASHMIR	4
3. BARODA	3
4. JODHPUR	2
5. JAIPUR	3
6. BIKANER	1
7. KOLHAPUR	1
8. MAYURBHANJ	1
9. SIKKIM-COOCH BEHAR	1

No. of Members

10.	TRIPURA, MANIPUR AND KHASI STATES	1
11.	RAMPUR-BANARAS	1
12.	ORISSA STATES	4
13.	C.P. AND BERAR STATE	3
14.	MADRAS STATES	1
15.	BOMBAY STATES	4
16.	HIMACHAL PRADESH	1
17.	UNITED STATE OF KATHIAWAR (SAURASHTRA)	4
18.	UNITED STATE OF MATSYA	2
19.	UNITED STATE OF RAJASTHAN	4
20.	UNITED STATE OF VINDHYA PRADESH	4
21.	UNITED STATE OF GWALIOR-INDORE-MALWA (MADHYA BHARAT)	7
22.	PATIALA AND EAST PUNJAB STATES UNION	3
23.	UNITED STATE OF TRAVANCORE AND COCHIN	7
24.	CUTCH	1
25.	JUNAGADH	1
26.	RESIDUARY STATES	1